



**BEWG**



AJAR Report on Regional Workshop

# EXCHANGE VISIT TO ACEH AND WORKSHOP ON NATURAL RESOURCES IN TRANSITION

SEPTEMBER 9-15, 2015

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# BACKGROUND

Myanmar and Indonesia are both in transition from military dictatorship and armed conflict to democratic governance. Both countries have significant regions of distinct ethnic groups living within vast areas of forests (and other natural resources) that have valuable economic value as well as being vital for local livelihoods and ecosystem services. Further, the regimes in both countries were characterized by—indeed, facilitated by—the over-extraction of forests and other natural resources by agents of the military and their economic and political cronies. These unsustainable practices not only damaged forests but also exacerbated armed conflict and displaced local communities.

While each country's history and context is unique, there are many lessons to be shared. Myanmar's resilient civil society has sustained grassroots and national level activism throughout decades of repression. Indonesia is farther along in its transition and can offer strategic learning opportunities for civil society in Myanmar seeking to advocate for specific reforms. In particular, there is much to be learned from Indonesia's successes and failures in security sector reform, such as curtailing the role of the military in politics and the national economy. The strengths and weaknesses of specific approaches to addressing the role of the military in legal and illegal sectors in natural resource

extraction and trade may offer useful parallels to the Myanmar context. In addition, with the declining formal role of the military, it is useful to examine how police and non-state actors ex-combatants have stepped in to assert control in the sector, particularly in illegal activities. Indonesia's Aceh Province offers a particularly apt learning opportunity on the reforms to civilian control of natural resource sectors in the context of Special Autonomy and a spike in natural resource investment.

Military transitions are inevitably slow as the military's influence does not dissipate overnight. Since progress toward civilian oversight usually lags, there is a rush to develop natural resource sectors in post-conflict economies when both the government and international donors attempt to use natural resources as an engine of growth and recovery, and as a "peace dividend" to offer warring parties. A boom in natural resource investment often disproportionately burdens women and ethnic minorities who lose access to land and resources they previously depended on for their livelihood.

Another key similarity between Indonesia and Myanmar is the critical role of civil society organizations (CSOs) in creating pressure for reform. In Indonesia for example, a strong and vocal civil society played a central role in building political will for change from the outset of the

post-Suharto transition. This occurred not only in the forest sector, but also in military and democratic reform, and with human rights advocacy. Increased international attention and a sense of urgency in newly post-conflict countries often accelerates the number and pace of programs aimed at reform. As in Indonesia, this energy can arrive ahead of the capacity of both transitional governments and civil society to effectively weigh options and may precede political will for change. During a drawn-out transition period, civil society can play an effective role at advocating for change. Therefore, it is critical for civil society to be able to hold international donors and investors to account and to pressure those political institutions that.

Forest Trends and Asia Justice and Rights (AJAR) held an exchange visit of civil society organizations (CSOs) from Myanmar to Indonesia, in collaboration with Burma Environment Working Group (BEWG) and Karen Environmental And Social Action Network (KESAN). The goal of the visit was to share the lessons from the two countries related to security sector reform, with a focus on natural resource exploitation. Participants from Myanmar included: Human Rights Foundation of Monland (HURFOM), Karen Human Rights Group (KHRG), Network for Human Rights Documentation - Burma (ND-Burma), Wimutti Volunteer Group (WVG), Kachin Women Association Thailand (KWAT), BRIDGE, Kachin Development Networking Group (KDNG), Myanmar Alliance for Transparency and Accountability (MATA), Ethnic Community Development Forum (ECDF) and Metta Development Foundation. AJAR would also like to thank Bo Arbogast for editing the final version of this report.



## Objectives

- Provide a space for exchange of experience and learning about successes and failures in security sector reform and civilian control of natural resource sectors in Myanmar and Indonesia, including an understanding of roles of key actors and how to influence these players;
- Provide an opportunity to explore how security sector reform and civilian oversight has progressed in Aceh's post-conflict natural resource sectors, including involvement of police and ex-combatants, and how CSOs and communities have pursued reforms;
- Identify opportunities and develop a toolbox for strategies and for pushing these agendas forward by developing specific CSO capacities, and engaging key actors; and,
- Plan for future exchanges.

The exchange visit was conducted in two parts. First, in collaboration with a local NGO in Aceh, WALHI Aceh, participants visited Aceh province to learn about the natural resource conflict and the role of the security sector and former combatants in resource extraction and trade before and after the peace process. During the visit, participants had a discussion with key stakeholders in Aceh and visited an area affected by conflict related to natural resources. Second, key actors from Indonesia who are engaged in reforms of the security sector were invited to a two-day workshop in Bali to meet with the participants to discuss the situations of Burma and Indonesia. At the end of the five-day exchange visit, participants discussed strategies and future plans for exchanges and learning.



Visiting tsunami sites in Gampong



# VISIT TO ACEH, INDONESIA



Aceh, Indonesia 10-11 September 2015

# DAY 1



Participants & facilitators photo group at WALHI office

## Workshop on Natural Resource in Transition: Lessons from Aceh and Myanmar

Hosted by WALHI Aceh, AJAR facilitated a one-day discussion on involving CSOs, as well as representatives from the local government and parliament. The sessions began with an overview of the conflict in Aceh and Myanmar, followed by a session on the roles of military and non-state actors in natural resource extraction/exploitation. In the evening, participants attended an informal discussion with representatives of previous and current Aceh government as well as a member of Partai Aceh, the ruling party in Aceh.

### A short history of conflict in Aceh

Yarmen Dinamika, a senior Acehnese journalist who played a prominent role in the peace process, provided a potted history of the various conflicts that has affected Aceh since it was integrated into Indonesia in 1945. There were three major conflicts:

• Perang Cumbok, Pidie (1945-1946): a horizontal conflict or social revolution between the ulama (religious leaders) and hulubalang (aristocracy) took place. After the Japanese occupation in World War II, the hulubalang wanted the Dutch to return because they had received many privileges during the Dutch occupation. The

religious leaders saw this as a betrayal in the fight for Acehese independence, and defeated the hulubalang.

- Darul Islam (Islamic Army) Rebellion (1953-1959): After 1945 Aceh had the status of independent province, but Sukarno retracted this status and the leaders of Aceh protested. A vertical conflict arose between Aceh and the central government, with the Acehese fighting for regional autonomy and for the establishment of an Islamic State of Indonesia. Implementation of martial law occurred in 1957, followed by the declaration of "Guided Democracy" by Sukarno in 1959. This marked the reduction of power and influence for the Darul Islam movement. Three years of negotiations (1959–1962) led to a peace agreement that ended the conflict, with Aceh restored as an autonomous province with special rights for Islamic law.
- Free Aceh movement (1976-2005): This movement (known as Gerakan Aceh Merdeka or GAM), sought independence for Aceh. GAM fought against Indonesian government forces - a vertical conflict. This later became a horizontal conflict (GAM vs non-GAM). The conflict started because of the over-exploitation of natural resources by the Indonesian central

government, with no return to the people of Aceh. Natural resource extraction Aceh led to human rights violations during the war. After the tsunami, a peace agreement was brokered between GAM and the Indonesian Government. The terms of the agreement included:

- Special autonomy given to Aceh province, including the authority to establish local political parties (Partai Aceh was established by former GAM)
- Many freedom fighters who were in prison received amnesty, except those involved in terrorism
- Concessions related to natural resource were given, i.e. inside the 12-mile EEZ (Exclusive Economic Zone), Aceh is entitled to 70% of revenue; outside of the 12 mile EEZ, Aceh receives 30% of the revenue, and Jakarta 70%.

#### Impact of the conflict on women

Evi Zain, a woman human rights defender from Aceh shared her views on the impact of the conflict on women. During the conflict, women in Aceh faced violence and repression. A coalition of NGOs documented 103 cases of violence against women in 13 districts, most of these the martial law between 2003-

2005 (65 cases.) There are many more undocumented cases. The impact of the conflict on women include loss of livelihood, displacement and poverty. During the conflict, women took on traditional roles, such as cooking, but also challenged the gender roles when men were imprisoned or took up arms; women evacuated dead bodies, were used as human shields, and also worked as informants. However, they were pushed aside after conflict subsided.

Since Special Autonomy in 2000 and the peace process in 2005, women have been disproportionately affected by Sharia law. However, there are currently no specific policies (and a lack of resources) allocated to address the impact of repression and violence against women. Sharia law has resulted in discrimination against women within family and community. Moreover, women find it difficult to hold public positions or join political parties to advocate for their own interests.

CSO's have played a role in conducting advocacy and providing solidarity to victims. During the conflict, CSOs had strong international links; they held a strong position in negotiations and voice in the media. After the conflict, the civil society movement has become fractured. Many CSO leaders have become "contractors" working on development projects for big aid agencies. Some have joined political parties. This has reduced

civil society's bargaining position. Further, there was a difference in the interpretation of who should receive welfare support between the Aceh government and CSOs. The Acehnese government has prioritized access to welfare support for former combatants, and not victims or civilians. Thus the peace agreement was not implemented for the benefit of victims. This failure has undermined the sense of achieving a just peace. Neither the central government (in Jakarta) nor the local government is paying attention to victims.

#### Natural resource issues in post-conflict Aceh

Mustiqal Syah Putra, a legal aid lawyer from LBH Aceh, spoke about new challenges around natural resource management (NRM) after the peace process. Resource extraction has increasingly been dominated by ex-combatants. Natural resources became a target because other economic sectors were not well developed due to the war. There was also strong demand for resources for reconstruction after the tsunami.

In 2005, there was a strong hope that the newly elected government, led by former combatants, would be able to protect Aceh's natural resources. Although reconstruction of Aceh was largely successful, there were many unresolved issues still around reintegration. There

were not enough jobs suitable for ex-combatants with low skills. There was also tension amongst ex-combatants over who had or hadn't received reintegration payments. As a result the government was reluctant to cause more trouble by restricting access to resource extraction.

During the years of conflict, forest cover was generally protected since threats of violence and troop movements in the forest made it unsafe to enter. Once the conflict ended forests became an attractive target for exploitation. Since the peace agreement was signed, 27 thousand hectares of forest have been lost.

The peace agreement only specified arrangements for oil and gas power-sharing under special autonomy, but not for the other natural resources sectors - agrarian, foresting, mining - which are still under central control. Natural resources in Aceh include:

- Oil and gas, which contribute to 14% of Indonesian GDP. There is information that a new oil & gas reserve has been found, similar in size to the reserves in Kuwait.
- Forests that support the lives and livelihoods of people in Aceh
- Mining including for mineral, coal and sand quarries for construction
- Palm oil plantations, and other

agricultural crops such as cocoa and coffee

- Fisheries.

In post-conflict Aceh, the emphasis has been to promote growth over sustainability and equity, facilitated by political actors for private corporations. This is a continuation of patterns in the past, e.g. the involvement of Exxon Mobil has resulted in pollution and human rights violations. Growth has occurred in the areas of estate crops, logging and oil and gas.

During the reintegration process some ex-combatants have become forest rangers patrolling and protecting forests, while others have become involved in illegal extraction. Thousands of rangers were trained and provided valuable on-the-ground training, but once the funding ended, the program became voluntary only.

Civil society organizations had a strong role under the first Aceh government, when the governor tried to "green" the forest sector to be more sustainable and equitable. But the current government has not continued this approach. CSO's need to be strengthened and empowered to have a voice in management of natural resources in the post-conflict era.

## The origins and nature of ethnic conflict in Myanmar

Ethnic minorities have fought for their rights and self-determination in Myanmar since 1947. In 1947 there was an agreement to establish a federal union. In 1962, a federal system was initiated with a majority-Burmese government but with little power for ethnic minorities. There has been a 67-year long civil war in Myanmar – with numerous conflicts occurring since independence in 1948.

Myanmar/Burma has been led by various formations of government:

- 1948-1962: Union Government
- 1962-2011: Military Government (Nay Win) SLORC
- 2011- present: Current semi-civilian government

### Milestones of failed and current peace negotiations in Myanmar

After the 1990 elections, ceasefire agreements with some ethnic armed groups (EAG) initiated but failed.

Aug 2011: Peace negotiations resumed. The Government established a Union Peacemaking Central Committee (UPCC) and the Working Committee of UPCC (chaired by the President and Vice-President) and also formed the Myanmar Peace Center to provide technical assistance.

Ethnic Armed Organisations (EAOs) established the Nationwide Ceasefire Coordination Team (NCCT.) In 2015, the Ethnic Armed Groups (EAGs) established the Senior Delegation for the Nationwide Ceasefire Agreement (NCA) To date ceasefire agreements with 14 EAGs have been signed.

Government wants to exclude six Ethnic Armed Organisations from signing the NCA because of recent fighting in addition to three other groups since they have no significant armed wings

Ethnic leaders have agreed in principle to ensure an all-inclusive Nationwide Ceasefire Agreement (NCA). It seems that a NCA will be signed but still not clear who will be included and different dates have been announced. However, clashes continue and 100,000 people have been displaced; there are ongoing human rights violations occurring including land confiscation/ forced labor, child soldiers, forced relocation, and torture.



### Case Study 1: Conflict and human rights violations in Kachin State

A Kachin NGO has documented nearly 500 human rights violations committed by the army in the past four years. There are many more that remain undocumented and include rape, disappearance, torture, and killings. The situation as stands today:

- Continuing militarization process
- Arbitrary arrest and torture continue
- Destruction of property and resulting large-scale displacement
- IDP camps, with many social problems

Recommendations to international partners:

- Pressure government to withdraw troops and enter political dialogue
- Provide humanitarian aid
- Suspend all investments

### Case Study 2: Rohingya conflict in Arakan State

Inter-community violence began 2012 in Arakan State between the Muslim Rohingya and the Buddhist Arakan communities. During the conflict, both communities suffered and many displaced. Historically, both communities lived together without problems, although both groups have been oppressed by the government. The current violence politically benefits the government and provides justification for

military involvement. The government refuses to give the Rohingya citizenship even though they have been living in Myanmar for many years. The Rohingya also continue to be referred to as 'Bengali' by many people. They are "stateless" people because Bangladesh also does not wish to recognize them as citizens.

### Natural resource extraction in conflict and post-conflict Aceh

Aceh-based environmental activists, Dewa Gumay (FFI), Jes Putra Kluet (Telapak), Farwiza (HaKa), Zulfikar Arma (JKMA) joined a panel to discuss key lessons around natural resource extraction in Aceh. The panelists reflected on the role of natural resource in fueling the conflict in the past. They also spoke about some achievements and failures to protect natural resources in post-conflict Aceh.

The Indonesian Army (TNI) and ex-combatants play significant roles in palm oil and mining sectors under the Special Autonomy. One of the cases discussed in the session was the Tripa Peat Swamp. An illegal concession was obtained and the military functioned as security forces for the company, setting up posts and providing security patrol personnel. Former combatants have also played a very important role in natural resource extraction, e.g. palm oil industry, especially as "facilitators", using their networks to get permits.



During the conflict, the extraction of natural resources (e.g. illegal logging, and mining) was carried out by TNI to fund and to support the conflict, at the expense of the protection of forests and biodiversity. People with power and connections took advantage of the conflict situation resulting in the misuse of natural resources. Post-conflict, the extraction of natural resources is continuing, carried out by ex-combatants and also people from the communities, supported by investors. There is more public scrutiny after the conflict and an increase in transparency of information but extraction remains at high intensity. Where previously the parties were in conflict with each other, they are now partners in extraction.

Under the Suharto regime, agrarian conflict often resulted from a disregard for the traditional owners of the land. State authorities saw all land as belonging to the state and leased it to investors. This ignored the right of the adat (traditional) communities to manage their own land as recognized by the constitution. Legal aid data from 1998-1999 shows that many new concessions resulting in a rise in the number of land disputes as well as occurrences of local community members who protested being disappeared/killed. Since that time there have been ten years of peace with many changes, but little change in terms of management of natural resources, because of the role of

the military hasn't changed and their behaviors in rural areas hasn't changed. The paradigm of investor driven commercial resource extraction is at the root, and there is a lack of good policies and control over government resource management by the public.

After the Special Autonomy status was declared in Aceh, the police and military made public declarations/commitments that they would cooperate to stop illegal logging. Still the practices continued. Police (especially BRIMOB, the riot brigade) became increasingly involved in illegal resource extraction due to the declining role of military in the province (relative to troops levels during conflict).

After the elections were held in Aceh following the peace process, the first governor (an ex combatant commander) initiated a moratorium on logging and a suspended the issuing of new licenses. The forest sector use zones were re-drawn (through a multi-stakeholder and science-driven process) to take into account biodiversity, danger from landslides and flooding, importance for community use, productivity for agriculture, etc. To reduce deforestation, ex-combatants were engaged as forest guards to patrol and control illegal extraction - approximately 2000 people. Where previously there were 145 licenses including those in protected forests, there were now only 58 licenses remaining

which were being put under close scrutiny. More recently these new “green” forest zones are being rolled back by the new (also ex combatant) government in Aceh, and public participation is very low. Even the central government now objects to the Aceh government's resource management strategy because it contradicts national zoning ( the Aceh parliament does not recognize the central government authority). Local CSOs are bringing a civil suit against the Aceh government to address this problem.

#### Measures needed for reclamation over resource extraction in post-conflict Aceh

There are few issues identified as urgent needs for a better future for Aceh. The first one is the need to have fair and just management of natural resources as an important part of conflict resolution, reconciliation and the peace process. Aceh also needs to improve law enforcement to reduce extraction and implement accountable policy processes with better public participation (CSOs and communities, scientists/academics). It is important is to have strong communities in order to affect change. Traditional communities need to be strengthened so that they can act to protect their resources. Policies should address economic factors (need for jobs, revenue for government) and poverty/livelihood needs, as economic conditions are a

prime motivation for extraction. Lastly, attention should be paid to the change in patterns and modalities of “legal” extraction during conflict (military controlled, emphasis on oil/gas) to post-conflict (ex combatant controlled, emphasis on mining and plantations because oil and gas reserves are drawn down). The military was in control during conflict and now police and some military, and ex-combatants are partnering for extraction and trade. Illegal trade has been active under both conflict and post conflict periods.

#### Natural resources and the role of the military in Myanmar's transition

After 2010, partial reform was in progress in Myanmar. Ethnic political parties were legalised, the NLD National League for Democracy was elected into parliament, state governments were established. Meanwhile, some media freedom and some protest was allowed. But, challenges remain:

- The 2008 Constitution (voted in a referendum held immediately following Cyclone Nargis) contains the following: Article 37 The state (“union”) has ultimate ownership of land and natural resources. According to this, the constitution does not recognize ethnic minority rights;
- Media and freedom of expression is still restricted under the 2008 Constitution;

- Civilian government still has a president with a military background;
- Civil war and violence has been ongoing.

Initial economic and government decentralization steps have been positive, but they do not go far enough. State governments have no authority over NRM. There is also poor oversight of natural resources extraction by government, military and cronies. Moreover, there has been unfair distribution of benefits. Half of the economic sectors are owned by military, 20% by cronies. The state controls 70% of all economic sectors. For example, the production of jade in 2011 generated USD 6-9 billion in revenue. Some single stones from the Kachin state are worth more than EUR 7 million. This situation causes continued grievance in ethnic minority areas where these valuable resources are located and the people have no political role in decision making and see no benefit from their extraction.

Meanwhile natural resources investment is skyrocketing and increased militarization continues. Following the initial peace process, the government began giving concessions to foreign investors in ethnic areas and megaprojects speed ahead. For example between 2011-2013, the government granted 671,000 concessions. Another 1 alleged million granted in Tarintharyi area. At the same time there is an increase of

military posts, at least 1 in 72% of village territories in South East Myanmar. It is difficult not to conclude that the government's motivation for peace process and "transition" is to increase investment without allocating the benefits.

What can be concluded from the presentation above is that the creation of state and regional level government is a good step forward, but doesn't address full self determination of ethnic groups and political status and control of natural resources within their territories. Moreover, conflict in ethnic minority states is not a byproduct of natural resources, but a consequence drawn out by a lack of political participation. This has governed the degradation and overexploitation of natural resources.

There are limited options for solutions:

1. The first is to amend 2008 constitution to recognize ethnic rights and ownership of natural resources.
2. Secondly, CSOs must be allowed (and empowered) to participate at a political level to introduce natural resources into peace negotiation and political dialogue in order to improve decentralization, recognize local ownership rights, improve revenue sharing and NRM.
3. Lastly, there needs to be a to halt large-scale extraction during the peace processes.



notes, ideas, and lessons learned

### Summary on the day's learning

The group had a session to discuss and compare the situation in Aceh and Myanmar.

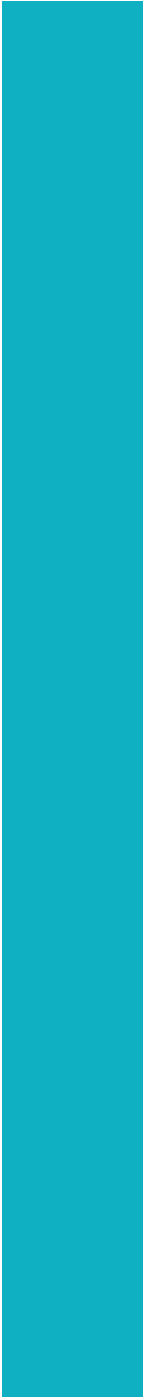
#### Similarities between Aceh and Myanmar:

- ÿ Truth and justice remain contentious issues. In the Aceh peace agreement, there is a promise to establish a truth and reconciliation commission (TRC) and a human rights court, but ten years later it has not been established.
- ÿ Religious & ethnic conflict increases in transition
- ÿ Key role of CSO and ethnic movements in pushing for change
- ÿ Need for inclusive vision of the future for positive peace, for both minorities as well as women
- ÿ Self-determination is at the heart of ongoing conflict, natural resource

management is an important aspect of this self-determination. How will natural resources management be controlled to maintain this principle during peacetime (and not just taken over by new ex-combatant govt)?

#### Key points from post-conflict Aceh:

- ÿ The first governor after the peace agreement was a rebel commander who ran as an independent (not from the party, Partai Aceh, renamed from the "disbanded" GAM armed separatist forces). He also had a degree in Conservation Zoology and had previously worked on elephant conservation in Aceh for FFI, an international conservation organization. He immediately established a logging moratorium and developed an external technical advisory board from both local



environmental CSOs and international experts, using an open, multi-stakeholder process to “green” the forest sector while establishing more sustainable and equitable resource use zones.

- However, in the following election, Partai Aceh won an overwhelming victory in both the parliament and the governorship, and almost everything which was associated with the previous administration was abandoned (the logging moratorium still stands, on paper, but it is widely ignored by illegal loggers). Now CSOs in Aceh struggle against the government's Spatial Plan, which was very un-transparent and un-participatory in its process, and opens up vast areas of pristine forests for development of plantations and mining. Even the central government in Jakarta has ruled that the plan is unconstitutional as it contravenes national planning laws, but the Aceh parliament refused to withdraw its plan. Local CSOs are bringing a civil suit to try to force the government to comply with the law. But the Spatial Plan has become a symbol of the struggle for authority between Aceh and the central government, and Jakarta seems unwilling to challenge Partai Aceh fearing more conflict and/or a return to calls for independence.

There were persistent high levels of

corruption under special autonomy, but now may worsen with more ex-combatants in parliament and/or government. Ex-combatant elites don't have many skills but can use their connections, monopolize resource business for themselves or act as professional “facilitators” to get licenses for resource business. As more former combatants enter into powerful positions in parliament and government, there may be more personal conflict of interest.

The formal entity established under the peace agreement to protect Acehnese culture (Wali Naggroe) has become an institution dominated by (unelected) elite ex-combatants working to create policies for their own benefit, and excluding indigenous communities' interests. CSOs have helped local communities map their territories and petition for recognition, as is allowed for by national law, but not a single community territory has been recognized.

Lower level ex-combatants have not benefited in the same way as the elite commanders, who monopolized reintegration payments, job opportunities, and also opportunities for contract “facilitation” (and extortion). Under the first Aceh governor, international funding supported the training of hundreds of community forest rangers to help patrol and protect the forest, and provide employment for lower level ex-combatants, as well as conflict-

affected people. The funding for this ended as the subsequent government did not support this initiative. But some still patrol on a volunteer basis and work with local CSOs.

A CSO coalition was formed around drawing attention to a kidnapped journalist who had covered environmental issues. This group now continues to do independent forest monitoring and has an online platform for reporting, with thematic layers showing commercial concessions, wildlife corridors, government use zones, etc. (See [www.hutan-aceh.com](http://www.hutan-aceh.com))

#### Key Lessons for Myanmar and Aceh:

- If natural resources are viewed solely as a commodity, the only thing that changes is the authority which gets the benefits. No new paradigm exists to recognize the importance and prioritize the role of natural resources for local livelihoods, cultural and social importance, ecosystem services( e.g. clean water), landslide and flooding protection, wildlife protection, and climate control.
- Governance (including oversight, participation, enforcement) must be established for sustainable and equitable natural resources use, not only changing who receives revenues. This should be spelled out in peace agreements if possible, or there should at least be guidelines and timetables established.
- Justice in natural resource management use is the foundation for a new society, one which must include participation of women at all levels.
- Campaigning, legal actions, and policy reform are needed to ensure international investors act responsibly for long-term justice and peace and not for the purpose of their own profits.
- International advocacy is needed to improve the participation of international actors (i.e companies) so they will be enforced to extend their work beyond their own benefits and cooperate with local communities for a sustainable justice and peace.





Sharing the lessons learned with representative from stakeholders

### Dinner and discussion with representatives from Aceh Government (past and present)

Three policy makers shared their reflections on the challenges to create and implement legislation related to natural resource management in Aceh. The panelists were: TM Zulkiflar, former environmental NGO director, now member of advisory team to the governor; Bakti Siahaan, Special staff to former governor Irwandi tasked with "greening the forest sector," now lecturer at law faculty, Syiah Kuala University (Unsyiah), Banda Aceh; and Kautsar, member of the Natural Resource Committee in Aceh Parliament, head of the Partai Aceh parliamentary majority and activist during conflict.

Zulfikar shared the current government

perspectives and policies on natural resources. The Aceh government's vision is in line with a "blueprint" from the peace agreement which was implemented to create a prosperous and equitable Aceh under special autonomy. The mission is to implement natural resources management with regards to respecting cultural and religious values of Aceh, and organizing economic structures through environmentally sustainable mandates.. The priorities for the next 5 years are to improve environmental quality and reduce the risk of disaster. Until today, the government has managed to rehabilitate critical lands, protect high-risk areas from extraction, keep a moratorium on logging in place, and decrease effects of natural disasters by adopting the central government's moratoriums on clearing peat forests and mining. Aceh plans to implement the

provisions under special autonomy that protects the environment.

Siahaan explained that the former governor, Irwandi, ran in the election as an independent candidate. The former governor saw a contradiction in the poverty of people and the richness of natural resources in Aceh. He also saw that all companies making profit from natural resources have a military connection. A new vision for NRM must benefit the people and be sustainable. In 2007, Irwandi established the "Aceh Green," a blueprint for comprehensive policies on environment and natural resources. The Government has collaborated with the government of Papua on a new vision for NRM. (Papua also has an armed separatist movement and received special autonomy in an effort to end calls for independence), and with Arnold Schwarzenegger in a "governors for climate change" convention in effort to establish a pilot REDD program. Siahaan commented that priority needs to be placed upon the management of environmental services, the endorsement of ecotourism, and the induction of REDD.<sup>1</sup>

Kautsar indicated that the 22 years of conflict in Aceh took place because of Aceh's lack of political authority, in particular a lack of authority over natural resources. The Law on Oil and Gas which established Aceh's 70% share of oil and

gas revenues with the authority over oil and gas allocation and the law over Exclusive Economic Zones (EEZ's) were both results of the peace process.

At the dinner meeting participants asked questions of the three speakers. Some of the questions raised included:

*How did the negotiating parties come to agreement on the percentage of revenue sharing of natural resources and what was the division of authority over natural resources between central government and Aceh in the MOU/special autonomy? Are the parties satisfied with the implementation of the revenue and power sharing for natural resources management; what challenges do they face in implementation ?*

On disarmament, Kautsar answered that the combatants were willing to lay down arms because they trusted Susilo Bambang Yudhoyono (at this point the Indonesian President had not undertaken a military campaign against GAM) and the process led by Martii Ahtisaari (the Finnish mediator) with support from the EU. However, there are still outstanding issues such as symbols (GAM flag) that are the subject of debate and could instigate future unrest.

*How much of the political aspiration of the Aceh government has been realized under current special autonomy? What is unfinished?*

<sup>1</sup> REDD: The United Nations collaborative program aimed at Reducing Emissions from Deforestation and forest Degradation



Regarding the sharing of revenues from natural resources, Kautsar felt that this is not yet satisfying for the Partai Aceh. He argued that 70% of Aceh's share of revenues for Aceh should extend out to 20 miles from coast. However, they are now focusing on optimizing their authority over older sources like Exxon Mobil.

[What \(formal/informal\) role have women played in the peace negotiation and transition process in Aceh?](#)

On status of women, Siahaan stressed that there is a policy at the national level that guarantees a quota of 30% for women in parliament. However, in Aceh especially, this has not yet been fulfilled. He mentioned that quotas for women are not enough; efforts must be undertaken to build a cadre of women who can participate effectively. Women's input on uses and impacts of natural resources

management will provide fundamental perspectives that have been overlooked.

[How were the negotiations on disarmament and reintegration? How was agreement reached, and what was the means for motivating combatants to disarm?](#)

The unfinished business from the peace agreement, according to Zulfikar, related to land issues, in particular struggles with the central government regarding Aceh's authority to manage its own natural resources. Technical expertise is needed to develop local oil and gas management capacity. This is now provided by outside industry. Additionally, Siahaan reminded that if authority and revenue is transferred without knowledge and expertise, it will just repeat a cycle of co-opting by local elites.



# DAY 2



Signboard at Lampanah village

## Visit to Gampong Lampanah

The group visited a local community in Gampong Lampanah (Lampanah Village) in Aceh Besar, to discuss issues relevant to that community. In particular, the group compared the issue of natural resource ownership/protection during the conflict and after the peace process.

During the conflict, from 1993 to 1996, 111,000 hectares in the area were seized for conversion into tree pulp plantation owned by PT Nusa Musri. This area contains large sections of traditional lands claimed by and managed by a local community. The locals only heard about the plan for this land to be turned into a plantation after it was already being field surveyed and boundary posts were installed. Today, the area is planted in an Acacia monocrop. This is expanding because Acacia self seeds and grows exponentially.

The Keuchik (traditional village leader) tried to resist the plantation, but he was immediately superseded by the district head. The community was essentially pressured to accept this “investment” by intimidation from the new district head and the military.

The plantation also took over multiple “padang meurabe's,” a traditional area used for managing livestock. The community has developed traditional institutions for managing marine areas

and fisheries, forest, wildlife, gardens, and grazing for livestock. Each one of these sectors has a separate traditional leader who is in charge of the management (e.g., panglima laut, panglima hutan, panglima gajah). These leaders and the traditional institutional uses were all ignored and replaced by the plantation.

Iron ore (pasir besi) was being mined with negative effects on local food fisheries and no benefits for local communities community was able to stop this mining with the help of WALHI.

Former GAM members, with the financial backing and protection of the TNI, were involved in illegal logging. Failed attempts to deal with the illegal logging

demonstrate the degradation of ancestral methods for resolving conflicts. The illegal actors involved were not under any authority to force them to compromise or halt activities entirely.

This community has experienced militarization for many generations. Security posts were always placed in their village from the beginning of the the Darul Islam conflict, through the communist purges of 1965, and continuing into the war with GAM.

This community does not feel any difference under revenue sharing agreements made under special autonomy. Everything seems to be the same, with revenue captured at the top levels by elites (ex-combatants).



People from Gampong sharing their experience during conflict in Aceh



**POS KAMLING**  
Desa. Lampanah.





# WORKSHOP ON NATURAL RESOURCES IN TRANSITION



AJAR Training Center, 13-15 September 2015

# DAY 1

*After an in-depth study of the visit to Aceh, AJAR gathered participants from Myanmar and key actors at national level (including two representatives from the Aceh meeting) to deepen their discussion about natural resources in conflict from national and local perspectives.*

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## Military Reform in Our Transitions: Myanmar and Indonesia

### National Reform and the Role of the Military in Myanmar

A participant from Myanmar provided an overview on reform in Myanmar. Reform has taken place within political, economic, and civil society spheres.

Within the political sphere, an election was held in 2010, marking the move from direct military rule to semi-civilian rule (although the military is still present in executive, legislative, and judiciary branches of government and hold many top positions in ministries). Liberalization has occurred; for example, there is an increase in the number of political parties, including ethnic parties, although they have yet to obtain much authority. There is now a division of power between the 'four pillars' of government: the legislature, the judiciary, the executive and the military. There has also been a re-engagement with the West and some loosening of control on the media and civil society. Ceasefires have been negotiated with many of the armed ethnic groups. There is an official strategy plan for this process but in practice the government has not followed its procedures. For example, at the diplomatic level there are peace talks, but there is still military action and active



conflict on the ground. The 2010 Constitution grants contain all authority over natural resources to the central government, even though there are state governments in place holding authority over other sectors. There is a continuing need to devolve authority over natural resources through decentralization or federalism. This would require constitutional reform. Also, the state government's chief minister is appointed by the president and not by the election of the majority party, therefore, lacking accountability, including a weak control over the budgets.

In the economic sphere, there has been a move towards liberalization and a market-driven economy. Some fiscal reforms have been enacted, especially concerning the unification of the exchange rate (previously exports earn US dollars but enter into state budget in local currency at artificially lower rate). Increased privatization of previously state-run services and organizations has occurred, but these privatised organisations are held mainly in the hands of family members and cronies of the elite. There has been a removal of sanctions and debt relief by other countries. However, the economic reforms have benefited the elites rather than the majority of the society – with some exception in the major cities. There have been insufficient environmental protection and social safeguards with

increased investments with continuing incidences of human rights violations.

Civil society has also experienced reform. There has been increased social spending in urban areas (but not in rural areas, where spending is still marginal). There has been an increase in aid and the number of development actors, including NGOs, which can be positive but at times conflicting to authentic needs, with a disregard for national NGOs which have been working within the country for many years. The role of the private sector in health care and education has increased slightly, but has not made an impact for the average population. There has also been a targeted crackdown on the media and on human rights defenders, with intimidation tactics used upon civil society.

Overall, the transition has occurred but it is not clear where Myanmar is heading. It is a top-down change, and at present appears to be entrenching authoritarian rule. The current reform is neither consistent nor substantive. It is still uncertain whether there is political will from the government and military to have a good faith peace process. It could also be a process of legitimizing military rule, and continuing to crackdown on CSOs, sustaining armed conflict in ethnic areas, and increasing land conflicts with the incarceration of farmers.

In terms of the military in politics,



constitutionally, the military retains 25% of seats in both upper house and lower house, nationally and in state and regional parliaments; the Ministry of Home Affairs, Defense Minister, and Justice Minister are all appointed by the head of the military. The Ministry of Home Affairs is responsible for administering the country, directly accountable to the military chief and not the President. There has been a militarization of the civil services with 'retired' military officers being appointed to civil service posts. Incorporating the military culture into civil departments makes it easier for the military to maintain control. Civil administrators have been sidelined and mainly used for technical expertise.

The election commission is also headed by a former general making it difficult to expect that there will be free and fair elections in November 2015. Only 75% of the seats from the House of Nationalities remain open (25% of seats remain reserved for the military). Therefore the opposition (NLD) must win 67% of the electable seats over all the other minor parties. Should the NLD win the election, the military still effectively has institutional control as more than 75% of votes are needed in parliament for any constitutional change to occur.

In terms of economic life, until 2011 policy making was still under the junta. The military also has direct ownership of

business through the Union of MN Econ Holdings Ltd (UMEHL), MN Econ Corp (MEC). They have exclusive export, import quotas on key commodities, monopolies on cigarette, alcohol, and are silent partners on commodity corps like mining. The corporation was never enforced to pay any tax until last year.

At the informal level, military has been bartering extended rights to cronies. Top commanders retain special permits and there is security provided for military individuals. They also develop family businesses and institutionalize private rent seeking.

In terms of the environment and natural resources, there remain major challenges. In ethnic areas (e.g., northern Shan State), there are hundreds of paramilitaries, which are involved in the illegal economy, namely drugs, and exploiting natural resources. They are provided arms, salary and rations by military. Paramilitaries are under the command of the military but also have considerable autonomy. Some members of local parliament, including those heading the committee to draft laws, are members of the militia. They are not mentioned or involved in the peace process or political dialogue, but they control the illegal economy. This will complicate any VPA/ timber legality process significantly.

"Border Guard Forces" are former ethnic

armies that have been brought into the Union army in exchange for natural resource business opportunities. The government uses this method to strategically splinter ethnic groups. BGF is not part of the peace process as “stakeholders” because there is no longer an armed insurgency. They do have direct ownership and joint ventures in natural resources companies.

The 2008 constitution Art 37 (a) and (b) mention that land and all natural resources are owned by the state. Individuals can only get users rights from the central government in central areas that carry administrative capacity. Ethnic areas are informally controlled by traditional law, but are not formally recognized in state procedures, and increasingly yielded for concession agreements. KNU and KIO have their own natural resources management policies in the areas they control as part of the negotiations.<sup>2</sup> In contested areas where the government has some influence but no control, communities suffer from a dual system and are attacked from both sides. This issue of statutory vs customary rights results in perpetual conflicts.

## Future Prospects

What will happen in the 2015 election? NLD will win, but maybe not by enough (they need 67% of elected seats) to form a government. Ethnic parties will win in their states, but will split the vote so they

will also not have enough of a majority to realize their aspirations.

The total seats are 664; 291 in ethnic states, 375 in regions (Bamar majority), and 166 for military. Meanwhile, any constitutional amendment requires 75% to pass. This 75% majority is unattainable without any military votes. NLD will need the agreement of military to govern.<sup>3</sup>

## Overview of National Reform Process in Indonesia: New Order (1965-1998), Reformation, & Post-reformation.

Haris Azhar (KontraS) provided an overview of reform in Indonesia. During the time of Soeharto, the police force was part of the military, not a civilian force. The military was a strong backbone of the New Order from 1965. The mass killings of 1965 were directly committed by the military, groups mobilized by them as part of an anti-communist movement. The communist party and its allies, both individuals and groups were the target of political persecution. Hundreds of thousands of (estimated to maybe even being a million) people were imprisoned without trial and subjected to forced labor in prison camps. Some were tortured, subjected to forced disappearances, and sexually harassed by the military or the militias which supported the government. Before the coup, the Indonesian Communist Party (PKI) was the 4<sup>th</sup> largest political party. After the coup PKI was outlawed,

<sup>2</sup> KNU: Karen National Union | KIO: Kachin Independence Organisation

<sup>3</sup> NLD: Myanmar/Burma's National League for Democracy

communism was used as a label to undermine any opponents, including those fighting against land grabbing.

Some milestones:

- 1967: New paradigm for military Dwi fungsi or “dual function,” meaning a role in security as well as politics. This produced the military's “territorial structure” where military presence/control from provinces down to villages. Civilians were now under the surveillance of the military. Other roles of the military included involvement in bureaucracy, and leadership in civilian governance, political parties, and business. This continued for more than 30 years, creating an accumulation of citizens who suffered under this regime.
- During the New Order Soeharto was known as the “Father of Development” from his centralized grip of development using natural resource extraction as the base for industry; seizing land and forests, and labeling resisters as communists. Now some communities are “reclaiming” land lost from this period.
- 1993: National Human Rights Commission started to become more active, drawing international attention/condemnation about situation of rights violations; including the Santa Cruz massacre in East Timor (using US supplied weapons) and armed conflicts in Aceh and Papua.
- 1996: period of political violence and disappearances, increased media attention to corruption of Suharto and family, increased CSO campaigning
- 1997: Soeharto's 7th re-“election”
- In 1997-1998, the movement for change was strengthened by the financial crisis of 1997. Inflation in the price of basic goods like kerosene lead to protests and rejection of the Soeharto regime, tainted by grand corruption and cronyism. By 1998 there was a mass-based movement rejecting the old regime with increased violence and conflict, especially between the military and students. On 21 May 1998 Soeharto resigned. In the early days of the transition acting President Habibie made some gestures, including the releasing of political prisoners, announcing open elections (with 48 parties registered), and holding a referendum on independence in East Timor.
- From the year 2000, constitutional and security sector reform began, including the division between police (internal security and law enforcement) and military (defence). The police benefited because they now control law enforcement, thus able to protect their own interests in business or ask for protection money from companies. Other important law reform concerning the military, police and national defense (2002, 2004) included provisions that military

personnel should be subject to civilian criminal law, abolition of the “territorial system,” and prohibition of direct or indirect involvement of military in private business.

To date, these reforms have been only partially implemented. The territorial system remains in place and there has not been a transition in judicial accountability. There has been only a partial reduction in military business ventures. Many cooperatives and foundations owned by the military are still standing and illegal business persists. The military is still widely involved in private security firms. There are more than twenty agreements to allow military to participate in civilian affairs and business (family planning, agriculture, teaching in schools, guarding transport systems).

Tensions between military and police are increasing since their separation. A 2004 National Security law mandated strategic infrastructure; including mining, oil operations and offices, to be guarded by the police and not the military (except the military is allowed to serve as security for mining operations in Papua, which is still an intensely militarized province.) This has led to competition over authority and control of corruption/extortion capital. There have been 16 cases of mutual attacks instigated by these “security departments.”

There was supposed to be a national

truth and reconciliation commission for past abuses as well as a human rights court. There were three trials (ad-hoc tribunals) for East-Timor (1999), Tanjung Priok, (1984) and Abepura (2000). Even for these partial efforts, there were problems with who was indicted. For example only Timorese were indicted for East Timor crimes. Now all the accused have been eventually acquitted.

While reforms took place in Jakarta, the role of the military has remained strong outside the capital. From 2002-2004, there were outbreaks of ethnic/religious violence in both Poso and West & Central Kalimantan (many believe this was if not instigated, exacerbated by military and political agents to justify a strong military presence) as well as continued military operations in Aceh (e.g. martial law in Aceh in 2003) and Papua.

Some reformers began emerging in the military, in part due to competition amongst different factions. Some generals who were reformers during the New Order had been sidelined by Soeharto and therefore had aligned themselves with opposition parties.

### Key Lessons:

- Documentation = knowledge. This requires access to information and transparency;
- Need for continuous campaign, advocacy, and awareness-raising; and

- There is a need for more people to be actively engaged and campaigning for these issues.

### Key actors in pushing reform forward:

- Reformer generals;
- Munir (founder of KontraS) was a labor activist so was sympathetic to soldiers plight. He engaged directly with military on reforms, and with parliament on drafting. Contributed to TNI drafting, wrote the article to support the welfare of troops as part of reform. This was controversial with other CSOs;
- Former police chief Nanang (good on HR, bad on corruption) whom previously cooperated with CSOs;
- Maruli from POLRI received a PhD on hate crimes. Approached KontraS to explain who are the good people within the department, how to approach them, and what issues to address.
- But beware! Making friends and engaging is not the same as being bought.

### Military Business Reform in Indonesia

Erry Riyana Hardjapamekas (former KPK commissioner and head of president's team to oversee takeover of military business assets) shared his experiences and reflections on this issue.<sup>4</sup> In 2004, laws were passed which separated

military from police and prohibited members of the military forces to have interests in private enterprise. Law 24 mandated in 2004 strictly prohibited the military from being involved in politics, and stipulates that by 2009 the government will take over all business activities owned either directly or indirectly, including foundations, and limited liability corps.

In March 2006 the military reportedly had 1,520 businesses, 23 foundations, and 172 cooperatives with assets of USD 150 m. In 2008, the Ministry of Defense (by then headed by a civilian: Juwono) said the military held 23 businesses, but 53 foundations and 1,098 cooperatives with assets of USD 120 million in cooperatives alone.

In 2008, Indonesian president, Susilo Bambang Yudhoyono (SBY), formed a team to transfer the military businesses to the government within only 9 months. In October 2009 a Presidential regulation was passed indicating that if military business had not been liquidated, they would have to be transferred to state enterprises. Even so, a compromise was reached where it was agreed that the businesses could be transferred to the Ministry of Defence as long as all communication and reporting systems were in place.

In February 2010, a verification process was implemented to ensure that no more

<sup>4</sup> KPK: Indonesia's government agency, "Corruption Eradication Commission"

businesses were owned by TNI. In fact, many businesses while nominally owned by private military personnel, had profits going to the military officials who were often in positions as commissioners for the companies.

But in 2010 the Ministry of Defense announced that the military did not own any more businesses (directly), except foundations that still should be maintained for soldiers welfare. Pak Erry recommended the establishment of PX (special stores) for soldiers' welfare but TNI refused that recommendation. He also pointed out that soldiers' welfare is an ongoing argument for why military business is needed but only receive payments once a year at Eid, valued at around USD 10. He believes this is not a credible argument. By Dec 2011 the government deemed the process "concluded."

Overall, the military business reform has done well because formal business by the military is now prohibited. But the process was incohesive, with many compromises and challenges, mainly from generals engaged in business.

Major components to military business reform:

- The transition to divesting military officers of business assets was implemented over a four-year period; this was too slow and allowed businesses to be sold off. Overall the

goal was to end military business, so this was a necessary compromise. This could not have proceeded without military agreement. Military officials were allowed to keep their wealth as this was a way of bringing the majority on board.

- Foundations "important to soldiers' welfare" were allowed to remain, even though they were still prohibited by law
- Allowed transition of business to Ministry of Defense
- Involvement in illegal business still has not been addressed
- Now police have moved into the gap resulting in police and TNI competition and jealousy, which is more dangerous because it gives a reason for TNI to reassert themselves.<sup>5</sup>
- To improve the situation on the behalf of the military, the government still needs to provide better funding to look after the welfare of soldiers (lost 50% more budget due to loss of business and to keep up with other civil society salaries like the Ministry of Defense).

Reasons for the overarching success of military business reform:

- There was support for the reform process from within. High-ranking officers within the military forces wanted the focus within the military to be on the defence function. The key

<sup>5</sup> TNI: Indonesian National Armed Forces

figure was Agus Wijoyo, a three-star general whose father was killed by communists in the 1965 coup attempt. For this reason Wijoyo had credibility. He was also was a military intellectual who could think broadly about the reform process.

- Progress depended on a few key reformers in both middle and upper ranks for sustainability of the long process. If there had only been support from upper ranks, their eventual retirement would threaten the long process.
- The popular uprising in 1998 that ended the New Order led to a recognition on the part of the generals and parliament that things had to change.
- Strong laws dictating reform, created a legal basis that was hard for generals to refuse. But the law was vague in some places. It only stated that the “govt” should take over business, which meant businesses should to be taken over by state owned enterprise. But the generals resisted and went to the Ministry of Defense instead, as a compromise. This also allowed those businesses suffering losses to be liquidated (and the money didn't go to state).
- CSOs were able/willing to also engage the military reformers directly.
- There was intellectual advocacy from academics.

- There was media exposure and public oversight.
- The international community served as a pressure group, but this was done carefully so as not to look like foreign intervention in sovereign affairs-- including the funding to CSOs acting in this affair.

Erry Riyana Hardjapamekas's also had a special role in this process. He was a recently retired KPK commissioner, so he had credibility and independence. He had accounting and business background expertise. And he was asked by a reformist four-star general, who was his childhood friend. This individual acted as his protector from any potential backlash

### Case Study 1: Papua

Victor Mambor, a senior Papuan journalist from the Tabloid JUBI, presented a different perspective on “special autonomy.” Papua, like Aceh, was also granted this special political status. However, violence is still an everyday reality in Papua.

There are rich natural resources in the two provinces of Papua and West Papua: including gold, nickel, copper and other metals, hydrocarbon potential (oil and gas, forest), and hydro-energy potential (rivers and lakes). The main actor is Freeport MacMoran, which operates Grasberg Mine, the largest gold mine in the world and the third largest copper mine. Their Contract of Work states that



Freeport must supply logistical support to local government. TNI uses this as justification to extort money. The Police and military act as security. Freeport revealed that they allocate Rp 1.5 billion rupiah (over US \$100,000) each month to the police and military solely for "meals". Conflict occurs between the police and the military because they are competing for money from Freeport, not between the authorities and freedom fighters as is sometimes promulgated.

There is a high level of militarization to protect "strategic" resources and to suppress indigenous protests and separatist activity. "Legal" TNI troop levels in Papua/West Papua to + 16,000, and police around 14,000 (In Aceh during the height of the DOM, troop levels were ~33,000), for a population of about 5.3 million in 2014.

A continuing influx of migrants means that the total population of migrants now out-numbers the indigenous population (53% migrants, 47% indigenous Papuan in 2015). Human rights abuse results from this high militarization, especially around "strategic assets" like mines. Police and military appropriate indigenous land and displace Papuans. They also sell weapons and ammunition to civilians (and report it as stolen) and run prostitution and alcohol rackets in mining areas. There is tight control of the media and of journalists. There is a high level of human rights violations against

indigenous Papuans (mostly civilians): including extrajudicial killings, arrests and disappearances, sexual harassment and abuse of Papuan women, intimidation, and suppression of free speech and association.

The government has had a variety of responses to grievances and violence in Papua associated with the lack of political participation: illegal annexation of Papua into Indonesia, the inequitable and destructive extraction of resources, and increasing militarization has led to more military suppression & violence, the division of the province into separate smaller territories, and the passage of the Special Autonomy law.

"Pemekaran," the process of dividing up administrative jurisdictions to create new provinces and districts is called "flowering" (pemekaran). Papua was divided illegally into 3 provinces by presidential decree (under President Megawati), although the court later declared one of these divisions illegal (the division into Papua and West Papua still stands). Megawati also tried to illegally establish other provinces as well as 13 new districts, but was barred from doing so by the courts. Papuans view this division as a tactic to divide them and increase control by the military. These divisions create more militarization (each new territory results in new military posts) and corruption due to the new lines of authority over control resources and



extortion revenues. The divisions also lead to increased competition and political tensions.

The Special Autonomy Law (Otonomi Khusus or Otsus) was passed after 1998, during the time of Reformasi in Indonesia, although the law is set to be reviewed in 2020. Otsus has three main points: the central government must act to 1) 'side with', 2) protect, and 3) empower the indigenous people of Papua. The law stipulates that the mining sector profits are to be divided in a 70:30 ratio for the provincial government.

Otsus has had some successes. It has increased confidence and bargaining power of indigenous Papuans because they can point to the law that outlines how their rights should be protected. It also has caused new leaders to emerge as it requires that only indigenous Papuans can be elected as governor (there are still non-indigenous individuals in district head positions).

Despite this, these provisions of Otsus have not been fully implemented. For example, it is estimated that up to 90% of the resource profits are still going to the central government. Further, only seven regulations have been passed to implement Otsus. Otsus has also failed to stem the flow of migrants and failed to address the sectoral laws (mining, forestry, plantation crops) that subjugate and ignore customary rights.

The primary reasons for failure of Otsus are:

Failure to implement regulations

- Distrust between Papuans and the central government. Papuans do not believe government will act in their interests and the government does not believe Papuans will abandon their independence cause.
- The central government misunderstands why people support independence, believing that if they implement Otsus it will lead to independence
- The local government has low capacity and is corrupt. It is not prepared to receive increased resource revenues from Otsus or the budget and authority when new districts are established.
- The Pemekaran of districts has worsened this process by establishing even more jurisdictions.

#### Case Study 2: Jambi

Musri Nauli is a senior environmental activist from Walhi Jambi, a province in southern Sumatera. As he was with us in Bali, his province was covered with haze and smoke from forest fires. Much of it caused by palm oil plantations burning forest to clear the ground for expansion. Jambi is an interesting case study because it is not yet an area known as a conflict zone, as Papua and Aceh.

The province of Jambi (on the east coast of Sumatra) covers 5 million hectares, of which roughly half are under concessions: 200,000 ha state forest, including logging concessions; 818,000 ha pulp plantations, 515,000 ha palm oil plantations; and 575,000 ha mining concessions. There were three phases of deforestation during which forests were converted to logging and pulp plantations, into palm oil plantations, and mining.

Some of the underlying problems in Jambi province are:

- A paradigm of militarization and a “security approach”, rather than conflict prevention and resolution
- The legal system: police are now tried in civilian courts but the military are still tried in the military court, which are not transparent and often more lenient on those who commit offenses against community members and CSO defenders
- Elitism: the military see themselves as privileged people and that military members are the best sons of the nation and therefore above the law
- The military engage in the protection of corporations, backing their operations

Corporations have a symbiotic relationship with the military and police -- corporations are dependent on the military and police for security and

“backing” to access land (by intimidating communities) and ensuring law enforcement against them is minimal. In turn, corporations are treated as cash cows for private security companies that are set up by the police/military. The military use security for mining and police for oil palm and pulp. Illegal gold mining also occurs with the protection of the military.

Impact of the relationship between the military and corporations in Jambi:

- 300 on-going land rights conflicts between communities and military/police perpetuating violence and backlash
- Increase in forest fires and smoke, due to companies cutting costs by using fire to clear large areas of forest to plant oil palm
- Smoke from forest fires causing large scale health problems, closures of schools and airports, and resulting in displacement of local people

# DAY 2



Participants shared their lessons learned in facing natural resources exploration during conflict & aggression

## Role of CSOs in Military reform: Indonesia Corruption Watch

Sely Martini highlighted the convergence of anti-corruption campaigning with environmental issues. Indonesia Corruption Watch (ICW) was formed in 1993 and now has 48 local partners and is part of 16 global coalitions. Corruption is defined by ICW as a misuse of entrusted power for personal gain including bribery, embezzlement, fraud, extortion, nepotism, and cronyism. Corruption as viewed by ICW is an imbalance in the relation between the State and its citizens and is concerned with the misappropriation of public funds. ICW empowers people to fight corruption, especially those who are disenfranchised, as they are the most likely to be impacted. For example, when forests are cleared for palm oil plantations, this does not result in a better income for the local population

Types of military involvement in private businesses, include formalized involvement through foundations and cooperatives; Informal or personal involvement, such as by being part of company operations (becoming advisory board members or directors); also taking part in criminal or illegal economies (e.g. smuggling timber or gold - with military personnel complicit in these activities).

ICW actions include active engagement in selecting commissioners for the Anti-

Corruption Commission (KPK), creating profiles to reveal if they have been involved in corruption or human rights violations, and revealing their assets (all public officials have to reveal their private wealth before and after they are appointed). Also, identifying the involvement of public officials in grand and petty corruption through actor mapping and 'patron-client' relationships (e.g. banks, investors), and database of holding companies and their concessions, including the correlation of increasing volume of concession permits and the election period.

#### ICW advocacy includes the following:

- Researching: including following investments and ownership of companies (and links to government and military, police), money laundering, revenues collected and deposited by government, budgets, assets of candidates and public officials, corruption practices, and report cards of government agencies.
- Working closely with KPK and Financial Intelligence Unit
- Increasing transparency and accountability (reporting; advocating for open data)
- Public review on cases (taking some to courts)
- Public campaigns, including social media and other media outlets

#### Militarism & Natural Resources and the Role of Civil Society

Khalisah Halid (Walhi) presented some of the lessons from Indonesia, focusing on the role of environmental NGOs. In 2014, The Indonesian Coalition for Agrarian Reform documented 472 agrarian conflicts in Indonesia, which resulted in 256 people being arrested, 110 prosecuted, 17 shot, and 19 killed. The main actors in these agrarian conflicts were:

- Police
- Corporations
- Regional government
- Courts
- National government
- Military
- Pamswakarsa (militia or civilian defence formed by the military under Soeharto as a civilian defense force. Now, they are legal subdivisions of the police who provide funding, uniforms, and some training). At present, pamswakarsa are hired as private security.

Patterns of facilitation of military involvement in business include:

- National Defense laws that declare certain resources to be strategic assets requiring military protection such as mines, oil & gas facilities.
- Foreign investment laws that ease regulations on companies, but also

require companies to provide logistical support to the military that provides protection of their operations.

- The declaration of some areas as “military operations areas” (such as in Aceh and Papua during periods of high conflict) legitimizing military presence and increasing troop levels.
- Law establishing the pamswakarsa militia as part of the police/military.
- Use of the label of terrorist” or “communist” to anyone who opposes Militias (pamswakarsa)
- Largely unregulated use of private security

Wahli, as an environmental NGO, fought for and won the right to have legal standing to act on behalf of the environment, which means they can sue in court when there are situations where the environment has been harmed. They use constitutional challenges, the requirements of national environmental law, human rights law, spatial planning law, and agrarian law.

Wahli also uses non-litigation advocacy methods such as campaigning at a national and international level, community organizing, policy dialogue and networking with human rights and women's organizations. Wahli uses the following strategies:

- Networking with state institutions (e.g. Anti-Corruption Commission, Human Rights Commission) to support their

advocacy

- Using complaint mechanisms of international financial institutions who invest in companies with operations in Indonesia, and UN complaints mechanisms for declarations such as for the Conventions on Economic, Social, and Cultural Rights (CESCR), Eliminations of Racial Discrimination (CERD).
- Monitoring and awareness raising about environmental policies/records of candidates at national and regional elections (including also involvement of individual officials as owners/permit issuers, use of NR revenue as campaign funding), outreach to voters and parties/candidates to try to get environmental concerns into parties platforms, hosting debates/talk shows to discuss environmental issues of concern to their constituents).

### Alternative Tools for Resolving Agrarian Conflict: Mediation

Ahmad Zazali is a mediator who has established an Impartial Mediator Network (IMN). IMN promotes solutions to natural resources conflicts through dialogue and mediation. The Network certifies members with legal standards from the Supreme Court. They have 30 mediators all over the country. Mediators can be involved in local mediation cases, but can also exchange with mediators in different areas if there is conflict of interest. They are a professional

organization, but also have NGO status (they receive grants to support mediation when one side of a dispute is unable to pay).

- IMN works to:
- Monitor conflicts concerning natural resources and document these into a database.
- Mediate between parties.
- Organize trainings for CSOs, government, corporations, and law enforcement (police, pamswakara, private security on conflict prevention and resolution).
- Promote policy change
- Their strategy of retrieving information comes through collecting data through their sms and online complaints channel, but also by calculating potential conflict hotspots by using map overlays of concessions, customary claims, satellite imagery of forest cover, and government land use zones, then follow up with field checks and documentation of conflict. Their trainings are on conflict mapping, negotiation skills, and mediation skills

To recruit mediators IMN reaches out to individuals rather than institutions. They look for individuals who have networks in government, business, are within the private sector, are viewed as independent, and have knowledge of international voluntary and national law requirements.

Primary reasons for potential conflict:

- Large areas have been designated as 'state forests' by the Government making that land and forest under the management and authority of Ministry of Forestry. However, these lands may include pre-existing rights communities who have been living and working in that area. There are tens of thousands of villages located in the areas claimed by the government as State Forest.
- Indigenous communities challenge the right of companies to operate on land in their traditional territories
- There is overlap between licenses and permits given to large companies/industries (96%), and those given to smaller-scale businesses / community forestry / people's concessions (3%). The government is prioritizing and giving permits to big corporations, not to community owned businesses.
- There are challenges to concessions given by the government to private companies by local people who have customary rights

Challenges in solving conflicts include:

The domination of large companies who have control, ownership, and utilization of natural resources, and the gap between these companies and other actors.

- The existing institutions set up to resolve conflicts about natural



resources are dysfunctional.

- People have only limited access to justice through the courts, because the Indonesian judiciary has a complicated system (i.e it is too complex to access and too expensive for any average person).
- The traditional approach of resolving conflicts through consultative deliberations has been changed because people are becoming more individual and less collective, and the state is using more violence (i.e. involvement of police/TNI in protecting companies in conflicts with communities).
- Some corporations continue to resist the laws/directives from the central government. The Government can be reluctant to revoke permits for big companies because companies will fight back, resulting in long and costly legal battles. Moreover, large companies have minions in the parliament, because they supply funds for their political campaigns.

Dialog and mediation (D&M) allows people to be able to access a dispute resolution system where they can participate fully; a system that does not have a judge as a single person who controls the decision-making process. If people go to the court in a case against a large company, it is almost guaranteed that they will lose, because of the evidentiary law and procedures

established in the courts. Moreover, the judicial system is corrupt, inefficient, costly, and time-consuming. Thus D&M is a more suitable method to Indonesian context; it is faster, simpler and cheaper than the courts, and can be accessed by marginalized communities. D&M aim for a win-win solution so that people can maintain good relationships with one another. It is a confidential process that can be important for corporations and sometimes for individuals who don't want their case to be public and want to protect their reputations.

Not all conflicts should/can be mediated. For example, if both sides do not agree to participate, or if there are other factors involved such as politics and elections.

There are also other options for intervention:

- Policy reforms, including:
  - social forestry: 12.7 million ha have been earmarked (not yet implemented) for community forests, establishment of social forestry as its own directorate inside the ministry
  - joint ventures/cooperation between communities and large companies (for example to establish community plots in pulp plantations that sell timber to the pulp mill)
  - revise land use zones
  - enclave villages/territories within concession areas to remove them from operational area

- establishment of a directorate in the ministry for the resolution of tenurial and indigenous conflict
- Concession permit review to revoke or revise those that violate community rights
- Negotiation/dialogue on individual cases
- Court cases

#### Obstacles to the work of IMN:

- Local government difficult to influence
- Both government and companies still tend to use military/security approach
- Involvement of police/TNI behind company conflicts (still engaged in protecting companies in conflicts with communities)
- "Sectoral ego" / turf wars by the sectoral agencies in government, lack of cooperation across agencies in government
- Decentralization development of local government and central government competition for authority
- Some companies continue to resist the laws/directives of the central govt (who is protecting them?).
- Lack of rule of law and corruption (are the companies stronger than the state? Why are they afraid to revoke the permits of companies who are clearly in violation of the law? Companies resist the government by challenging them in court or through political means and influence to

government officials/involvement in campaign funds).

It is critical for a mediator to be impartial. This can cause some conflicts with advocacy activities. IMN can advocate for peace and promote national policies to reduce conflict but does not advocate on specific cases in order to avoid conflict of interest. However, before you can use mediation, you must equip a person and institution with skills and resources separate from advocacy. Mediators can do other activities but must be seen by the public as independent. This can cause problems with other NGO alliances when mediators will remain mute on certain issues.





# SUMMARY



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## Key lessons learned from Indonesia on national and international advocacy

- Requires strong network with other organizations and international coalitions as well as support from communities. Successes come because of consolidation of civil society groups - victims' organizations give a moral authority, the media makes it known, academics can give legal opinion, student idealism and energy.
- Increase public campaigns and policy dialogue about problems in Myanmar - use websites, involve media, advocate to international consumers and investors regarding bans/boycotts.
- Strategic litigation - the effect of litigation on advocacy – it is important to get media coverage that becomes part of the campaign.
- Neutrality of CSOs during elections
- Importance of Transparency - including the role of the media
- Mediation as a tool

## Present challenges in Myanmar

- Government actively trying to divide civil society and succeeding in creating suspicion and mistrust between CSOs who have only recently collaborated.
- How can CSOs maintain neutrality during elections?
- Lack of funds to support the lawyer's'

costs. Need to find a way to support the lawyers who are involved.

- Need more independent academics to give formal opinions.
- Need to strengthen links between NGOs and lawyer groups, and build capacity of CSOs about how to prepare legal cases
- Safe houses for witnesses; is it possible in Myanmar?
- Need for an NGO who can focus on international campaigns, and raise issues strategically. International pressure would be useful for any litigation undertaken.
- How to find mediators who have the required skills and companies willing to engage with mediation? Funding for this provided by donors?
- Legal framework for transparency; developing a road map for transparency (i.e. the right to information, laws that protect victims and witnesses who reveal corruption cases and anti-corruption laws).

## In Conclusion: Brainstorming on Strategies

The Myanmar and Indonesian CSOs engaged in a strategy discussion need to agree on common goals and what topics offer our network the most comparative advantage, identify opportunities and engagement points, and which decide partners are best positioned to take the lead in different focal areas. Participants from both countries felt that there was a fruitful exchange between the two contexts. Exchanging information on deep protracted conflicts in the two countries, and learning about the innovations and strategies that have been developed has provided a creative space for these NGO actors.