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## LESSONS FROM ACEH FOR MINDANAO: NOTES FROM THE FIELD



*First, I ask forgiveness if this letter from me may disturb your peace of mind in government... My name is Halimah... At the time (in 1999), I was a junior high school student, in my third year, just finished with our national exams that took place that Monday. I came home from school, still wearing my school uniform when I was caught at the KKA junction. No vehicles could pass because of the traffic jam, the street was filled with people. Exactly noon that historical incident took place where armed soldiers fought against people who had no guns. I fainted because a bullet hit me in the head. Since this happened until now I still suffer and probably until the day I die, because a shrapnel is still lodged under the skin in my head."*

*Through this letter, we victims, especially me personally, hope that (President) SBY whom I respect would open your heart and take action that is decisive and just to deal with this case... We victims really hope that a human rights court and a truth commission can be established in Aceh. We victims may forgive but this does not mean we can ever forget."*

Letter from a woman survivor of a massacre in 1999, addressed to President Susilo Bambang Yudhoyono in 2012<sup>1</sup>

### Transitional justice and the peace agreement in Aceh

Nine years since the signing of the peace agreement between the separatist movement *Gerakan Aceh Merdeka* (GAM, Free Aceh Movement) and the government of Indonesia, there is little progress on the promise for truth and justice. This has led to growing frustrations, especially among victims of human rights violations, and human rights advocates.

In late 2004, Aceh was devastated by a Tsunami which killed more than 200,000 people within a few minutes. A year later, shocked by the loss caused by this natural disaster and cajoled by international good will for humanitarian assistance, the warring parties signed a peace agreement, known as the Helsinki Memorandum of Understanding (MoU), which, among others, provided Aceh with autonomous powers for governance.<sup>2</sup> Some provisions in the peace agreement also sought to address historical injustices and human rights violations, including:

- The establishment of a Truth and Reconciliation Commission for Aceh and a court with jurisdiction over crimes against humanity and genocide (2.3);
- Amnesty for individuals detained/imprisoned for being members of the GAM (3.1.1);
- Demobilization, disarmament and decommissioning of GAM combatants and relocation of Indonesian security forces (4.2-4.6);
- Instead of a reparation program, a reintegration program proposed economic support for former combatants, political prisoners and "civilians who suffered a demonstrable loss." However, there was no specific mention of victims, vulnerable groups or women (3.2);
- Establishment and reform of legal institutions in Aceh in order to strengthen accountability and rule of law (1.4).

The Helsinki MoU also created an independent monitoring group – the Aceh Monitoring Mission – led by the European Union in cooperation with representatives from neighboring ASEAN countries. A major focus was monitoring the disarming and destruction of weapons handed over by the GAM, and in parallel, the relocation of some 25,000 Indonesian army and police from Aceh. The GAM was officially disbanded at end of 2005 and was transformed into a political organization called the

<sup>1</sup> This letter was sent to President Susilo Bambang Yudhoyono in a packet of 1000 letters from victims in July 2012. Asia Justice and Rights (AJAR), a non-profit organization based in Jakarta, Indonesia working to strengthen accountability and respect for human rights in the Asia Pacific region, published the collection of victims' stories in the report "Remembering My Beloved, Remembering My Pain: How a group of victims from Timor-Leste and Aceh collected their own stories to push for change" in 2012, which is available at <http://asia-ajar.org/publications/Remembering%20My%20Beloved.pdf>.

<sup>2</sup> For more information on the conflict history and the peace process in Aceh, see Edward Aspinall's account "Islam and Nation: Separatist Rebellion in Aceh, Indonesia" (2009) and the International Crisis Group Asia Reports on Aceh (2001, 2003, 2007).

*Komite Peralihan Aceh* (Committee for Aceh's Transition). Eventually, GAM members formed local political parties that competed in the elections of 2009 and 2014.

### A shrinking commitment to accountability in Jakarta

Early on in the peace process, the Indonesian national parliament showed its reluctance to implement provisions for accountability already agreed in the Helsinki MoU. This reluctance was consistent with a systematic lack of political will to implement justice measures at a national level (ICTJ and KontraS 2011). In particular, two key provisions of the Helsinki MoU were altered in the national law on the implementation of regional governance in Aceh (Law on the Governing of Aceh) passed by the parliament in Jakarta in 2006:

- The human rights court (which under existing Indonesian law has jurisdiction over crimes against humanity and genocide, and has powers to be retroactive with parliament discretion) was limited to future violations. This reflected the lack of political will to investigate crimes that were committed during the conflict.
- The truth commission was inseparably linked to a national truth commission. Thus, when the Constitutional Court annulled the 2004 law establishing this national truth commission, central government officials claimed that a truth commission for Aceh could not be established (Clarke, Wandita and Samsidar 2008).

### Victims demanding justice in Aceh

In its early years, the peace process in Aceh focused mainly on security sector reform and political reform. The Aceh Monitoring Mission, the Indonesian government and GAM first completed the task of disarming and decommissioning both sides and establishing local political parties. Consequently, the relatively peaceful election of 2009 was considered an indicator of success.

However, the provisions on justice and accountability fell off the agenda. Some observers believe that both sides did not want to address justice issues as each of them may have committed war crimes. Human rights advocates demanding investigations were seen as “spoilers” of peace. Many international organizations, including UN agencies, sidestepped justice issues for fear of upsetting both sides.

Since 2006, victims groups started to actively speak about their demands for justice and truth. In July 2007, Acehese human rights NGOs for instance facilitated a victims' congress to strengthen the victims' role in the peace process (Clarke, Wandita and Samsidar 2008:17).

However, because much of the international and national attention focused on reintegration processes involving former combatants, their voices were hardly heard. Despite the existence of a reintegration program supposed to provide economic support not only to former combatants and political prisoners, but also to “conflict-affected” civilians, victims were mostly invisible to government officials.

One exception was the provision of *diyat*, an Islamic form of compensation to some 20,000 widows. This program commenced before the peace process and was continued and adopted by *Badan Reintegrasi Aceh* (BRA), Aceh's reintegration body. However, by each widow receiving a one-time payment of around 200-300 USD, the amount granted was relatively small. In addition, the payment was not accompanied by any kind of acknowledgement or apology for her husband's killing or disappearance. Another major concern was that victims of sexual violence were not included in any of these schemes because BRA officials believed it was too difficult for victims to provide evidence that a sexual assault took place. Instead of addressing this challenge, they chose to exclude victims of sexual violence, a move consistent with the fact that the Helsinki MoU did not include specific provisions for women's issues and concerns.

Nevertheless, in the decade since the signing of the Helsinki MoU, victims, survivors, and civil society have not remained passive. Many groups have consistently commemorated events of mass killings, demanding accountability, believing that an official recognition of what took place is a necessary foundation for lasting peace.<sup>3</sup>

### A truth commission established by local legislation

Faced with the broken promise to establish a truth commission, victims groups and civil society in Aceh have campaigned for the establishment of a truth commission by local legislation. They argue that the provision in the Law on Governing of Aceh, which inseparably links the Truth and Reconciliation Commission for Aceh to a national truth commission, does not preclude establishing a local truth commission in the absence of a national entity. In 2009, a coalition of human rights advocates presented a draft law to establish a local truth commission to the Acehese parliament. The local parliament announced a new commitment to revisit this initiative in 2012 (Pusaka 2012). After deliberation, consultation and comparative study, the Acehese

<sup>3</sup> Some victims who received *diyat* still feel that their right to justice has not been fulfilled. A female victim in Aceh Besar, for example said: “My child is dead as a consequence, then it is paid with 3 million rupiahs [approximately \$300] *diyat*. Is that justice? Not according to me, because my child's life has been tagged one life, 3 million rupiahs” (cited in Ross, Wandita and Samsidar 2008:23).

parliament, dominated by representatives from Partai Aceh (a political offshoot of the GAM), passed a law to establish a local truth commission by the end of 2013.<sup>4</sup> However, because local laws from Aceh must be vetted by the central government, this legislation is still languishing due to bureaucratic foot-dragging by Jakarta.

### Investigations by National Human Rights Commission

Since the fall of Soeharto in 1998 (known as “*reformasi*”), Indonesia’s National Human Rights Commission (Komnas HAM) has been vested with the powers to conduct investigations on cases of crimes against humanity or genocide, under Law 26/2000. Under this law, Komnas HAM would refer such cases to the Attorney General’s Office for prosecution in Indonesia’s human rights court, which has jurisdiction over these two categories of crime. However, the performance of this court gives rise to concern. Only three cases have been prosecuted so far (East Timor 1999, Abepura-Papua 2000, and Tanjung Priok massacre 1984) with a 100% acquittal rate. Although there have been initial convictions in the cases, every convicted person was subsequently freed on appeal (ICTJ and KontraS 2011). Komnas HAM’s referrals on seven additional cases are now languishing with the Attorney General’s Office.

Despite this, civil society groups in Aceh have pushed Komnas HAM to start investigations on five more key cases in Aceh. Subsequently, Komnas HAM formed an investigative team which stated in their preliminary findings released in October 2013 that serious human rights violations occurred during the armed conflict (Aritonang 2013). However, Komnas HAM is facing internal challenges that may detract from its effectiveness in carrying out its investigative functions.

### Similar but different: Mindanao and Aceh

The protracted conflicts in Aceh and Mindanao bear many similarities. In both contexts, there are claims for a distinct identity that pre-dates national independence, competing interests and claims on natural resources, and the desire to establish religious norms (Islam) as one foundation of governance.

Under the dictatorships of Marcos and Soeharto, respectively, both territories were ravaged by war and massive human rights violations. In the early years of transition after the dictators fell, both conflicts experienced escalations. A genuine political commitment from the central government was needed to bring the peace process forward in both countries.

<sup>4</sup> In November 2013, AJAR facilitated a five day workshop for members of the Aceh-nese parliament’s committee tasked to draft the local law.

Like the Indonesian parliament after the signing of the Helsinki MoU, the national congress of the Philippines is mandated to pass the Bangsamoro Basic Law, which lays the foundation for the establishment of the proposed autonomous region called Bangsamoro. Furthermore, the Moro Islamic Liberation Front (MILF), similar to the GAM in Aceh, is aspiring for some kind of formalization of Shariah Law as a result of the peace process.

Similar to Aceh, the conflict parties agreed to work out a program for transitional justice early on in the peace process. According to the Framework Agreement (FAB) signed by MILF and the Philippine government in October 2012, the transitional justice program should address the legitimate grievances of the Bangsamoro people and correct historical injustices and address human rights violations (VIII 12). Beyond that, the FAB contains the following provisions seeking to address past violations as a foundation for a lasting peace:

- Reparations for land dispossessions (VI.2), including recognition of indigenous peoples’ rights (VI.3);
- A commitment to addressing violations of human rights, civil rights, social, political injustice and impunity (VI.1);
- Decommissioning of MILF and transfer of law enforcement from the military to the police force of the Bangsamoro (VIII.5 & VIII.6);
- Provision of rehabilitation, reconstruction, and development programs for the Bangsamoro, specifically mentioning the needs of “combatants, internally displaced persons, and poverty-stricken communities” (VIII.10).

Building upon the provisions in the FAB, the Annex on Normalization, passed in January 2014, states that a transitional justice and reconciliation commission (TJRC) should be established to undertake a study and recommend appropriate mechanisms for transitional justice and reconciliation to the panels (H.1). Similar to Aceh at an early stage in the peace process, these provisions still need further detailing and will demand strong political commitments to be put into practice.

### Lessons from Aceh – Conclusion

As there are a number of similarities between the Aceh and the Mindanao contexts, many key lessons can be learned for Mindanao:

- The legalization of a peace agreement into national law is one of the first challenges to ensuring peace. Without strong advocacy and pressure by stakeholders, political decision makers at the national and regional level may pull back on commitments made at the negotiation table.

- International state and non-governmental actors as well as local civil society should take a role in demanding accountability measures during the early phase of the peace process. In the Aceh experience, accountability was sidelined as another pion in the political negotiations between local and national actors. International actors were reluctant to push the issue for fear of upsetting Jakarta, and a key opportunity was lost.
- Peace agreements often focus on former combatants but remain rather silent on victims. Victims groups should be strengthened and empowered to engage local and national government officials in a struggle of contextually appropriate truth and justice mechanisms. There needs to be dedicated strategic planning and resourcing for the long-term participation of victims from all sides of the conflict.
- In Aceh, victims groups are exhausted and disorganized by now. Many of their civil society counterparts entered into local politics, leaving an organizational vacuum. There needs to be a long-term strategy for increasing the capacity of local victims groups to deal with trauma, including documenting and sharing of their experiences, as well as for strengthening their socio-economic base.
- Victims need both acknowledgement and socio-economic support. Civil society and government actors can work together to achieve a balance of the two through creative and contextual processes. There needs to be a dedicated strategy to ensuring and planning for the long-term participation of victims from all sides of the conflict. Resources should be set aside for this purpose.
- Shariah law in Aceh has been formalized in a way that discourages women from speaking out<sup>5</sup> and overly focuses on women's modesty. There is also social and cultural pressure not to report sexual violence as it brings shame to the community. Rather than legitimizing discriminatory norms and practices, Shariah law should be interpreted and formalized in a process which is inclusive to the concerns of women. Safe spaces are needed for women to speak about their experiences.
- Programs that strengthen human rights and the rule of law, as well as address violence against women, should integrate acknowledgement and accountability for past crimes in the

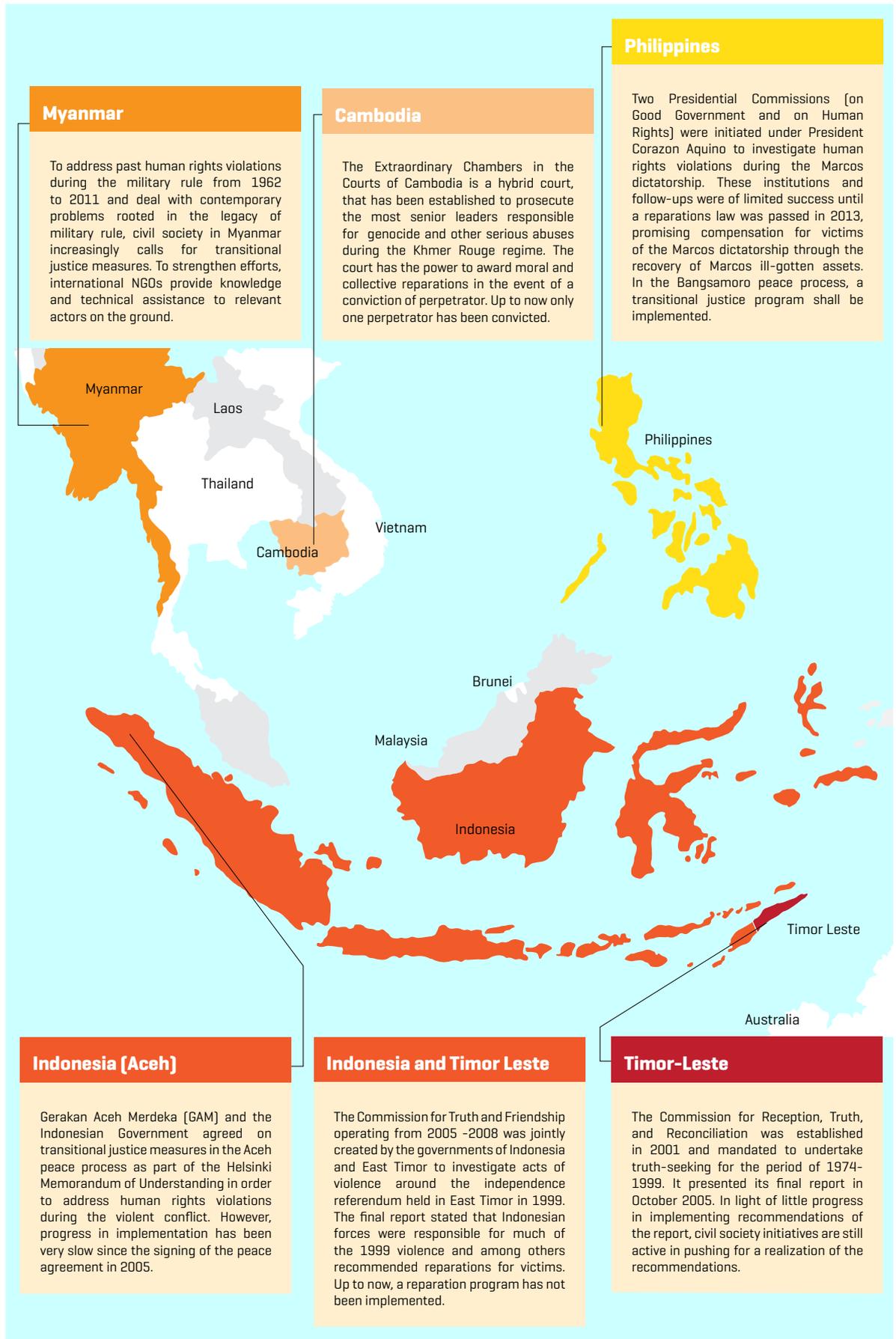
process of dealing with new issues. Justice and accountability measures are part of rebuilding trust in the institutions of governance and rule of law. Allowing perpetrators to roam free, without social, administrative or judicial sanctions, shakes the foundation of trust in the peacebuilding process.

Finally, building peace requires a long-term investment in strengthening victims' capacity, memorializing the painful experiences of the past and pushing for sanctions and credible investigations of those who committed serious crimes. Human rights and peace advocates should plan for a marathon, not a 100 meter sprint, developing long-term goals that can sustain the long march for justice and peace.

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<sup>5</sup> In November 2013, AJAR facilitated a five day workshop for members of the Aceh-nese parliament's committee tasked to draft the local law.



Transitional Justice in Southeast Asia