



Transitional Justice and the Aceh Truth and Reconciliation Commission

**Workshop
20-23 September 2016
Bali, Indonesia**



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From 20 September 2016 AJAR facilitated a four day workshop with the seven commissioners-elect of the Aceh Truth and Reconciliation Commission (TRC). The commissioners-elect bring to this important role a wealth of collective experience and skills from their past and present work in a range of fields including law, academia, human rights, research, teaching, community activism and politics.

Background

Indonesia's Aceh province was the site of a protracted armed insurgency that operated at varying levels of intensity from 1976. In 2005 a Memorandum of Understanding (MOU) known as the Helsinki Agreement was concluded aiming to end the conflict in Aceh. The Aceh Truth and Reconciliation Commission was mandated by this MOU and by the Law of Governance of Aceh No. 11/2006. Further, in 2013 the Aceh Parliament passed the truth commission by-law Qanun 17/2013.

In 2016 seven commissioners-elect were selected:

- 1 Fajran Zain
- 2 Afridal Darmi
- 3 Evi Narti Zain
- 4 Muhammad MTA
- 5 Masthur Yahya
- 6 Fuadi
- 7 Ainal Mardhiah

The Aceh TRC is expected to operate between 2016 and 2021. It's successful implementation is vital to better understand the circumstances that led to past abuses in Aceh, to ensure that shared experiences are acknowledged and preserved, to ensure truth, justice and reparation for victims of the conflict and their families, and to learn from the past to ensure that such crimes will not be committed again.

Workshop Day 1



Opening the workshop AJAR Director, Galuh Wandita, emphasised that the workshop would be a forum for open discussion, learning and direction-setting. Objectives of this first working meeting of the commissioners-elect would include capacity building, expanding knowledge of international law and justice mechanisms, learning from previous truth commissions, learning about cooperation with national mechanisms including Komnas HAM and Komnas Perempuan and, finally, drafting a plan together to articulate a way forward.

- *Session 1 – The Transitional Justice Framework*

AJAR President and transitional justice expert, Patrick Burgess, provided an introduction to the transitional justice framework, encouraging participants to consider transitional justice as answering the question: ***“What do we do after mass human rights violations have been committed?”***

After pointing to similarities between the experience of Timor-Leste and that of Aceh, he noted that important differences existed also and that ultimately “it’s up to us (commissioners) to decide what do we do in the Aceh context in response to the history of mass violations.” In every different context, different challenges are faced.

In strategising a transitional justice framework Patrick proposed four key components, and encouraged commissioners to consider how their strategy for the Aceh TRC would incorporate each of them:

- Truth seeking
- Reparations
- Prosecutions

- Institutional reform

The commissioners-elect participated in a guided indepth discussion on each of the above four components. Patrick reminded them that throughout the TRC process they would gather a lot of different information – ***“when you shine a light on dark places you will uncover all truths”*** - and that obtaining complete, objective, correct data is paramount to achieving accountability.

Patrick explained that TRC fact-finding is not to determine guilt, but to establish facts, consider the law, and perhaps also to assign responsibility.

- Session 2 – The Right to Truth and Approaches to Truth Seeking

“It’s OK if they give us truth now, then the other things will follow. The first thing is finding out”

- wife of disappeared man, Nepal

Howard Varney, senior program advisor at the International Centre for Transitional Justice, presented an overview of truth commissions, exploring the range of approaches to truth seeking. He posed the questions, ***“Why does the truth matter? what do we want to find out? and what are the elements of truth?”***



The commissioners-elect learned about the ‘Right to Truth’, an emerging principle of international law obliging states to provide information to victims, their families and to society as a whole about the circumstances surrounding serious human rights violations.

Participants examined the range of reasons why uncovering the truth was important, including to clarify the narrative of events from a variety of

perspectives, to disentangle the many layers of conflict, to assist in the healing process by bringing closure and restoring human dignity, and because knowing the facts can combat impunity, properly inform the remedy process for victims, and help prevent violations occurring again.

Also discussed was the issue of legitimate exceptions to the general principle of the right to truth (for example in cases involving children and where lives would be endangered by revealing identity); how the amnesty granted to former GAM combatants would affect the TRC and prosecution process; what the TRC would consider to be the indicators of successful litigation; and the methods used to conduct hearings ie. public, private, legal protection for commissioners.

- *Session 3 – Gender Perspectives in the Aceh TRC process*

Samsidar and Ifdhal Kasim, prominent Indonesian human rights activists and members of the committee responsible for selecting the seven Aceh TRC commissioners-elect, addressed the important issue of how to build a gender perspective in the work of the TRC.

They encouraged the commissioners-elect to consider processes and structures that would support victims and female witnesses to testify; to put in place measures to prevent re-victimization, especially for women victims of sexual violence; to recognize the need for special ways of handling gender-based violence and crime, including alternative methods for establishing proof; and to consider a gender-sensitive and equal reparations strategy.



They also highlighted the vital importance of challenging traditional social norms – be they derived from culture, religion, patriarchy or elsewhere – that view sexual violence as a shameful disgrace for the victim (as well as

their families and communities) that should not be discussed or exposed to a truth seeking process.

Session 4 – Elements and Methods of Truth Seeking

Howard Varney, senior program advisor at the International Centre for Transitional Justice, introduced the elements and methods of truth seeking, with an emphasis on public hearings.

He pointed out that the procedures for carrying out public hearings must be made in accordance with the goals and mandate of the TRC. Matters for consideration by the commissioners included, for example, whether to have a commissioner present at all hearings, whether to include a cross-examination process, in addition to other logistical issues.

Varney emphasised the vital importance of the process being thoroughly and accurately documented, including by video recording and transcripts. He also highlighted security as an important consideration for the public hearing process.

Public hearings are not always solely related to fact finding, however. Varney reminded the commissioners-elect that what is often more important is that the Commission provide a space for victims to speak and be heard, and demonstrate to the public that the Commission is undertaking its work with sincerity, gravity and vigour. As such, the pre-hearing process is of great importance, and must include a solid preparation process encompassing indepth investigations, well-considered choice of cases presented for testimony and a precise and sensitive process for selecting and preparing witnesses.

Workshop Day 2

- *Session 1 – The Aceh TRC and Indonesia*



Ifdhal Kasim, advisor to the office of the President of Indonesia (and former head of the Indonesian National Human Rights Commission), explored issues surrounding the legal basis of the Aceh TRC.

Currently there are two bills with Indonesia's Coordinating Ministry for Political, Legal and Security Affairs regarding the establishment of the Aceh TRC. Kasim conceded that progress on these had been very slow. He suggested that there were other documents that could be viewed as the legal basis for the Aceh TRC, including the Helsinki MOU itself, article 2.3 of which states:

A Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures.

He also highlighted a relevant court decision as a 'negative' form of legislation that could also be considered the legal basis for the establishment of the Aceh TRC.

He then briefly raised the issue of funding, proposing that the provincial Aceh budget allocation (special autonomy fund) should be sufficient to fund the Aceh TRC.

Mr Kasim concluded by articulating his view that the Aceh Governor should take a strong stance on the Aceh TRC in relation to Jakarta, and articulate a clear political vision on comprehensively addressing the issue of past human rights abuses in the interests of Aceh. Demonstrating strong public support for the Aceh TRC should be a priority for the office of the Governor.

- *Session 2 – Building a TRC ‘Step by Step’: Lessons from Timor-Leste*

Galuh Wandita, AJAR Director and former Deputy Director of the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), shared her deep insights on implementing a truth and reconciliation process from start to finish.

She emphasised the importance of developing a strategic plan to which commissioners should refer regularly and use as a map to inform daily TRC operations. Galuh explained how the Timor-Leste CAVR Strategic Plan highlighted four key principles that guided its work - strong coordination between units and regional-national offices; open planning and flexibility; three-monthly review and adjustment of workplans; and learning from the field.

The CAVR also produced work plans and training manuals for staff and continually monitored the overall work of the Commission and its staff to ensure consistency and quality. Galuh urged the Aceh TRC Commissioners-elect to give careful consideration to the institutional structure of the TRC, advising that the Commission be structured in the way that best serves its aims and best fits within its particular context and mandate. The Timor-Leste CAVR, for example, comprised three tranches that worked in an integrated manner – truth seeking; victim support and reparations; and reconciliation.

The Aceh TRC Commissioners-elect were invited to brainstorm how they saw the Aceh TRC working in practice. They discussed how the TRC would cover all districts of Aceh, including remote areas, how they could work innovatively with NGOs, how they would assign staff, whether they should engage a special unit for outreach and training, and how they might encourage reticent and/or traumatised victims to testify (particularly victims of sexual violence), among other topics.

Galuh explained that in setting up the Timor-Leste CAVR, commissioners made a conscious decision to place victims at the centre of their work and to employ a community based approach as far as possible. The CAVR staff worked hard to establish a feeling of comfort and safety around public hearings and victim testimonies.

Importantly also Galuh described how CAVR commissioners conceptualised the main themes and structure of the Commission’s final

report at the outset of the process, and that this guided their work for the duration of the commission. Knowing what the final report would look like, she explained, meant that commissioners and their staff could better see what work was required to produce it, and could then plan and implement tasks accordingly.

Galuh encouraged the Aceh TRC commissioners-elect to begin by identifying the range of issues and events to be investigated within the key period of the TRC's mandate.

- Session 3 - Working with National Mechanisms: Komnas HAM, Komnas Perempuan



Dr. Otto Nur Abdullah, of the Indonesian National Human Rights Commission (Komnas HAM) and Azriana, Chair of the National Commission for Women (Komnas Perempuan) provided an overview of the work of their respective commissions. They also discussed the ways in which they envisaged the Aceh TRC working together with Komnas HAM, Komnas Perempuan and other national mechanisms.

After providing a brief summary of the work and background of the commission, Azriana, Komnas Perempuan Chair, outlined some of the past and present challenges it had faced. She stated that government support for the establishment of such a commission was initially low and funding very difficult to obtain. She also identified Komnas Perempuan's limited mandate as a challenge, noting for example that the commission is not mandated to carry out investigations.

Despite this, however, Azriana stated that Komnas Perempuan had learned to be creative and innovative in carrying out its mandate and urged the Aceh TRC to be creative in utilizing other available mechanisms

in its work. Azriana noted, for example, that while Komnas Perempuan was not mandated to conduct investigations, it could make recommendations and link in with the work of Komnas HAM and national law enforcement agencies.

The Komnas Perempuan Chair highlighted support from civil society as a key motivating factor in the daily work of the commission. ***“The most important thing we have is the legitimacy given to us by the victims”*** she stated.

Azriana discussed the importance for the Aceh TRC of tapping existing data sources, and building upon information/testimony already collected ie. by NGOs, Komnas Perempuan, and other stakeholders in order to maximize efficiency. This is particularly important when dealing with traumatized victims who may not cope well with having to retell their 'story' in the context of a TRC public hearing. Azriana also urged participants to invest effort in building the capacity and knowledge of those stakeholders and partners of the Aceh TRC who they will be working closely with in carrying out their mandate.



Dr. Otto Nur Abdullah, of Komnas HAM, reiterated the vital importance of building strong networks and collaborative relationships with Komnas HAM and Komnas Perempuan, as well as with other national institutions. He outlined a number of areas in which the Aceh TRC could work together with Komnas HAM, emphasising that it would be legally permissible to report gross human rights violations to Komnas HAM, for example, including those that had been investigated and dealt with by the TRC.

Dr Otto also reminded participants of the importance of the TRC maintaining high standards in its legal work, for example, in gathering evidence, recording testimony, undertaking investigations, maintaining standards of proof, dealing with

victims, etc. Working within the law is paramount, he stated, particularly because information and evidence collected by the Aceh TRC might also be used in subsequent court proceedings and prosecutions.

- *Session 4 – Reparations: Principles, Mechanisms and Innovation*

In this session Galuh Wandita and Samsidar discussed the critical issue of reparations, and urged the commissioners-elect to take a 'victim-centred' approach to reparations and to consider innovative approaches.

The obligation incumbent upon states to provide individual reparations for victims of human rights violations is well established in international law.

The commissioners-elect were urged to think broadly and creatively in their efforts to strengthen victims not only via the reparations mechanisms of the TRC but also through other mechanisms. Civil society initiatives to strengthen and educate victims and those that link victims with government services such as those available from the Social Welfare Ministry could also be helpful.

The Aceh TRC commissioners-elect were urged to be participatory and inclusive in their approach, and to consider seeking input from civil society organizations, including victims groups, regarding what types of reparations should be adopted and implemented.

Finally, emphasis should be given to urgent recovery efforts, especially for the most vulnerable victims and those in urgent need.

Workshop Day 3

The commissioners-elect began day three of the workshop with a group brainstorming session facilitated by AJAR's Atikah Nuraini, Indri Fernida, and Galuh Wandita. They explored issues such as historical factors and roots of the conflict in Aceh as well as the TRC working structure, mandate and legal issues, vision and mission, values and principles; stakeholders; funding; administrative issues; and the involvement of stakeholders.

The group debated the timing of the roots of the conflict in Aceh, noting that while certain key events of 1976 were major triggers for the GAM insurgency movement that formally ended with the signing of the Helsinki MOU, Aceh had also been the site of earlier unresolved conflicts. These included pro and anti Dutch divisions in the early twentieth century, the rise of Darul Islam in the 1950s, and escalating tensions with Jakarta post-independence.

In 1976 Acehnese civilian leader Hasan Tiro made a freedom declaration and Indonesia began developing large natural resource projects such as the Arun gas field with 'Mobil Oil Indonesia'. The centralist Suharto government in Jakarta exercised a virtual monopoly over all major natural resource projects in Aceh, including mining, plantations, and oil and gas production. It also monopolised distribution and profits from Aceh's rich natural resource wealth.

These 'triggers' fueled resentment already felt in Aceh due to perceived discrimination. Acehnese were excluded from participating in and benefitting from the large-scale natural resource business operations in their province. They also suffered from the effects of highly corrupt governance and low accountability for public officials in Aceh. In addition, Aceh suffered from low education levels and low health indicators.

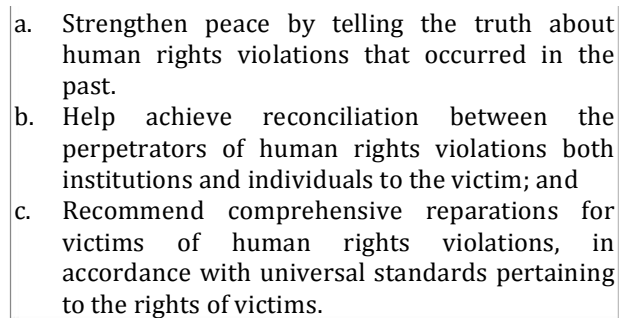
Tension and violence escalated during the 1980s and 90s when the Indonesian government stepped up deployment of military personnel to secure vital projects, infrastructure, heavy equipment etc in Aceh. During this period intimidation and attacks on the civilian population increased. The GAM armed resistance movement grew also and in 1988 the Indonesian president sent a large deployment of combat troops to Aceh after the governor had requested an increase in troops for security reasons.

The commissioners-elect agreed that the TRC process should include a segment in which the roots of the conflict in Aceh are clarified and explained for the public good. It was noted that the Qanun 17/2013 divides the period for investigation into 1976 onwards and pre-1976, prioritising the period from 1976 onwards. The group acknowledged that they could include an historical chapter in the TRC final report that could address earlier conflict roots and provide further context (based on

existing research), and well as a chapter detailing the roots of the ‘modern’ post-1976 conflict.

The commissioners-elect then moved on to consider the various groups, individual actors and other stakeholders that will impact the TRC and that the TRC will impact. Those impacting the TRC include the Indonesian central government, the Aceh regional government, donors, GAM, DPRA. Those that the TRC will impact include, among others, the religious Ulama, academics and other influential community members, international institutions, conflicting groups – Indonesian military, national police, GAM former combatants and militias, victims, CSOs and claimant groups. They noted that the TRC will need to develop a strategy for interacting with these groups.

The group then discussed a vision and mission for the TRC, referring to article 3 of the Qanun 17/2013 which articulates the TRC’s aims as follows:

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- a. Strengthen peace by telling the truth about human rights violations that occurred in the past.
 - b. Help achieve reconciliation between the perpetrators of human rights violations both institutions and individuals to the victim; and
 - c. Recommend comprehensive reparations for victims of human rights violations, in accordance with universal standards pertaining to the rights of victims.

They concluded that the ultimate mission of the TRC in broadest terms should be to create a sustainable peace in Aceh by resolving past human rights violations, with a focus on reconciliation, reparations, and rectifying the historical narrative.

They also discussed the values and principles of the TRC, referring to articles 2 and 4 of the Qanun 17/2013, which articulate a set of guiding foundations and principles.

The commissioners-elect concluded this session by exploring ideas for the work structure of the TRC, noting the vital importance of having a well integrated structure. Galuh Wandita, AJAR Director, provided examples from the Timor-Leste CAVR experience. She explained that the Commission comprised a Chair and Deputy Chair and six working groups of two to six staff each, with the possibility of recruiting additional support staff in the regions. A secretariat supported the work of the Commission. The relationship between the Commissioners and the secretariat must be strong. Other stakeholders, such as advisors, experts and partners, may also be engaged to assist the Commission in a consultative manner.

The group agreed that the TRC must be supported by good administration, and that they should therefore give careful consideration to the selection of staff for key positions such as executive director and finance director. They also acknowledged the challenge of fundraising, noting that effort would be required to source and manage non-budget funding.

- *Session 2 – Investigations and Linking to Prosecution*

Howard Varney, senior program advisor at the International Centre for Transitional Justice, began the discussion on TRC investigations by referring to the Aceh truth commission by-law Qanun 17/2013, which he noted provides the legal authority for the TRC to undertake its work, including investigations.

He urged the group to interrogate Qanun 17/2013 carefully in order to ensure they have a very clear idea of what investigative powers the commission has at its disposal to engage in fact-finding. Commissioners will need to consider whether the law provides comprehensive direction regarding its investigative powers, for example, or whether the TRC will need to develop a more specific set of procedures to guide the investigations and research process.

He introduced the concept of ‘window cases’ - the idea that initial fact-finding be focussed on a series of important events that shed light onto broader area of understanding.

Varney emphasised the vital importance for a successful TRC investigations program of comprehensive planning and management. He stated that during a planning phase prior to the commencement of investigations the TRC should specify what it wanted to know, the range of time available, the geographical areas to be covered, the tools and resources required, and estimated budget etc, and that the plan should also be flexible enough to accommodate changes.

The planning phase also should include research and the preparation of background papers, identification of key issues or topics for investigation, legal theories and relevant legislation that would serve as references, and a description of how all tasks related to the investigations are to be carried out.

He also identified the management of information and evidence as key, noting that evaluation and analysis of information was very important. Finally, he emphasised the importance of training for all staff involved in investigations, particularly in regard to standards of proof, noting that this was important particularly when considering which cases to refer for prosecution. Sound investigations should be guided by a clear methodology and be well documented. They should also incorporate special provisions for fact-finding in sensitive cases such as those involving sexual violence and those involving children. Investigation

processes should aim to clearly answer the questions: what happened to whom; who were the perpetrators; and why it happened. He urged participants to ensure all interviewers were trained and briefed in proper interview techniques and to continually monitor quality and consistency.

Varney advised the group, in planning a program of investigations, to also consider formulating a set of 'ethics and rights' principles governing the treatment of victims and witnesses.

- *Session 3 – Reconciliation: Principles and Mechanism*

Patrick Burgess opened the discussion on reconciliation by contending that reconciliation is an attempt to 'close the abyss' of emotional distance created by conflict (and fueled by lingering destructive feelings of anger, distrust, desire for revenge etc).

He noted that those designing the reconciliation process must consider the characteristics of the 'reconciling' parties – such as victims and perpetrators, individuals and communities, and individuals and organisations, for instance. Reconciliation processes might also be inter-community, inter-institutional and even inter-regional (Aceh-Jakarta).

Learning from the experience of Timor-Leste where community-based reconciliation processes were implemented, he described how community spaces were provided for perpetrators to admit their mistakes in the presence of the community. These spaces may also be used to hear the testimony of victims, however, in may also be appropriate in some contexts hearings for victims be carried out separately.

Reconciliation forms a crucial part of most truth commissions. Reconciliation processes recognize the need to redress past wrongs and at the same time promote the idea of a common, connected future for all parties. The forms that reconciliation processes take in each different post-conflict situation must be tailored to suit their particular context.

Workshop Day 4

The commissioners-elect began day four of the workshop by further discussing the TRC working mechanism, workplan and working timelines, key themes and reporting. They agreed on a broad draft workplan for each of the five years to 2021 and proposed targets.

Key themes discussed include issue of natural resources and human rights violations, land conflicts and human rights violations, widespread and systemic human rights abuses, the role of women and conflict, security for military businesses and violations of cultural rights

The commissioners-elect agreed on a broad draft working timeline as well.

- *Session 2 – Outreach, National Vision and the Role of Civil Society*

“The success or failure of a commission is strongly determined by the peoples sense of ownership of it”

- Galuh Wandita, AJAR Director

“The commission must not only look back, we must also look forward”

- Aceh TRC Commissioner-elect

In this final session, Galuh Wandita discussed the importance of community outreach and the engagement of civil society in the TRC process and Howard Varney presented the example of the ‘National Vision Project’ undertaken by the Sierra Leone Truth and Reconciliation Commission as part of their community outreach process.

The Sierra Leone National Vision Project asked citizens what kind of country they envisaged for the future and invited contributions. It received an overwhelmingly enthusiastic response, garnering broad public support, including from the President himself. The project received contributions in the form of written and recorded essays, plays, poems, music, wood carvings, paintings, childrens’ drawings, installations and sculptures among others. Contributions were received from every segment of society, including prisoners, former combatants, artists, teachers, school children and parents.

In fact, the National Vision project proved so inspirational and significant that the Commission in its report recommended that it “should become a permanent, open, interactive civic space for all stakeholders in Sierra Leone to engage in dialogue through artistic and scholarly expression on political, moral and social issues of the past, present and future.”

Varney encouraged the Aceh TRC, in its gathering of statements and public hearings, to consider capturing ideas about what respondents envisage for their future Aceh. He suggested that this would not only be informative for the Commission in obtaining a sense of the hopes and expectations of the people of Aceh, but is also important for reconciliation and forward planning.

Galuh Wandita emphasized that community outreach was an extremely important part of the TRC process that should not simply be regarded as an afterthought. She noted that a commission's success can be determined by the community's sense of ownership of it and urged the commissioners-elect to incorporate community outreach into their TRC workplan at the outset.

“We need outreach not just to victims but also to youth because Aceh’s future peace will be in their hands”

- Aceh TRC Commissioner-elect

TRC outreach efforts should be far-ranging and creative, and invite the involvement of as many citizens as possible. The group discussed the various ways people could be invited to participate, including via television, radio, and social media. They discussed the option of establishing within the TRC a creative team for community outreach that could work collaboratively with NGOs and involve other civil society organisations and stakeholders. They noted the importance too of outreach initiatives that are inclusive of young people, who will after all play an active role in preserving peace in Aceh into the future.

