



# TIME TO FACE THE PAST

JUSTICE FOR PAST ABUSES IN  
INDONESIA'S ACEH PROVINCE

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INTERNATIONAL



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*Cover photo:* Survivors of the Aceh conflict demonstrate outside Parliament, calling for the establishment of a truth commission. Banda Aceh, Aceh, Indonesia, December 2010.

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# MAP OF ACEH



# GLOSSARY

## IN ENGLISH

**AMM:** Aceh Monitoring Mission

**CEDAW:** Convention on the Elimination of All Forms of Discrimination against Women

**CMI:** Crisis Management Initiative

**CoHA:** Cessation of Hostilities Agreement

**ICC:** International Criminal Court

**ICCPR:** International Covenant on Civil and Political Rights

**LoGA:** Law on Governing Aceh

**MOU:** Refers to the Helsinki Memorandum of Understanding signed between the Government of Indonesia and the Free Aceh Movement in 2005

## IN INDONESIAN

**ABRI (Angkatan Bersenjata Republik Indonesia):** Armed Forces of the Republic of Indonesia

**BRA (Badan Reintegrasi Aceh):** Aceh Reintegration Agency. Now known as the Aceh Peace Strengthening Agency (*Badan Penguatan Perdamaian Aceh, BP2A*)

**Brimob (Brigade Mobil):** Police Mobile Brigade

**BRR (Badan Rehabilitasi dan Rekonstruksi):** Aceh Rehabilitation and Reconstruction body

**DOM (Daerah Operasi Militer):** Military Operations Zone

**DPR (Dewan Perwakilan Rakyat):** House of People's Representatives, the lower house of the legislature in Indonesia

**DPRA (Dewan Perwakilan Rakyat Aceh):** Aceh House of Representatives, the provincial legislative body in Aceh

**GAM (Gerakan Aceh Merdeka):** Free Aceh Movement

**KKR (Komisi Kebenaran dan Rekonsiliasi):** Truth and Reconciliation Commission

**Komnas HAM (Komisi Nasional Hak Asasi Manusia):** National Human Rights Commission

**Komnas Perempuan (Komisi Nasional Anti-Kekerasan Terhadap Perempuan):** National Commission on Violence against Women

**Kopassus (Komando Pasukan Khusus):** Special Forces Command

**Koramil (Komando Rayon Militer):** District Military Command

**KPTKA (Komisi Independen Pengusutan Tindak Kekerasan di Aceh):** Independent Commission for the Investigation of Violence in Aceh

**NAD (Nanggroe Aceh Darussalam):** Peaceful State of Aceh. Formal name of the Aceh province between 2001 and 2009

**Pos Sattis (Pos Satuan Taktis dan Strategis):** Tactical and strategic unit post

**Qanun:** Aceh provincial bylaw

**SGI (Satuan Gabungan Intelijen):** Joint Intelligence Unit

**TNI (Tentara Nasional Indonesia):** Indonesian National Armed Forces

- 8 Time to face the past  
Justice for past abuses in Indonesia's Aceh province



# 1. INTRODUCTION

“[We] want to know why until now the government of Indonesia has not acknowledged that we suffered human rights abuses. As victims... we do not feel revenge, however they must address our feelings. [The government] cannot say there is already peace. Because for us peace is justice for victims... I know the agreement on 15 August 2005 between the Government of Indonesia and the Free Aceh Movement brought peace in Aceh. [But] in the Helsinki MOU they also mentioned about human rights and the creation of a Human Rights Court and a TRC [Truth and Reconciliation Commission] in Aceh. My dream has not been fulfilled yet. We are still fighting, not against the government, but for the government to remember what happened to us. They do not have the right to forget.”

The former head of a victims' association in Aceh, 8 May 2012

On 15 August 2005, the Indonesian government and the armed pro-independence movement, the Free Aceh Movement (*Gerakan Aceh Merdeka*, hereafter referred to as GAM) signed a Memorandum of Understanding (MOU) under the auspice of the Crisis Management Initiative (CMI) headed by former Finnish president Martti Ahtisaari signalling the end of years of violence. The Aceh conflict had a devastating impact on the civilian population, in particular between 1989 and 2004 when military operations were conducted by the Indonesian authorities to suppress claims for separatism.<sup>1</sup> Between 10,000 and 30,000 people were killed during the conflict, many of them civilians.<sup>2</sup>

National and international fact-finding organizations, including Indonesia's National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*, hereafter referred to as Komnas HAM), and the National Commission on Violence against Women (*Komisi Nasional Anti-Kekerasan Terhadap Perempuan*, Komnas Perempuan) have produced extensive accounts of some of the serious human rights violations and abuses committed against the Acehnese civilian population during the conflict. However, many of these official accounts, including the Komnas HAM reports, which indicate that the vast majority of past abuses were committed by members of the security forces and their auxiliaries, have yet to be made available to the public.<sup>3</sup>

Amnesty International and other bodies documented a range of violations committed by members of the security forces and their auxiliaries, including unlawful killings, enforced disappearances, torture, forcible displacement of civilians, arbitrary arrest and detention of those suspected of supporting GAM. Human rights abuses committed by GAM, including hostage-taking and the targeted killing of suspected informers, government officials and civil servants, were also reported.<sup>4</sup> Amnesty International along with others has also highlighted the extent of violence against women during the conflict and stressed in its 2004 report *Indonesia: New military operations, old patterns of human rights abuses in Aceh* that there was a “long-established pattern of rape and other sexual crimes against women” in the province.<sup>5</sup>

Although rarely labelled as such, many of the human rights abuses<sup>6</sup> committed during the Aceh conflict<sup>7</sup> constitute crimes under international law. Many of the violations and abuses committed by both sides in the context of the non-international armed conflict that existed between 1989 and 2005 may amount to war crimes. Many of the violations directed by Indonesia's forces and their auxiliaries against civilians as part of the policy of suppressing the independence movement appear to have formed part of a widespread or systematic attack and may amount to crimes against humanity. These and other crimes under international law, including torture, extrajudicial execution and enforced disappearance must be investigated and, where sufficient admissible evidence exists, those suspected of criminal responsibility should be prosecuted in fair trials in accordance with international law and standards without recourse to the death penalty. Victims also have a right to an effective remedy, including truth, justice and full and effective reparation.

However, as illustrated by the quote above, most victims and their relatives have long been denied truth, justice and reparation in violation of Indonesia's obligation under international law. They are still waiting for local and national Indonesian authorities to acknowledge and remedy what happened to them and their loved ones during the conflict.

During a visit to Aceh in May 2012, Amnesty International spoke with various groups and individuals, including non-governmental organizations (NGOs), community organizations, lawyers, parliamentarians, local government officials, journalists, and over thirty victims and their representatives about the current situation in Aceh and the lack of measures to provide truth, justice and reparation for crimes committed during the conflict.

Victims and their relatives told Amnesty International that they welcome the current peace process and the improved security situation in Aceh;<sup>8</sup> however they do not understand why commitments contained in the 2005 MOU to set-up a Human Rights Court for Aceh and an Aceh Truth and Reconciliation Commission have yet to be implemented.<sup>9</sup> They also explained that, although some post-MOU programmes have provided some forms of financial support to many victims, these measures have lacked consistency and they were not specifically related to an acknowledgement of past human rights abuses.

At the time of the peace agreement in 2005, the topic of addressing crimes committed during the conflict was perceived by some as a threat to the peace process.<sup>10</sup> However, seven years on, it is time for the central and local Indonesian authorities to face the past and take long overdue measures to implement victims' rights to truth, justice and reparation. Not only would it contribute to healing the open wounds of the civilian population, it would also help strengthen the rule of law in the country and secure the peace process in the long-term.<sup>11</sup> As noted by the UN Secretary-General Kofi Annan in August 2004:

*"[t]ransitional justice initiatives promote accountability, reinforce respect for human rights and are critical to fostering the strong levels of civic trust required to bolster rule of law reform, economic development and democratic governance."<sup>12</sup>*

Addressing past crimes and acknowledging that serious human rights abuses were committed during the Aceh conflict would also send a strong signal to other victims of human rights abuses and their families in Indonesia, who are waiting for measures of truth, justice and reparation to address crimes committed in other situations.<sup>13</sup>

In order to strengthen the rule of law in Indonesia and ensure that victims and their relatives have access to truth, justice and reparation for crimes committed during the Aceh conflict, Amnesty International recommends that local and central authorities undertake the following steps as a matter of priority:

- Acknowledge that serious human rights violations and abuses, including crimes under international law, were committed during the Aceh conflict;
- Set up immediately a truth commission in line with international standards to ensure that victims, their families and affected communities are provided with full disclosure about what happened during the Aceh conflict and ensure that specific measures are taken to reveal the fate and whereabouts of victims of enforced disappearances;
- Take effective measures (including law reform) to investigate and, where there is sufficient admissible evidence, prosecute those responsible for crimes under international law, including possible war crimes and crimes against humanity, torture, extrajudicial executions and enforced disappearances committed during the conflict; and
- Establish a programme to provide full and effective reparation including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition to all victims of human rights violations and abuses in Aceh. The programme should be devised in consultation with victims and should take into account the different experiences and needs of women and men, girls and boys, who experience conflict differently, as well as any other relevant groups.



An Indonesian soldier guards villagers during a security search in Pusong village in Indonesia's Aceh province on 18 July 2003.  
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## TRUTH, JUSTICE AND REPARATION

Whenever serious human rights violations and abuses are committed – including genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances which are crimes under international law and violations against the international community as a whole – Amnesty International calls on national authorities to fulfil their obligations to ensure truth, justice and full reparation to victims.

These measures are not discretionary. They form part of the duty of all states to provide an effective remedy to victims as recognized in Article 8 of the Universal Declaration of Human Rights; the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and Article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia acceded on 23 February 2006. Indonesia also has specific obligations to take these measures in relation to war crimes as guaranteed in the Geneva Conventions, which it ratified on 30 September 1958; in relation to torture as guaranteed in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it ratified on 28 October 1998; and in relation to enforced disappearance as guaranteed in the International Convention for the Protection of All Persons from Enforced Disappearance, which it signed on 27 September 2010 but has yet to ratify.

Recognizing that impunity exists mainly when the national authorities of countries where the crimes under international law were committed or whose nationals are suspected of committing them fail to act, it is important that the national criminal and civil justice systems of all countries step in, where there is sufficient admissible evidence, to try those suspected of responsibility for the crimes on behalf of the international community and award reparation to victims by exercising universal jurisdiction.

### Truth

Victims of serious human rights abuses, including crimes under international law have a right to truth.<sup>14</sup> States must take measures to establish the truth about the crimes, including the reasons, circumstances and conditions of the human rights abuses; the progress and results of any investigation; the identity of perpetrators (both subordinates and their superiors); and in the event of death or enforced disappearance, the fate and whereabouts of the victims. Truth can help victims and their families understand what happened to them, counter misinformation and highlight factors – such as discrimination – that led to the abuses. It allows societies to know why abuses were committed so that they are not repeated.

### Justice

International law obliges states to exercise criminal jurisdiction over crimes under international law.<sup>15</sup> States must ensure that the crimes are investigated and, if sufficient admissible evidence exists, those suspected of criminal responsibility should be prosecuted in fair trials in accordance with international law and standards without recourse to the death penalty. Genuine investigations and prosecutions ensure that there can be no impunity.

### Reparation

Victims of human rights abuses, including crimes under international law, have a right to full and effective reparation. Victims should have access to effective measures to address the harm they have suffered and to help them rebuild their lives, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>16</sup> Reparation should seek to “as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”<sup>17</sup>

## 1.1 METHODOLOGY AND ACKNOWLEDGEMENT

This report builds on Amnesty International's past work documenting human rights violations and abuses during the Aceh conflict and thereafter. It is part of a wider programme of work monitoring the Indonesian government's steps towards combating impunity for past human rights violations.<sup>18</sup> Recent Amnesty International publications, such as a submission on Indonesia to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in June 2012,<sup>19</sup> have highlighted some of the shortcomings in Indonesia's fulfilment of its international human rights obligations to provide an effective remedy.

The findings of this report are based primarily on a May 2012 visit to Aceh by Amnesty International. Amnesty International delegates visited Banda Aceh (the capital city), Greater Aceh, Pidie Jaya, Bireuen, Lhokseumawe, North Aceh, East Aceh, and Langsa. During the visit, delegates met with victims' community groups, NGOs, lawyers, parliamentarians, the head of the Aceh branch of Komnas HAM, representatives from the Aceh Reintegration Agency (*Badan Reintegrasi Aceh*, BRA),<sup>20</sup> and the interim Governor of Aceh. Central government officials were informed about Amnesty International's planned visit.

A one day workshop was organized during the May visit to discuss with victims and their representatives the current situation in Aceh and to what extent victims of past human rights abuses have been able to access comprehensive measures of truth, justice and reparation since the conflict ended in 2005. Seventeen representatives from Pidie Jaya, Bireuen, Bener Meriah, Lhokseumawe, North Aceh, East Aceh, Central Aceh, Aceh Jaya and South Aceh were able to attend the workshop and share their experience. Amnesty International delegates also met individually, or in small groups, with other victims and their representatives, both women and men, as well as children, while travelling along the East coast of Aceh. They were from Banda Aceh, Pidie, North Aceh, Lhokseumawe, East Aceh and Langsa. Although Amnesty International delegates sought to meet with victims of past human rights abuses committed by both parties to the conflict, they were only able to meet with victims of human rights violations committed by members of the security forces. Historically, it has remained a challenge to meet with victims of GAM abuses due to fear of retaliation.

This report also relies on visits to Jakarta in September 2011, and April and October 2012, during which Amnesty International delegates met with representatives of Komnas HAM, local and international NGOs, and other experts; daily news monitoring of issues related to justice, truth and reparation in Indonesia; extensive reading of academic and other professional publications; and information from lawyers, NGOs and other relevant contacts in Indonesia.

Amnesty International thanks the staff of Koalisi NGO HAM Aceh, an Acehnese human rights organization, for generously agreeing to organize the one day workshop with victims and their representatives in May 2012. Amnesty International also extends its deep appreciation to all victims and their representatives, who courageously shared their stories, generously opened their homes, and entrusted Amnesty International to raise their concerns. When victims have consented, their real names are mentioned. Otherwise, names have been withheld for safety and confidentiality reasons.

## 2. GENERAL OVERVIEW

The province of Aceh,<sup>21</sup> also known as the “veranda of Mecca”, lies at the northern tip of the island of Sumatra, a short distance across the Straits of Malacca to Malaysia (see Map of Aceh, p5). Despite its wealth in natural resources, including oil and gas, Aceh remains one of the poorest regions of Indonesia. According to the Institute of Official Statistics twenty per cent of its 4.5 million population were poor in 2010,<sup>22</sup> twice as much as the national average.<sup>23</sup> In recent years, Aceh has often hit international headlines either due to its strict implementation of Shari’a based laws whose provisions often violate international human rights standards,<sup>24</sup> or in the context of the Asian natural disaster of December 2004 which left over 260,000 people dead or missing.<sup>25</sup> Less is known about the long bloody conflict between the armed pro-independence movement, GAM, and Indonesian security forces during which crimes under international law were committed, including possible crimes against humanity and war crimes, torture, extrajudicial executions and enforced disappearances.

### 2.1 CRIMES UNDER INTERNATIONAL LAW DURING THE ACEH CONFLICT

The Aceh conflict between GAM and Indonesian security forces dates back to the mid-1970s when, on 4 December 1976, the Free Aceh Movement unilaterally declared independence.<sup>26</sup> Support for independence in Aceh is rooted in a long tradition of resistance to outside domination, including against the former Dutch colonial power.<sup>27</sup> The unequal benefits of economic development, the perceived lack of respect for cultural and religious traditions, and the appalling record of human rights violations by Indonesian security forces all contributed to fuelling the resentment of many Acehnese against the Indonesian government.<sup>28</sup> The 1976 insurgency was quickly crushed by the Indonesian security forces. Those among GAM’s leadership who were not killed or imprisoned, fled abroad. Dr Tengku Hasan di Tiro, a well known Acehnese businessman and GAM’s founder,<sup>29</sup> was among those who managed to escape.<sup>30</sup> He found refuge in Sweden, where he established a self-proclaimed government in exile. In 1989, the Free Aceh Movement military wing re-emerged in Aceh. Following a series of attacks on police and military installations, the Indonesian security forces embarked on counter-insurgency operations. Aceh became a “Military Operations Zone” (*Darurat Operasi Militer*, DOM).

#### A. THE DOM PERIOD (1989-1998)

Amnesty International’s report “*Shock Therapy*”: *Restoring Order in Aceh, 1989-1993*<sup>31</sup> estimated that two thousand civilians, including children and the very elderly, were unlawfully killed, some in public executions and others while in military custody, during counter-insurgency operations between 1989 and 1993. As described at the time:

*“[i]n an effort to undercut the civilian support base of the guerrilla resistance, Indonesian forces carried out armed raids and house-to-house searches in suspected rebel areas. The houses of villagers suspected of providing shelter or support to the rebels were burned to the ground. The wives or daughters of some suspected rebels were*

*detained as hostages and some were raped. Anyone suspected of contact with Aceh Merdeka was vulnerable to arbitrary arrest and detention, torture, 'disappearance' or summary execution. The counter-insurgency campaign also resulted in the flight of hundreds of Acehnese to neighbouring Malaysia beginning in March 1991.*

*A key component of the counter-insurgency campaign in Aceh was the strategy of civil-military cooperation, officially known as the "People's total defence and security system" (Sishankamrata). The involvement of civilians in the military campaign inevitably increased the scale of human rights violations. The most notorious example of the strategy of civil-military cooperation was the "fence of legs" operation - used previously in East Timor - in which ordinary villagers were compelled to sweep through an area ahead of armed troops, in order both to flush out rebels and to inhibit them from returning fire. Essential to the success of these operations were local "vigilante" groups and night patrols made up of civilians but established under military order and supervision. Between 20 and 30 young men were mobilized from each village in suspected rebel areas... Refusal to participate in these groups - or failure to demonstrate sufficient commitment to crushing the enemy by identifying, capturing or killing alleged rebels - sometimes resulted in punishment by government forces, including public torture, arrest and execution."<sup>32</sup>*

According to official Indonesian sources and local media reports, GAM members were also responsible for human rights abuses between 1989 and 1993, including the targeted killing of some government officials; the burning of schools and other public buildings; the destruction of vehicles and other property owned by commercial enterprises and the intimidation, ill-treatment and killing of dozens of civilians, including suspected informers and non-Acehnese residents of "transmigration villages".<sup>33</sup>

By the time the DOM status was lifted in 1998, many hundreds and possibly thousands more civilians had been killed. Members of the security forces arbitrarily arrested several thousand people during these years on suspicion of supporting GAM. As illustrated by the serious human rights violations which occurred at *Rumoh Geudong* (see below, The "Torture Chamber": *Rumoh Geudong*), Indonesian security forces subjected detainees to extensive periods of incommunicado detention and torture including rape and other forms of sexual violence. The police and military also appear to be responsible for the disappearance of hundreds of people during this period.<sup>34</sup>

Many of these human rights abuses which were committed in the context of the non-international armed conflict may amount to war crimes. Many violations by members of the security forces and their auxiliaries appear to have formed part of a widespread or systematic attack directed against the civilian population that may amount to crimes against humanity. These attacks appear to have been part of a policy aimed at crushing the armed pro-independence movement.<sup>35</sup> Under international law, these and other crimes under international law, including torture, extrajudicial executions and enforced disappearances must be investigated, and where sufficient admissible evidence exists, those suspected of criminal responsibility should be prosecuted in fair trials in accordance with international law and standards without the recourse to the death penalty (See Chapter 4). Victims also have a right to an effective remedy, including truth, justice and full and effective reparation (see Chapter 3, 4 and 5).

## THE “TORTURE CHAMBER”: RUMOH GEUDONG



Remains of *Rumoh Geudong*, a military post used by the Special Forces Command (*Kopassus*) in Pidie district where those accused of being GAM members or supporting them were detained, tortured and killed. The house was burned down after the Military Operation Zone (DOM) status in Aceh was lifted in August 1998. © Amnesty International

Serious human rights violations have been documented at the Bille Aron military post (*Pos Satuan Taktis dan Strategis* or *Pos Sattis*) known widely as *Rumoh Geudong*, a large house in Glumpang Tiga, Pidie District operated by the military Special Forces Command (*Kopassus*) since April 1990. The military appear to have arbitrarily arrested or abducted dozens, and possibly hundreds of people accused of being GAM members or supporting or assisting GAM including their family members between 1997 and 1998 and brought them to *Rumoh Geudong* for interrogation.

During interrogation, it is alleged that soldiers, assisted by government informants, tortured or otherwise ill-treated detainees – both men and women. This included being punched, kicked or beaten with pieces of wood or metal, some while hanging upside down. Others were burned with cigarettes or electrocuted in different parts of their body including their genitals. Detainees also reported being soaked in sewer water or having large wooden logs placed on their bodies. Some women detainees held at the military post alleged that they were raped and subjected to other forms of sexual violence. Some detainees were allegedly killed or disappeared.<sup>36</sup> Victims and witnesses reported seeing dead bodies being put into gunny sacks and taken away.<sup>37</sup>

On 21 August 1998, weeks after the end of the DOM period a Komnas HAM fact-finding team visited *Rumoh Geudong*. They saw electric cables on the floor of the house and blood stains on the walls. They also found human remains including pieces of bones from fingers, legs and hands as well as strands of hair. Victims and witnesses reported that before the arrival of the fact-finding team, detainees and local villagers were asked by the military to dig up human remains buried around the house which were put into vehicles and taken elsewhere. At 3pm on the same day, after the Komnas HAM team had left the location, *Rumoh Geudong* was burned down, reportedly by an angry mob.<sup>38</sup>

The *Rumoh Geudong* case was one of five cases recommended for immediate prosecution by the Independent Commission for the Investigation of Violence in Aceh (KPTKA), an official body established by the Indonesian authorities in July 1999. In November 1999 the Attorney General set up an investigation into the case.<sup>39</sup> However Amnesty International is not aware of anyone who has been brought to trial for the serious crimes perpetrated at *Rumoh Geudong* (see Chapter 3.2 B: The 1999 Independent Commission for the investigation of violence in Aceh, p23).



#### B. "THE HUMANITARIAN PAUSE" (1999-2002)

Following the fall of President Suharto's rule in 1998, the DOM status was lifted and some senior military officials and government officials publicly acknowledged some of the military wrong doings during the DOM period.<sup>40</sup> In August 1998, General Wiranto, the then head of the Indonesian military apologized "*for the behaviour of a handful of the soldiers which led to the emergence of various excesses that have been detrimental to the people*".<sup>41</sup>

However it brought only brief respite. In January 1999, the first of a series of new military operations was launched following attacks on the security forces, allegedly by GAM. The human rights violations and general hardships for the civilian population that accompanied them<sup>42</sup> led to increased support among the general population for GAM, or at least its declared goal of independence. During this period, GAM was also accused of human rights abuses, including abduction, harassment and killings of civilians, and arbitrary detention.<sup>43</sup> In 1999, locally-based human rights groups estimated that over 421 people had been unlawfully killed in Aceh. By 2001 the figure had more than doubled to 1,014 and in 2002 it increased again to 1,307.<sup>44</sup>

Although force continued to define the response of the military and some parts of the civilian leadership to GAM, former President Abdurrahman Wahid (October 1999 – July 2001), initiated efforts to seek a political solution to resolve the situation.<sup>45</sup> On 12 May 2000, the "Joint Understanding on a Humanitarian Pause for Aceh" was signed, the first of a series of agreements between the Indonesian government and GAM. Initially it met with some success, but within a few months levels of violence began escalating once again. Talks continued intermittently over the next two years, culminating in the signing of the Cessation of Hostilities Agreement (CoHA) in Geneva, Switzerland on 9 December 2002.

The CoHA was ambitious, involving international monitors, the establishment of "peace zones", disarmament of GAM and a limited withdrawal of Indonesian troops. Within months it had begun to unravel as both sides contested the interpretation of the agreement. By April 2003, the military started deploying additional troops to Aceh in preparation for a new campaign against GAM.<sup>46</sup>

#### C. OLD PATTERNS, NEW HUMAN RIGHTS VIOLATIONS (2003-2004)

On 18 May 2003 a six-month military emergency was declared. In November 2003, it was extended by a further six months. In May 2004 it was downgraded to the status of civil emergency and authority was transferred back to the provincial civilian administration under the Aceh Governor.

Amnesty International's report *Indonesia: New military operations, old patterns of human rights abuses in Aceh* documented a pattern of grave abuses of human rights during the 2003 military operations that closely match both the pattern and the intensity of the human rights abuses committed during the height of the DOM period. Indeed, many of those interviewed by Amnesty International described the new military operations as "DOM 2".<sup>47</sup>



An Indonesian soldier watches as hundreds of Indonesian airborne soldiers parachute into an area in Central Aceh on 20 May 2003.  
© REUTERS/Stringer

As in previous military campaigns against GAM, the security of the civilian population was paid scant regard. The security forces forcibly displaced civilians from their homes and villages, carried out armed raids and house-to-house searches and destroyed houses and other property. The Indonesian military failed to distinguish between combatants and non-combatants. Young men were frequently suspected by the security forces of GAM membership and were particularly at risk of human rights violations, including unlawful killing, torture and other ill-treatment, and arbitrary detention. Some members of GAM were also unlawfully killed after being taken prisoner. Women and girls were subjected to rape and other forms of sexual violence. Trials of hundreds of individuals suspected of being members of or supporting GAM contravened international standards for fair trials, including because suspects were denied access to legal representation and were forced to confess guilt under torture. Civilians, including children, were forced to support military operations.<sup>48</sup>

During the renewed military operations in 2003-2004, Amnesty International and official Indonesian sources also documented human rights abuses by GAM including hostage-taking, killings and recruitment of child soldiers. Among those GAM abducted were individuals suspected of collaborating with the Indonesian security forces; local politicians; civil servants; individuals engaged in government projects, relatives of military or police officers and journalists. In addition to the taking of hostages, GAM was also regularly accused by the Indonesian authorities of the unlawful killing of civilians, including of children. The media has also reported cases of unlawful killings by GAM.

In 2003-2004, children were also reported to have been recruited by GAM.<sup>49</sup> The majority of children involved in GAM were boys. According to local NGOs, children were involved in a

range of tasks including acting as informants, collecting “taxes”, participating in arson attacks, providing food and other supplies, cooking and collecting firewood. It is unclear to what extent recruitment was voluntary and there were reports that some children were forced to join, or were forced to remain in GAM if they joined of their own accord.<sup>50</sup>

## 2.2 THE HELSINKI PEACE AGREEMENT AND ITS AFTERMATH



Indonesia's Law and Human Rights Minister Hamid Awaluddin (L) shakes hands with the GAM Chairman Malik Mahmud (R) in the presence of Finland's former president Martti Ahtisaari (C) after the signing of the peace agreement on 15 August 2005.  
© REUTERS/Ruben Sprich

With the election of President Susilo Bambang Yudhoyono in September 2004, a new approach to the situation in Aceh began to develop.<sup>51</sup> Informal talks resumed between representatives of the Free Aceh Movement and the Indonesian government.<sup>52</sup> The December 2004 earthquake and tsunami accelerated the peace negotiations. The Free Aceh Movement eventually agreed to drop its demands for independence, while the Indonesian government accepted a comprehensive reintegration and amnesty programme for former GAM combatants, the formation of local political parties, and new security arrangements in Aceh.<sup>53</sup>

Despite ongoing armed clashes during the first part of the year,<sup>54</sup> the civil emergency status was lifted on 19 May 2005, and restrictions on access to the province progressively eased.<sup>55</sup> On 15 August 2005, a peace agreement was signed in Helsinki between the Indonesian government and the Free Aceh Movement.

The 2005 Helsinki Peace Agreement, also known as the “Memorandum of Understanding between the Government of Indonesia and the Free Aceh Movement” sets out a broad framework for both parties to reach a “peaceful settlement of the conflict”.<sup>56</sup> It includes a broad range of provisions pertaining to governance issues, the economy, the rule of law,

amnesty, human rights, reintegration of former combatants, and security arrangements.

The MOU specified that a new Law on the Governing of Aceh will be based on the principle that "*Aceh will exercise authority within all sectors of public affairs... except in the fields of foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion*" (Article 1.1.2), and that the government of Indonesia would facilitate the "*establishment of Aceh-based political parties*" (Article 1.2.1). Chapter 2 specifically deals with human rights, commits to the establishment of a Human Rights Court for Aceh (Article 2.2) and the establishment of a Commission for Truth and Reconciliation in Aceh (Article 2.3).

In Chapter 3, however, the MOU establishes a major barrier to justice for victims of crimes committed by GAM by providing that the Government of Indonesia will "*grant amnesty to all persons who have participated in GAM activities as soon as possible and no later than within 15 days of the signature of the MOU*" without any exclusion for persons suspected of committing crimes under international law, including war crimes (Article 3.1.1).<sup>57</sup> Following the peace agreement, approximately 2,000 prisoners who were allegedly "involved with GAM" were granted amnesty and released.<sup>58</sup>

Allocation of funds to support the rehabilitation of former combatants and political prisoners, security arrangements, including the demobilization of non-organic troops,<sup>59</sup> and the decommissioning of all arms, ammunition and explosives held by GAM are dealt with in Chapter 4. The MOU also provided for the establishment of the joint ASEAN and EU Aceh Monitoring Mission,<sup>60</sup> which was tasked with monitoring compliance by both parties to the peace agreement, and dealt with high level dispute settlement mechanisms in the event of disputes.

Although some aspects of the peace agreement, such as the setting-up of local Acehnese political parties, were criticized by some national political and military figures<sup>61</sup> and at one point threatened to derail the peace talks,<sup>62</sup> much of the implementation of the peace agreement proceeded without any major breach.<sup>63</sup> By 31 December 2005, the armed independence movement had completed the handing over of weapons, and the Government of Indonesia had completed the withdrawal of troops from Aceh, as agreed in the MOU.<sup>64</sup> By July 2006, the Law on the Governing of Aceh (Law No. 11/2006) was passed by the House of People's Representatives,<sup>65</sup> and the first local elections involving local Aceh parties were held in December 2006.<sup>66</sup>

Despite sporadic violent incidents since August 2005, especially in the context of local elections,<sup>67</sup> Aceh has enjoyed relative peace over the last seven years.

## 3. TIMID STEPS TO ESTABLISH THE TRUTH

“After my father was taken by the TNI [Indonesian military] we didn’t know what to do. We could not do anything except cry. We looked for him everywhere... me and my younger siblings who were still studying could not go to school anymore because we had no money, and we couldn’t concentrate on school anymore... we couldn’t focus... we were looking for dad... until today I wonder why my father was killed... why my father was tortured? What did he do wrong? It is not clear... My life now is very sad... because my siblings no longer go to school... My hope is that the government will be held responsible for what happened to my father. My father was not GAM... maybe he helped GAM [but] everyone helped GAM... [how come] he was killed like this... where is the justice? If my father was wrong why wasn’t he brought to justice? They say Indonesia has the rule of law... so why was he killed? ... Until today I would be ready to die to demand [prosecutions] of all perpetrators”

Zulkifli’s father was taken by the military in 2003. He never saw him again.<sup>68</sup>

Victims’ groups and local Acehnese NGOs have called for the Indonesian authorities to establish the truth about crimes committed during the conflict, in particular to find out what happened to disappeared and missing persons. During Amnesty International’s visit to Aceh in May 2012, many victims and family members like Zulkifli explained that they still do not know what happened to their loved ones. Presuming they have been killed, they wanted to know why and where their bodies are. Some hoped that, if the truth could be established, it would counter the culture of impunity that exists and lead to criminal justice and reparation. Many explained that it is important for their children and the population as a whole to know and understand exactly what happened in the past so that history does not repeat itself. However, despite numerous investigations into human rights abuses committed in Aceh between 1998 and 2009, and commitments to establish a truth commission both at the national and local level in recent years, Indonesian authorities are currently failing to take immediate and effective measures to establish the truth about abuses committed during the conflict, and denying victims’ right to truth.

Amnesty International calls for truth commissions to uphold the right of all victims of past human rights abuses to obtain truth, justice and reparation without discrimination and in compliance with international law. To this end, truth commissions are not intended to act as substitutes for the civil, administrative or criminal courts. They should not bar criminal justice or reparation by granting measures, such as immunity from prosecution for participants, for crimes under international law or other measures to maintain impunity.

### 3.1 THE FATE OF DISAPPEARED AND MISSING PERSONS

During Amnesty International’s one day workshop with victims’ representatives from various parts of Aceh province in May 2012, many representatives emphasised victims’ demands for truth about the fate and whereabouts of disappeared or missing persons<sup>69</sup> together with the need to be able to provide proper burials.

The right of families of disappeared and missing persons to know what happened to the victims is an essential component of the right to truth. International humanitarian law expressly guarantees the right of family members to know the fate of their missing relatives.<sup>70</sup> The right to know the fate and whereabouts of disappeared relatives, both in times of peace and in times of armed conflict, has been confirmed in Article 24 (3) of the International Convention for the Protection of All Persons from Enforced Disappearance (which Indonesia has signed but not yet ratified),<sup>71</sup> as well as jurisprudence of international and regional human rights bodies<sup>72</sup> and national courts.<sup>73</sup>

Principle 4 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity states:

*“Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victim's fate.”<sup>74</sup>*

Few steps have been taken to enforce these rights in Aceh, and elsewhere in Indonesia. As a result, families and communities are being left to suffer.<sup>75</sup> A former head of a victims' association in Aceh told Amnesty International about the enforced disappearance of his brother and how difficult he finds it not knowing where he was buried:

*“... One of my brothers became a victim of enforced disappearance... Until now [we] don't know where his grave is... My nephew, his child... when he returns home for Lebaran (Muslim festival) he says 'let's go to the grave of my father'... [But] how can I explain that there is no grave... no grave...”<sup>76</sup>*

## DISAPPEARANCES OF HUMAN RIGHTS ACTIVISTS

**Between 2000 and 2004, it is believed that 15 human rights defenders in Aceh were extrajudicially executed and at least four were subjected to enforced disappearance.<sup>77</sup> Mukhlis Ishak (m, aged 27) a member of the non-governmental organization, Link for Community Development (LCD) which assists internally displaced people, “disappeared” after being detained by plain-clothed men in Bireun District in 2003. It is still not known ten years later what happened to him. His family is demanding full disclosure about what happened in 2003.**

Mukhlis Ishak and another activist were arrested on 25 March 2003 while accompanying villagers who were demonstrating outside the office of the District Head of Bireun, to peacefully protest plans to establish a Police Mobile Brigade (*Brigade Mobil*, Brimob) post in their village. Photographs taken by a witness to their detention show the two men being led to a black mini-van. Local sources believe that the men in the photo with Mukhlis were members of the Joint Intelligence Unit (*Satuan Gabungan Intelijen*, SGI). It is feared that Mukhlis was targeted as a result of his human rights activism. It was initially thought that Mukhlis was being held in the SGI military post in Bireun District. However, family members and activists who went searching for Mukhlis at the military post were told that he was not being held there. Mukhlis has not been seen since he was detained ten years ago. No investigation is known to have been carried out into his “disappearance”. His whereabouts remain unknown and the perpetrators have not been brought to justice.

## 3.2 INVESTIGATIONS OF HUMAN RIGHTS ABUSES IN ACEH NOT MADE PUBLIC

There have been a number of initiatives by the authorities and the National Human Rights Commission (Kommas HAM) to investigate human rights abuses committed at different stages in the conflict and specific incidents.<sup>78</sup> Although many of these investigations have been important in documenting the many human rights abuses committed during the conflict, they provide only a piecemeal approach to establishing the truth and fail to provide a comprehensive record of the abuses committed by both sides between 1976 and 2005. Furthermore, some of the investigations are preliminary and do not look deeper into the causes of the abuses or identify what happened to victims of enforced disappearance. All of the final reports are yet to be made available to the public and, as explained in Chapter 4, many of their recommendations to ensure prompt prosecutions into some of the crimes identified have yet to be implemented.

### A. THE 1998 INVESTIGATIONS

In July 1998, a parliamentary investigation team (*Tim Gabungan Fakta - DPR*) was established under the leadership of Lieutenant General Hari Sarbano who headed the military faction in parliament. The team travelled to Banda Aceh, Pidie, North Aceh and East Aceh and received numerous reports of human rights violations by the security forces. In October 1998 the parliamentary investigation team reported publicly that it had received over 1,700 individual reports of human rights violations, including 426 “disappearances” and 320 unlawful killings in Aceh.<sup>79</sup> A final report was reportedly submitted to the House of People’s Representatives, however to Amnesty International’s knowledge such a report has never been made available to the public.<sup>80</sup>

In July and August 1998, Komnas HAM carried out its first investigations into past abuses in Aceh during the DOM period. Its preliminary findings (released on 25 August 1998)<sup>81</sup> concluded that there were at least 781 deaths, 163 “disappearances”, 368 cases of torture and 102 cases of rape committed in the context of the military operations between 1989 and 1998. Komnas HAM also reportedly identified the location of nine mass graves in Aceh.<sup>82</sup> However, at the time of writing, Amnesty International is not aware of a final Komnas HAM report detailing these particular findings, which has since been made available to the public.

### B. THE 1999 INDEPENDENT COMMISSION FOR THE INVESTIGATION OF VIOLENCE IN ACEH

In 1999, President Habibie established the Independent Commission for the Investigation of Violence in Aceh (*Komisi Independen Pengusutan Tindak Kekerasan di Aceh*, KPTKA) to investigate the human rights abuses that occurred in Aceh during and after the DOM period.<sup>83</sup> The Commission, which worked for six months, consisted of representatives from Komnas HAM, NGOs, universities, community leaders and members of government agencies. It reported that it had collected information about 5,000 cases of human rights abuses in Aceh committed in the past ten years including cases of unlawful killings, torture, “disappearances”, arbitrary detention, rape and sexual violence.<sup>84</sup> In its final report, the Commission concluded that the acts conducted by the military constituted a form of “state violence”.<sup>85</sup>

The Commission recommended that the government investigate five priority cases and bring the perpetrators to justice (see Chapter 4: Justice for past human rights violations). Although the Presidential Decree provided the Commission the powers to publish the results of the

investigation,<sup>86</sup> the final report has yet to be made available to the public.

#### C. THE 2003 NATIONAL HUMAN RIGHTS COMMISSION AD HOC TEAM

Komnas HAM initially set up an *ad hoc* investigation team for Aceh (*Tim Ad Hoc Aceh Komnas HAM*) led by M.M Billah to monitor the peace process in Aceh following the signing of Cessation of Hostilities Agreement (CoHA) on 9 December 2002. After the CoHA collapsed and the Indonesian government declared a military emergency in May 2003, the team broadened its mandate and included more people on their team, including human rights activists. The main mandate of the team was to monitor the adherence to human rights and humanitarian law during the military emergency and to establish complaints mechanisms across the province.

The team investigated 70 cases of human rights violations during the military emergency (May 2003-May 2004)<sup>87</sup>, including cases involving extrajudicial executions, arbitrary arrests and detentions, enforced disappearance, torture, rape and other forms of sexual violence, indiscriminate attacks as well as looting and destruction of private property.<sup>88</sup> In their concluding report, the team found that there were strong indications that gross human rights violations had occurred (Article 9 of Law No. 26/2000). The team reportedly then submitted their findings to the government, and recommended that Komnas HAM set up a *pro-justicia* investigation team to conduct a preliminary inquiry as provided for under Article 18 of the Law on Human Rights Courts.<sup>89</sup> To date, however, the report has not been made public and there has been no decision from Komnas HAM to follow up on the team's recommendations.

Koalisi NGO HAM Aceh, an Acehnese human rights organization, has recently used Law No. 14/2008 on Public Information Transparency to file an "objection" (*keberatan*) in October 2012 and subsequently a "dispute settlement" (*penyelesaian sengketa*) to the Public Information Commission (*Komisi Informasi Publik*, KIP) to urge Komnas HAM to publish this report. It has been reported that a dispute settlement hearing is currently being adjudicated by the Public Information Commission.<sup>90</sup>

#### D. THE 2009 ACEH ANTI-VIOLENCE STUDY TEAM

In 2009, Komnas HAM set up a team mandated to review cases of human rights abuses from the DOM period until the end of 2003 and to identify patterns of human rights abuses.<sup>91</sup> From 1 February 2009 to 30 April 2009, the Aceh Anti-Violence Study team (*Tim Pengkajian Antikekerasaan*) led by Ahmad Baso investigated 70 cases of past crimes. The team eventually proposed a combination of justice and truth processes to address past abuses in Aceh.<sup>92</sup> Amnesty International is not aware of any follow up to the team's recommendations. Their final report has yet to be made available to the public.



### 3.3 STALLED EFFORTS TO ESTABLISH A TRUTH COMMISSION

Truth commissions have emerged in recent years as potentially important mechanisms to establish the truth in post-conflict and other situations where human rights abuses have been committed. Although there have been many different models, in general truth commissions are defined as “official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law, usually committed over a number of years”.<sup>93</sup>

Unlike other inquiries, such as those referred to in the section above, truth commissions focus on providing a full account of past abuses and identifying their reasons. A 2004 report by the United Nations Secretary-General on the Rule of Law states that truth commissions:

*“have the potential to be of great benefit in helping post-conflict societies establish the facts about past human rights violations, foster accountability, preserve evidence, identify perpetrators and recommend reparation and institutional reforms. They can also provide a public platform for victims to address the nation directly with their personal stories and can facilitate public debate about how to come to terms with the past.”<sup>94</sup>*

There are currently two initiatives to establish truth commissions that would cover crimes committed in the Aceh conflict. However they have been stalled for many years.

#### A. THE NATIONAL TRUTH AND RECONCILIATION COMMISSION

In 2004, a law to establish a national Truth and Reconciliation Commission was adopted in Indonesia with powers to receive complaints; investigate gross human rights abuses which occurred in the past; and make recommendations for compensation and/or rehabilitation for victims. However, the legislation was seriously flawed as it empowered the Commission to recommend amnesties for perpetrators of crimes, undermining the possibility of truth and justice. It provided that cases that the Commission dealt with would be barred from prosecution and it made it a requirement that victims would only receive compensation if the perpetrator had been granted amnesty.<sup>95</sup> In 2006, the Indonesian Constitutional Court struck down the Law on a national Truth and Reconciliation Commission (Law No. 27/2004), on the basis that the provision requiring that amnesty be granted to perpetrators of gross human rights abuses before victims can receive compensation and rehabilitation was unconstitutional.<sup>96</sup>

A new draft truth and reconciliation law which does not provide for amnesties has been submitted to Parliament,<sup>97</sup> and is scheduled for debate between 2011 and 2014. However, at the time of writing, it has yet to be tabled for discussion, and it is unclear whether there is sufficient political will to pass the draft law.

#### B. A COMMISSION FOR TRUTH AND RECONCILIATION IN ACEH

**“Seven years since the peace [agreement] there are a few things within the MOU and the Law on Governing Aceh which haven’t been realized yet, especially the local legislation on a truth and reconciliation commission. My hope is that the feeling of justice towards victims of past crimes will be fulfilled with the setting up of a local law on a truth and reconciliation commission in Aceh.”**

A human rights activist in Aceh, 17 May 2012.

Both the 2005 peace agreement<sup>98</sup> and the subsequent 2006 Law on Governing Aceh (Law

No. 11/2006, LoGA) contain provisions for the establishment of a Commission for Truth and Reconciliation in Aceh. The MOU provides that 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*" (Article 2.3). Further, the LoGA provides that the Aceh Truth and Reconciliation Commission in Aceh "*shall constitute an inseparable part of the [national] Truth and Reconciliation Commission*" (Article 229), and that it shall become effective no later than one year following the enactment of the LoGA (Article 260). However, with the annulment of the 2004 Truth and Reconciliation Law and the subsequent delays in setting up the national Truth and Reconciliation Commission, it remains unclear when the Truth and Reconciliation Commission in Aceh will proceed.<sup>99</sup>

The situation illustrates the broader lack of political will to address past crimes in Indonesia or Timor-Leste (formerly East Timor), and the government's reluctance to establish the truth. At the national level, Indonesian military and parliamentary officials have stressed the need to forget about the past in order to move forward. Some have also argued that reopening the wounds of the past may challenge the current peace process. The then military commander in Chief General Endriartono Sutarto said in August 2005:

*"It shouldn't be at the very moment we are resolving the problem, that we are always oriented to the past, with the result that we'll be unable to create the peace we desire."*<sup>100</sup>

The local authorities in Aceh have also previously been reluctant to push for truth for victims. A change of local government took place in Aceh in June 2012. In their campaign programme, the successful local government candidates committed to "implementing the LoGA seriously and thoroughly".<sup>101</sup> However, it remains to be seen whether the Aceh Truth and Reconciliation Commission will be one of their priorities, as the Aceh Governor's current position on this issue remains unclear.<sup>102</sup>

Some organizations and members of the Aceh House of Representatives (*Dewan Perwakilan Rakyat Aceh*, DPRA) have argued that there is no need for a national truth commission to be set up first for the Acehnese Truth and Reconciliation Commission to function.<sup>103</sup> The LoGA provides that the details regarding the structure, working procedures, personnel and finance of the Aceh Truth and Reconciliation Commission are to "*be governed by Aceh Qanun (bylaw) with guidance from prevailing laws and regulations.*"<sup>104</sup> NGOs have submitted a draft *Qanun* to the Aceh House of representatives for consideration.<sup>105</sup> However, on 11 September 2012, a member of Commission A of the Aceh House of Representatives, Abdullah Saleh, stated that the parliament would have to wait for the passing of the national Truth and Reconciliation Commission law before setting up a commission for Aceh.<sup>106</sup> In January 2013 the draft Aceh Truth and Reconciliation Commission *Qanun* was nonetheless included in a list of priority bylaws to be debated in 2013.<sup>107</sup>

Some victims' groups continue to campaign for the setting up of the Aceh Truth and Reconciliation Commission. Hundreds of victims demonstrated in front of the Aceh parliament in 2010 demanding the establishment of the Commission.<sup>108</sup> They argue that "*a TRC established by a Qanun could at least engage in recording cases of human rights abuses, so that important information does not get lost over the course of time*".<sup>109</sup>

### 3.4 THE URGENT NEED TO ESTABLISH THE TRUTH ABOUT ABUSES COMMITTED DURING THE CONFLICT



Victims/ survivors of the Aceh conflict demonstrate for the establishment of a truth commission outside the Aceh House of People's Representatives, December 2010. ©Koalisi NGO HAM Aceh

More than seven years after the end of the conflict, the national and local authorities are failing to take effective measures to establish the truth about abuses committed during the conflict. Victims and their families are being denied information about the abuses committed against them, including the fate and whereabouts of disappeared and missing persons. Many of those interviewed by Amnesty International in May 2012 stressed that it is essential that the truth about what happened in the past is established so that new generations can learn about it. Many victims emphasized the need to ensure that what happened during the Aceh conflict would be part of the curriculum so that young people in Aceh would learn about it, so that the past would not repeat itself.

As time passes, there is a growing risk that valuable information will be lost. Indeed, much has already been destroyed, including during the 2004 tsunami. Mani Iraya,<sup>110</sup> a woman in her sixties, who was raped and subjected to other forms of torture at *Rumoh Geudong* for four months by *Kopassus* troops expressed dismay to Amnesty International that there was no proof left of what happened there after the building was burned down in 1998 (see box The "Torture Chamber": *Rumoh Geudong*, p16). Mani Iraya told Amnesty International how she was beaten repeatedly, and electrocuted while naked during her detention at *Rumoh Geudong*. She said that the troops used electric cables from her feet to her nose, and that they injected mercury into her body. She recounted that at night she was raped in front of people who watched, and forced her to hold a man's penis. Mani Iraya still suffers from injuries in her upper body as a result of the beating. She continues to hope that those who tortured her will be brought to justice but she is pessimistic as it may be difficult to find the perpetrators. Local NGOs are gathering witness testimonies, but much more needs to be done by the authorities to establish the truth.

## 4. JUSTICE FOR PAST HUMAN RIGHTS ABUSES

“I hate the military... I told my family that I would rather run and be shot than to be beaten up again... I was detained by Kopassus [the Indonesian Special Forces Command]... in 2004 they brought me to the post and used electric shocks on me... I have been at least 16 times to the hospital because blood is coming out [from my body]... this is the effect of my beating previously... and I still have headaches... I have seen those who detained me hanging around... the name of the first one is X... and the second one is Captain Y... he is still alive... they said I was wrongly arrested... it wasn't professional as I wasn't GAM... I was just a normal person.”

Members of the security forces arbitrarily arrested and detained Faisal several times between 2002 and 2004. They beat him up repeatedly, and used electric shocks. A decade later, Faisal continues to suffer from regular headaches and cannot hear properly.<sup>111</sup>

Most perpetrators of crimes under international law have never been brought before an independent civilian court of law in Indonesia. Like Faisal, many victims and their families know the names of those who abused them. However they find that they have no access to the courts. For those who do not know the exact circumstances of what happened to their relatives, there are real challenges in terms of access to information and verification of testimonies. Many victims of past human rights violations also told Amnesty International in May 2012 that they feel scared (*“rasa ketakutan”*) to bring up past issues. Some victims' representatives have even received threats due to their work on impunity for past crimes. Such a climate of fear, trauma and revenge underpins the prevailing impunity and threatens efforts to establish a long-term meaningful peace. Criminal justice is a vital part of victims' right to an effective remedy.

Where crimes were committed in Aceh or elsewhere in Indonesia, national authorities must ensure that they are investigated and, if sufficient admissible evidence exists, those suspected of criminal responsibility should be prosecuted in proceedings which meet international fair trial standards. Should national authorities fail to investigate and prosecute crimes under international law, where there is sufficient admissible evidence, it is important that the national criminal and civil justice systems of all countries step in to try those suspected of responsibility for the crimes on behalf of the international community by exercising universal jurisdiction.

### 4.1 A FLAWED LEGAL FRAMEWORK TO PROSECUTE CRIMES

There are a number of judicial mechanisms which could be used to deal with ordinary crimes and crimes under international law committed in Aceh by members of the security forces and their auxiliaries, and GAM. However, many flaws and barriers in the legal framework and a lack of political will to develop effective mechanisms and strategies to investigate and prosecute crimes in Aceh – and elsewhere in Indonesia – have entrenched impunity.

## A. THE CRIMINAL CODE AND THE CRIMINAL PROCEDURE CODE

Crimes under international law – that is crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances - are currently not defined in the Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) making it very difficult for victims to seek justice before ordinary criminal courts in Indonesia. The Criminal Code contains certain ordinary crimes under national law which have some similarities to some crimes under international law such as “maltreatment” (Articles 351, 353, 354, and 355), which encompasses some elements of torture. However, as the Committee against Torture has repeatedly emphasized in the context of torture, most crimes under international law cannot be covered by prosecuting the offences as ordinary crimes under national law. Crimes under international law should be prosecuted as such - for example, in chapters of the Criminal Code labelled “Crimes under international law”, incorporating principles of international criminal law and excluding improper defences, such as the defence of superior orders - not as other offences under the Indonesian Criminal Code which may not reflect the seriousness of the crimes or be consistent with the definitions under international law.

Amnesty International has expressed concerns about inadequate definition of ordinary crimes, regardless of whether or not they constitute crimes under international law. The definition of rape in the Criminal Code for example does not meet current international standards. It limits rape to “sexual intercourse” of females only, excludes rape in marriage and requires the use or threat of force. Hence, it is also inconsistent with the approach taken in the Elements of Crimes of the Rome Statute of the International Criminal Court (ICC),<sup>112</sup> which encompasses a broader range of conduct as rape and is gender neutral. Consistent with international law, the Elements of Crimes takes the approach that force is not a required element of the crime of rape. The test is whether a person has freely agreed to the sexual activity or not and it provides that there are situations in which consent can never be given (e.g. in “coercive circumstances” such as armed conflict). The Criminal Code definition falls far short of these fundamental standards and should be amended to remove these barriers to justice. A requirement in the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHP) that two elements of evidence must be provided in order to prove the crime of rape also poses a significant barrier to survivors and must be amended.<sup>113</sup> According to Komnas Perempuan, such legal provisions make it practically impossible for victims/survivors of rape and other forms of sexual violence to obtain justice through the courts.<sup>114</sup> The requirement that an additional element of evidence other than a victim’s testimony be provided for corroboration (“*bukti menguatkan*”) can be extremely difficult to satisfy in cases involving sexual violence, which predominantly occur in private without witnesses. Further, in practice medical examination (*visum e repertum*) indicating the presence of semen has become the required additional evidence which for victims of rape and other forms of sexual violence in particular in areas of conflict is almost impossible to provide (see Section 5.3 on Barriers faced by women survivors of violence in accessing reparation and assistance).<sup>115</sup>

Amnesty International and local civil society organizations have long called for a revision of the Criminal Code and Criminal Procedure Code, in part to ensure that victims can effectively access justice and reparation for crimes under international law in line with international human rights standards.<sup>116</sup> This process could be conducted in preparation for Indonesia’s ratification of the Rome Statute of the International Criminal Court (which it has committed to ratify by 2013 in the National Human Rights Action Plan).<sup>117</sup>

## B. THE LAW ON HUMAN RIGHTS COURTS

The Law on Human Rights Courts (Law No. 26/2000) provides two opportunities to ensure justice for victims. Firstly, it establishes a Human Rights Court in Medan to operate from the Medan District Court,<sup>118</sup> which has jurisdiction over crimes committed in Aceh since the law was enacted in 2000. In other words, jurisdiction over crimes committed in the last five years of the conflict. However, the court has not considered or ruled on any cases.<sup>119</sup>

Secondly, the Law on the Human Rights Courts provides a legal framework to deal with crimes against humanity prior to 2000. Article 43 provides that “*Gross abuses of human rights occurring prior to the coming into force of this Act [Law on Human Rights Courts] shall be heard and ruled on by an ad hoc Human Rights Court*”. The *ad hoc* Human Rights Court “*shall be formed on the recommendation of the House of Representatives of the Republic of Indonesia for particular incidents upon the issue of a presidential decree.*” An *ad hoc* human rights court for Aceh could have jurisdiction over crimes committed in the Aceh conflict before 2000. However, such an *ad hoc* Human Rights Court has not been set up.

Even if the *ad hoc* Human Rights Courts were established or the Medan court addressed crimes in Aceh during the conflict, the law establishing the Human Rights Courts currently limits their jurisdiction to “gross human rights violations and abuses” (“*pelanggaran hak asasi manusia yang berat*”), which it defines as genocide and crimes against humanity (Article 7). The definition excludes other crimes under international law without any basis, including: war crimes, torture, extrajudicial execution and enforced disappearance. Although in some circumstances, torture, extrajudicial execution and enforced disappearance can amount to genocide or crimes against humanity, they are also crimes under international law and national courts should have jurisdiction over them.

As war crimes, torture, extrajudicial executions and enforced disappearance are not adequately defined in the Criminal Code (see Section A above), the very limited jurisdiction of the human rights courts creates a major gap in Indonesia's national laws and limits the ability of victims in Aceh – and elsewhere in Indonesia – to obtain justice, truth and reparation.<sup>120</sup> Furthermore, the definition of crimes against humanity in Article 9 of Law No. 26/2000 is weaker than the definition in international law.<sup>121</sup>

Amnesty International has long expressed concerns about some of the flaws of the Law on Human Rights Courts in terms of its procedures.<sup>122</sup> Komnas HAM is the sole body expressly authorized to initiate and carry out preliminary *pro-justicia* inquiries into alleged cases of gross human rights abuses (Article 18 of the Law on Human Rights Courts). It is not clear whether prosecutors could conduct preliminary inquiries. Any restriction on the ability of prosecutors to conduct inquiries would be inconsistent with their independence and contrary to the UN Guidelines on the Role of Prosecutors,<sup>123</sup> in that it limits their ability to select cases for investigation under Article 11. Furthermore, despite Law No. 26/2000, authorizing Komnas HAM to call on witnesses, complainants, victims, or the subjects of a complaint (Article 9.1), in practice Komnas HAM have been unable to secure the attendance of some military officials in recent years.

Articles 21 and 23 of the Law on Human Rights Courts provide that the investigation and prosecution of gross human rights abuses are to be undertaken by the Attorney General, who is a political official, not an independent professional prosecutor. Moreover, the Law on

Human Rights Courts is silent on whether the decision by the Attorney General not to proceed with an investigation can be legally challenged. Decisions on whether to open an investigation and to prosecute could be, or be perceived to be, politically motivated if sufficient safeguards are not put in place to ensure that these decisions are made on the basis of neutral criteria, such as the sufficiency of admissible evidence. Even the perception of political bias undermines justice. Indeed, *“a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”*<sup>124</sup> The Attorney General should have no role in deciding whether or not to prosecute. Such decisions should be taken in all cases by an independent professional prosecutor, in accordance with neutral criteria and without any political or other improper pressure.

It is particularly concerning that the only mechanism Komnas HAM can use to follow-up on the failure of the Attorney General to proceed with investigations into reports of human rights abuses it has submitted, is to request a written statement from the Attorney General concerning the progress of the investigation and prosecution of a case.<sup>125</sup> In practice, many of the cases that Komnas HAM has submitted to the Attorney General's Office have not been investigated and prosecuted.

### C. THE 2005 HELSINKI PEACE AGREEMENT AND THE LAW ON GOVERNING ACEH

The 2005 Helsinki Peace Agreement contains mixed messages on justice. On the one hand, it provides *“[a] Human Rights Court will be established for Aceh”*, without prescribing any limitations or further information.<sup>126</sup> On the other, it mandates the government of Indonesia to *“grant amnesty to all persons who have participated in GAM activities [...]”*, without providing any exclusion for those accused of crimes under international law.<sup>127</sup>

A year after the Helsinki Peace Agreement, the House of People's Representatives adopted the Law on Governing Aceh which also provided for the Human Rights Court for Aceh. The Law, however, interpreted the provision on the Human Rights Court in the Peace Agreement restrictively and provided that it would only have authority to *“investigate, prosecute, rule on, and resolve cases of human rights violations that take place subsequent to the enactment of this Law [LoGA]”* (Article 228). Although the scope of the crimes it can prosecute appears to be broader than the “gross human rights violations or abuses” in Law No. 26/2000 on Human Rights Courts, by limiting its jurisdiction to crimes committed post-2006 it precludes this court from prosecuting crimes committed during the conflict.

Six years later, the flawed Human Rights Court in Aceh has yet to be established. The 2012 Crisis Management Initiative Final Report, which provides a set of recommendations to both parties to the peace agreement on how the peace process can be sustained, states that recent discussions between the Indonesian government and representatives from the former Free Aceh Movement indicate that Acehese representatives *“expect the court to be established according to the provisions of the law”*. The opinion reportedly prevails among the concerned authorities (the Ministry of Law and Human Rights and the Supreme Court) that the Law on Human Rights Courts needs to be revised, taking Aceh out of the Medan court's jurisdiction, before a separate law on the establishment of a Human Rights Court in Aceh can be enacted.<sup>128</sup>

While a revision of the Law on Human Rights Courts might provide some opportunity to

address some of the flaws identified in Section B above, such a process would also risk removing the jurisdiction from the only human rights court with jurisdiction to investigate and prosecute crimes committed in the Aceh conflict, albeit those committed from 2000 onwards.

#### D. THE MILITARY CRIMINAL CODE

Amnesty International opposes the investigation and prosecution of military officials for crimes under international law before military courts. Such proceedings for very serious crimes are neither impartial nor independent and are rarely transparent. In order for the investigations and trials to be effective and to be regarded as credible, persons belonging to the security forces who are alleged to have committed crimes under international law should be brought to trial in civilian courts in proceedings which meet international standards of fairness and without the imposition of the death penalty.

Criminal offences by military personnel can be tried in military courts under the Military Criminal Code (*Kitab Undang-Undang Hukum Pidana Militer*, KUHPM),<sup>129</sup> or if there is a combination of military and civilian actors involved they can be tried before a joint military-civilian court (*koneksitas*).<sup>130</sup> In 2004 the new Law on the Indonesian National Armed Forces (Law No. 34/2004) subjected soldiers to the authority of the civilian courts for violations of the Criminal Code. However, this has yet to be implemented as the House of People's Representatives has failed to amend the Law on Military Tribunals (Law No. 31/1997) to provide civilian courts jurisdiction over members of the military for all crimes committed against civilians.<sup>131</sup>

The 2005 MOU specifies that "*all civilian crimes committed by military personnel in Aceh will be tried in civil courts in Aceh*" (Article 1.4.5). However, according to the LoGA "*[c]rimes committed by personnel of the Indonesian National Armed Forces in Aceh shall be prosecuted in accordance with prevailing laws and regulations*" (Article 203.1). The fact that the Law No. 31/1997 on Military Tribunals has yet to be amended potentially conflicts with the requirements for prosecutions before civilian courts in the MOU. The LoGA also specifies that "*prosecution of personnel of the Indonesian National Armed Forces in Aceh... shall be carried out in an open manner and shall be open to the public, except as otherwise stipulated by law*" (Article 203.2). However, in practice prosecutions before military courts are not transparent.

During Focus Group Discussions designed by CMI to address the implementation of the MOU, representatives from the former Free Aceh Movement have raised concerns about these provisions. In particular, members of the former Free Aceh Movement have said that these laws are not "sufficiently clear regarding the treatment of civilian crimes committed by military personnel", and "might still allow such crimes to be tri[ed] in military courts". As a result, they are asking for "an adjustment of the respective LoGA regulations", or for clearer provisions on this issue to be incorporated into Law No. 34/2004 on the Indonesian Armed Forces and Law No. 31/1997 on Military Tribunals, if they are revised.<sup>132</sup>

## 4.2 LIMITED AND INADEQUATE PAST INVESTIGATIONS AND PROSECUTIONS

There have been a range of fact-finding investigations since 1998. However, very few of them



have led to trials of those responsible for past crimes. The very few trials into criminal offences which amount to human rights violations by members of the security forces have either been conducted by military or joint military-civilian courts (*koneksitas*). These courts have lacked transparency with verdicts not disclosed to the public, thus making it nearly impossible to verify whether the sentences had been carried out. Until the peace agreement and the subsequent amnesty, trials of criminal offences by GAM members were dealt with before civilian courts, and manifestly contravened international fair trial standards.

#### A. THE 1999 INDEPENDENT ACEH COMMISSION: FIVE CASES SELECTED FOR PROSECUTION

In 1999, the Independent Commission for the Investigation of Violence in Aceh set up by President Habibie recommended that five cases be brought to trial immediately.<sup>133</sup>

Although it represented a step forward in addressing enduring impunity, the cases recommended for prosecution only consisted of a small fraction of past abuses. Only two incidents which happened during the DOM period were selected: the rape of a woman in West Aceh, and the cases of kidnapping, torture and extrajudicial executions at *Rumoh Geudong*, Pidie district between 1997 and 1998 (see The "Torture Chamber": *Rumoh Geudong*, p16). No cases which occurred during earlier periods of DOM were selected. The remaining cases (extrajudicial executions of seven people in Idi Cut, East Aceh district in February 1999 – see box, p34; the Bantaqiah killing in West Aceh, July 1999; and the extrajudicial executions of 39 people in *Simpang KKA*, North Aceh district in May 1999, see box, p47) which were recommended for prosecution occurred during the "humanitarian pause" (see Chapter 2.1 B, p17).

Of the DOM period, none of the cases which were recommended for criminal prosecution led to trials before civilian courts.<sup>134</sup> Of the remaining cases, only one case out of three led to criminal prosecutions, however not before a civilian court. In July 1999, twenty-four low-ranking members of the military and one civilian were convicted and sentenced by a *koneksitas* court to between eight-and-a-half and 10 years' imprisonment for their involvement in the unlawful killing of a Muslim cleric, Teungku Bantaqiah, and over 50 of his followers in Pesantren Teungku Bantaqiah, Desa Blang Meurandeh Beutong, West Aceh district in July 1999.<sup>135</sup> The commanding officer who was originally named by the prosecution as a key suspect in the case absconded and was not rearrested.<sup>136</sup> It is not known whether those convicted served their sentence or whether they appealed their sentence. There have yet to be criminal proceedings into the remaining cases identified for prosecution by the independent commission.

## THE IDI CUT CASE



Villagers gather at Arakundo Bridge to search the bodies of those killed by Indonesian security forces on 3 February 1999 in Idi Cut, East Aceh . © Koalisi NGO HAM Aceh

Just after midnight on 3 February 1999, members of the military (Linud 100 battalion) opened fire on thousands of people who were returning home after attending a “preaching” (*dakwah*) rally at the Matang Ulim village in Idi Cut, East Aceh. The action appears to have been carried out in retaliation for the kidnapping and killing of ten army personnel in Lhok Nibong by unidentified persons on 29 December 1998.

According to reports, the crowd was first pelted with stones from the direction of the District Military Command (*Koramil*) base at Idi Cut. At around 1am, shots were fired indiscriminately into the crowd, again from the direction of the military base. Those killed and some of those injured were thrown into trucks and taken away by the military.

At 3am, witnesses saw military trucks heading to the Arakundo Bridge (see photo of the old Arakundo Bridge above). There the security forces reportedly tied the bodies with barbed wire and put them into sacks. Then stones were attached to the sacks and they were thrown into the Arakundo River. On 4-5 February villagers conducted a search in the Arakundo River and recovered sacks with the corpses of six people. A seventh victim who was shot and killed was found in his vehicle. Dozens of civilians were wounded during the incident. Fifty-eight people were also arrested and allegedly tortured or otherwise ill-treated while in detention at the East Aceh sub-district police station. They were all released by 5 February.<sup>137</sup> At least 13 people were reported missing after the incident.

The Idi Cut case was one of five cases recommended for immediate prosecution by the July 1999 Independent Commission for the Investigation of Violence in Aceh. Although the Attorney General set up an investigation into the case in November 1999,<sup>138</sup> no members of the security forces have ever been brought to trial for the serious crimes which occurred then.

## B. KOMNAS HAM PRELIMINARY INQUIRIES: A LACK OF FOLLOW-UP

Following Law No.26/2000 on Human Rights Courts, Komnas HAM was granted the power to conduct *pro-justicia* inquiries into crimes against humanity and genocide.<sup>139</sup> If Komnas HAM considers that there is sufficient evidence that a gross abuse of human rights has occurred, a summary of the findings shall be submitted to the Attorney General's Office for investigation.<sup>140</sup> In this context, the Komnas HAM plenary decided to establish inquiries into two cases of past abuses in Aceh: in relation to the RATA killings in December 2000, and following the Bumi Flora killings in August 2001. However neither of these planned inquiries led to criminal prosecutions. The stalled process following *pro-justicia* inquiries can be partly explained by Komnas HAM's weak mandate (See Section 4.1 B: The Law on Human Rights Courts, p30), and the lack of follow-up or support from the Attorney-General's Office. Further there have been ongoing concerns about Komnas HAM's lack of independence from political powers, which continues to affect its capacity and performance.

- In 2001, Komnas HAM announced that it would establish a *pro-justicia* inquiry into the extrajudicial execution on 6 December 2000 of three workers from the humanitarian agency, Rehabilitation Action for Torture Victims in Aceh (RATA). The police had initiated an investigation into the RATA killings and in December 2000 they had detained four civilian suspects and four members of the security forces. However, as the case appeared to be moving slowly, Komnas HAM announced on 9 January 2001 that it would establish a Commission of Inquiry (*Komisi Penyelidik Pelanggaran Hak Asasi Manusia Aceh – KPP HAM Aceh*). The KPP HAM Aceh would investigate the RATA killings in the context of wider human rights violations in Aceh under powers vested in it by Law No. 26/2000 on Human Rights Courts, with a view to bringing the case to justice in one of the permanent human rights courts. In early January 2001 the Provincial Prosecutor for Aceh rejected Komnas HAM's plans<sup>141</sup> and announced his intention to prosecute the suspects in a joint civil and military court (*koneksitas* court). These plans, however, never materialized as in March 2001 the four civilian suspects escaped from detention in Medan. Four members of the security forces were later released after their detention orders expired. A decade later Komnas HAM has yet to set up a *pro-justicia* inquiry team, and there has been no new development in this case.

- On 8 March 2002 Komnas HAM formed a *pro-justicia* inquiry led by BN Marbun following the Bumi Flora killings in August 2001 (for details about the Bumi Flora massacre, see box p40). At the end of their term in 2007, the Komnas HAM Commissioners had not completed their inquiry and recommended that the work be taken forward by the new Commissioners. There has been no reported progress on this inquiry.<sup>142</sup>

C. INADEQUATE STEPS TO DEAL WITH CRIMES COMMITTED BY MEMBERS OF THE SECURITY FORCES

## MEN SHOT AND BURNED ALIVE IN 2003 IN SOUTH ACEH



Graves and memorial of those who were shot dead or burned to death by Indonesian security forces at Jamboe Keupok, South Aceh on 17 May 2003. © KontraS Aceh

On the morning of 17 May 2003, dozens of soldiers including *Kopassus* and Raider units arrived in three trucks at the village of Jamboe Keupok in South Aceh district. They rounded up everyone at the village and separated the men from the women and children. The military then started beating the men in front of the women and children. The women and children were taken to a school building in the village and locked up there. The soldiers then shot and killed four villagers. They took 12 men, whose hands were tied, to a house nearby, where they were locked up. The soldiers then poured oil around the house and set it on fire. From the school the women and children heard the men shouting followed by gunfire. After the military left, the women came out and found the burned remains of the 12 men in the house.<sup>143</sup> Amnesty International is not aware of any investigation into this case.

Amnesty International is not aware of any trials for the thousands of other cases of human rights violations, including enforced disappearances, (mass) killings, torture and other ill-treatment, rape and sexual violence, arbitrary detention, and forced displacement, believed to have taken place between 1989 and 1998 when the Aceh province was a military operations zone. Amnesty International knows of only two instances in Aceh in which cases during the “humanitarian pause” (1999-2002) have been investigated and resulted in military trials, or joint civilian/military trials.<sup>144</sup>

During the subsequent period of military operations (May 2003 – May 2005), some cases of human rights violations appear to have been dealt with before military tribunals. In May 2004, the Commander of the Armed Forces, General Endriartono Sutarto, admitted that “violations” had been committed since the start of Martial Law in March 2003. He stated that 511 violations had been recorded since May 2003. Of these 511 violations, he claimed that suspects in 429 cases involving soldiers had been brought before military courts and that 57 soldiers had been convicted and sentenced to terms of imprisonment, and three others had been discharged from the military.<sup>145</sup> During this period, the only known trial for sexual violence resulted in the conviction of three low ranking military officers for the rape of four women in North Aceh in 2003. They were convicted and sentenced by a military court to between two-and-a-half and three-and-a-half years’ imprisonment out of a maximum of 12 years for the crime of rape.<sup>146</sup>

Cases which have been investigated by the military and in which have resulted in trials of members of the security forces before military courts represent only a fraction of the allegations of human rights violations during the 2003-4 military campaign, and the Aceh conflict as a whole. To Amnesty International’s knowledge no one has been held to account for the numerous outstanding cases of severe human rights violations committed against human rights defenders during the years of conflict. Amnesty International is also unaware of any criminal investigations and prosecutions into past cases of enforced disappearances.

#### D. UNFAIR TRIALS OF GAM MEMBERS AND SUPPORTERS AND THE PEACE AGREEMENT AMNESTY

Thousands of alleged GAM members and supporters were arrested, tried before civilian courts and imprisoned during the period of the conflict. Many of these detentions and trials are believed to have manifestly contravened international fair trial standards. These include the failure to present warrants on arrest, failure to inform detainees of the reason for arrest or detention and inform them promptly of any charges against them, the extensive use of torture and other forms of cruel, inhuman or degrading treatment to extract confessions and denial of access to legal counsel, particularly during the first days of detention.<sup>147</sup>

The 2005 peace agreement provided that the Government of Indonesia would grant amnesty to all persons who had participated in GAM activities (see Chapter 2.2). As a result an estimated 2,000 people who were in detention were released. In its submission to the Aceh Monitoring Mission in September 2005,<sup>148</sup> Amnesty International welcomed the release of those who may have been imprisoned solely due to their peaceful activities in Aceh, however it recommended that those who may have perpetrated serious human rights violations and abuses were not granted amnesties and all cases of past abuses be investigated and perpetrators brought to justice. The amnesty failed to provide any exception for persons suspected of committing crimes under international law and establishes a barrier to the investigation and prosecution of such crimes by GAM forces. The amnesty violates Indonesia’s obligations under international law to prosecute these crimes and denies victims’ right to justice.

#### E. LIMITED WITNESS AND VICTIMS MECHANISMS

Effective victim and witness protection is vital to the effective investigation and prosecution of crimes under international law. In 2006, the national parliament enacted a Law on Witness and Victim Protection (Law No. 13/2006). The law established a Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban*, LPSK), which is now

operational, to provide protection and support to victims and witnesses in criminal cases.<sup>149</sup> However, the Witness and Victim Protection Agency is only based in Jakarta and has yet to set up any regional offices limiting access to witnesses and victims in other parts of the country, including Aceh.<sup>150</sup>

The provisions in the Law on Witness and Victim Protection provides that “[w]itnesses and/or victims who feel they are under serious threat, upon the judges approval, can give their testimony without being present in the court where the offence is being tried” (Article 9.1). The law states that they can give their testimony in writing or through electronic means (Article 9.2-3). It is a positive improvement from the current Criminal Procedure Code which requires that a victim or witness be present in court to make their testimony. However, there remain obstacles in practice to accessing these enhanced protections.

#### 4.3 CONSEQUENCES FOR PEACE IN ACEH AND THE RULE OF LAW THROUGHOUT INDONESIA

The need to bring perpetrators of crimes under international law to justice has not been part of the government's priorities in addressing the conflict in Aceh. There is a lack of political will from all parties to put in place the necessary mechanisms to ensure justice for victims. No new cases regarding crimes under international law during the Aceh conflict have been prosecuted since the 2005 peace agreement. In many cases, Komnas HAM and the Attorney General have failed to follow-up on investigations and the recommendations of inquiries. The situation of almost complete impunity has fuelled a general mistrust in the administration of justice by the Acehnese, a situation mirrored in many other parts of the country where serious human rights violations have occurred.

The Indonesian government has so far failed to address past human rights violations, including during the events of 1965-66, the 1998 May riots, and the conflicts in Aceh, Papua and Timor-Leste (formerly East Timor). The longstanding absence of progress in securing justice for serious human rights violations and the failure to undertake comprehensive reforms of the security forces perpetuates a culture of impunity and undermines progress in establishing the rule of law across Indonesia. Those suspected of crimes under international law remain in powerful positions where they could repeat such violations, and some have risen to the apex of the political system. Meanwhile Amnesty International continues to document human rights violations by members of the security forces.<sup>151</sup> The poor record so far damages public confidence in public institutions central to the democratic transition process which began in 1998, as well as the prospect for achieving genuine and sustainable human rights improvements for all in Indonesia. Ongoing incidents of mob and vigilante violence are sometimes justified as an attempt to seek justice in the absence, or perceived absence, of effective law enforcement and rule of law.<sup>152</sup>

During their visit to Aceh, Amnesty International delegates were told about sentiments of revenge within certain parts of the population – especially among young people who face high levels of unemployment,<sup>153</sup> poverty, and limited educational opportunities. Some raised the possibility of “horizontal” conflict (social or communal violence) in certain parts of the region, which may be fuelled in part by unequal redistribution programmes towards the population (see Chapter 5.2: The limits of programmes for “conflict victims”, p42) and/or old

wounds between members of pro-Indonesian militia groups during the conflict, such as PETA (*Pembela Tanah Air* or “homeland defenders”) and the Aceh Transition Committee (*Komite Peralihan Aceh*, KPA), the organization of former GAM combatants. Leaders associated with PETA, from the highland districts in Aceh (Central Aceh, South East Aceh and Bener Meriah) have advocated the splitting of the Aceh province because they resent the lack of development in their districts as well as the allocation of benefits to former GAM combatants, which have been inaccessible to them.<sup>154</sup> The death of several people in the context of the local Aceh elections in 2012, believed to be related to the rivalry between opposite factions of the Free Aceh Movement,<sup>155</sup> also shows that some of the old violent tactics which were used during the Aceh conflict still prevail at the expense of the rule of law and could quickly resurface.<sup>156</sup> There are also concerns among the population about the continued existence of illegal weapons in Aceh.<sup>157</sup>

During Amnesty International's visit to Aceh in May 2012, some survivors and their representatives stressed that justice eventually needs to be done, and be perceived to be done for those who suffered abuses. Some worried about the possibility for the Aceh conflict to start again.

## 5. REPARATION: A PATCHY AND INADEQUATE FRAMEWORK

### THE BUMI FLORA MASSACRE

On 9 August 2001, armed men shot and killed 31 men at the PT Bumi Flora rubber and palm oil plantation in East Aceh. Dozens of armed men wearing striped military uniforms and round helmets arrived in one of the housing areas on the plantation in the morning and gathered all the men. The civilian men were asked to open their shirts and squat down with their hands on their thighs. The armed men then opened fire on the civilians killing 31 men and injuring at least seven people.

Investigations were reportedly conducted by the district authorities and police after the massacre. Komnas HAM also conducted an investigation into the killing on 23-24 August 2001 and recommended that a formal preliminary *pro-justicia* inquiry be established to investigate allegations of gross human rights violations. In May 2002 Komnas HAM formed an *ad hoc* team to conduct a *pro-justicia* inquiry for three months but stopped activities only with a recommendation for further inquiries.<sup>158</sup> None of the investigations above have led to any criminal prosecutions and no one has yet been held accountable.

Roni, a rubber tapper, was one of the 31 people who were shot dead at the PT Bumi Flora rubber and oil plantation. In May 2012, Amnesty International met with his wife Ennie and their daughter who was 22 months old at the time of the incident.<sup>159</sup> Over ten years later, both mother and daughter still experience economic hardship and psychological trauma. Although Ennie received some money from the Aceh Reintegration Agency (BRA), a government-sponsored compensation and reintegration programme set up following the peace agreement, she still does not feel satisfied. She was in fact sad to take the money but she felt that she did not have any other choice as she has nothing. Ennie's daughter has received a scholarship for her studies. However, she has never received any form of counselling. Her mother explained that she has headaches very often and cries all the time. She has no money to take her to hospital and pay for special help such as counselling. Ennie explained that she does not have any hope [for procedural justice]. For her, "*it's up to [the authorities] if [the perpetrators] are tried or not*".

This story is emblematic of the sort of situation victims/survivors of the Aceh conflict are facing today. Although some measures to compensate people for their loss or to assist children whose parents were killed during the conflict were taken during and shortly after the Aceh conflict,<sup>160</sup> most survivors do not trust the justice system as an avenue to seek reparation, and there has yet to be a comprehensive reparation programme specifically aimed at victims of crimes under international law in Aceh and their families. The Indonesian government appears to favour collective reparation,<sup>161</sup> and the various measures that have been taken have been mostly financial, targeting the Acehnese population at large rather than individual victims of human rights abuses. Marginalized groups such as victims/survivors of sexual violence have been unable to access the programmes. At the time



of writing, initiatives to memorialize and pay tribute to victims have been largely community-based with little involvement from government authorities.

## 5.1 BARRIERS TO REPARATION BEFORE INDONESIAN COURTS AND ABROAD

Laws and regulations in Indonesia related to reparation for victims of human rights abuses remain inadequate and inconsistent with international law and standards. Victims face serious obstacles in seeking reparation before national courts both in law and practice.

There are no provisions under the Criminal Code which would allow victims and their relatives to obtain reparation for some of the crimes under international law which occurred during the Aceh conflict. Although the Indonesian Civil Code (*Kitab Undang-undang Hukum Perdata*) provides for compensation for “an illegal act which causes damage to another party” (Article 1365), there is minimal precedent for successful claims.<sup>162</sup>

Law No. 26/2000 on Human Rights Courts provides that “[e]very victim of a gross human rights violation or abuse [*“pelanggaran hak asasi manusia yang berat”*], and/or his/her beneficiaries, shall receive compensation, restitution, and rehabilitation” (Article 35.1) and that a Human Rights Court may grant such measures in their ruling. However, most victims of human rights abuses in Indonesia are unable to access these courts because their jurisdiction is limited to crimes against humanity and genocide. Even where abuses may meet such thresholds, to date there is no Human Rights Court (permanent or *ad hoc*), which has dealt with crimes committed during the Aceh conflict (See Chapter 4.2: Limited and inadequate past investigations and prosecutions, p33).<sup>163</sup>

Furthermore, Regulation No. 3/2002 on the Compensation, Restitution, and Rehabilitation of Victims of Gross Human Rights abuses which implements Article 35.1 and 35.2 of the Law on Human Rights Courts states that victims must wait for the verdict to be upheld on all available appeals, before they are eligible for reparation measures.<sup>164</sup> However, past experiences of human rights courts rulings in Indonesia have been disappointing for victims and their families as currently all the trials before the human rights courts in Indonesia have resulted in convictions which have been overturned on appeal.<sup>165</sup>

The 2006 Law on Witness and Victim Protection provides that victims of gross human rights abuses are entitled to medical services, psycho-social rehabilitation, to request compensation or restitution,<sup>166</sup> and protection and assistance from the Witness and Victim Protection Agency.<sup>167</sup> Although some of these measures could be provided before a final decision on guilt or innocence is made,<sup>168</sup> they remain difficult to access in practice (see Section 4.2E on limited witness and victims mechanisms). Further, according to Regulation No. 44/2008 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, a victim of gross human rights abuses can only apply for compensation when there is an ongoing Komnas HAM *pro-justicia* inquiry into gross human rights abuses or before the Public Prosecutor files charges. In order to qualify the victim would require a referral letter from Komnas HAM showing he/she has suffered gross human rights abuses. Aceh victims are currently unable to access these compensation measures as none of the investigations by Komnas HAM, except for the Bumi Flora case (see Section 4.2 B Komnas HAM preliminary Inquiries: A lack of follow-up) have led to actual *pro-justicia* inquiries into serious human

rights abuses in Aceh.<sup>169</sup>

The barriers to seeking reparation before national courts in Indonesia have led some victims to seek remedies through civil lawsuits abroad. However, pursuing such cases can be complex and there are numerous obstacles in accessing foreign courts and enforcing reparation orders.

## THE EXXON MOBIL CASE

In 2001 and 2007 a group of villagers from Aceh filed civil lawsuits against Exxon Mobil Corporation, a US corporation which operated a large natural gas extraction and processing facility in the Aceh province of Indonesia in 2000–2001. They claimed that Exxon Mobil should be held responsible for its complicity with human rights violations perpetrated by Indonesian soldiers who were mandated to protect the company's property and operations.

On 8 July 2011, in a 2-1 decision, the District of Columbia US Circuit Court of Appeals said that Exxon Mobil did not have corporate immunity from claims filed by 15 Indonesian villagers under the US Alien Tort Statute (ATS), and could face claims relating to extrajudicial killings, torture, and prolonged arbitrary detention by Indonesian soldiers in Indonesia's Aceh province under the ATS.

The decision was welcomed by victims and NGOs, as it offered an avenue through which victims could have their allegations properly examined by a court. However, in another decision by the US Second Circuit Court of Appeals in September 2010 in the case *Kiobel v. Royal Dutch Petroleum*, the Court ruled that customary international human rights law does not recognize the liability of corporations and as a consequence multinational corporations could not be held liable under the ATS. This question, as well as the question of whether ATS can apply outside the US at all, is now being considered by the US Supreme Court.

## 5.2 THE LIMITS OF PROGRAMMES FOR “CONFLICT VICTIMS”

**“We are not hoping for BRA [Aceh Reintegration Agency programme] but for KKR [truth and reconciliation commission] first to uncover the truth so that it is clear what they are paying for... BRA is only compensation for conflict victims... In fact with BRA it has created new conflict... previously the victims groups were united but now there has been some division among victims... the [compensation] programme has challenged the unity between victims... some victims have received assistance but others have not... I myself have not got anything.”**

A representative from an Aceh victims' group who was arrested and arbitrarily detained in 2003 by Kostrad and beaten.<sup>170</sup>

The most comprehensive programme of assistance to date was implemented following the Helsinki Peace Agreement in 2005. As part of the BRA assistance programme, some forms of assistance were provided to up to 62,000 civilians who had suffered during the Aceh conflict,<sup>171</sup> as well as to over 8,000 former GAM supporters or combatants and to over 6,000 former anti-separatist/pro-Indonesian militias.<sup>172</sup> The assistance programme targeted individuals who had lost a family member; children; persons suffering from an ongoing disability as a result of the conflict (*cacat*); and those who lost their house.<sup>173</sup> The assistance took different forms, including economic empowerment, financial compensation (*dijayat*);<sup>174</sup>

house reconstruction; medical assistance; scholarships for children orphaned during the conflict; and other assistance (*sayam*).<sup>175</sup> Over the course of their visit to Aceh in May 2012, Amnesty International delegates were told about some of the shortcomings of these government-sponsored programmes.

#### A. LACK OF TRANSPARENCY AND CONSISTENCY



Office of the Aceh Reintegration Agency (BRA) in Banda Aceh which implemented an extensive reintegration and assistance programme following the 2005 peace agreement. © Amnesty International

Amnesty International acknowledges that the Indonesian government has taken measures to provide financial and other material assistance to victims of the Aceh conflict. However, during interviews in May 2012 NGO workers, victims' representatives and others expressed concerns about the unclear and difficult process in place for "conflict victims" to access the assistance scheme. The definition of "conflict victims" was a problem in itself as it was not well defined. Further the requirements to access the BRA scheme were challenging to implement in practice for a number of reasons. Firstly, some victims/survivors explained that they did not feel brave enough to report to the local authorities what had happened to them and claim access to the scheme. Others explained that it was difficult to show proof of what had happened to them. In particular, it was difficult for torture victims (including victims/survivors of sexual violence, see Chapter 5.3 below) to be recognized as such if their injuries were not physically visible. Lastly, some victims stressed that it was particularly challenging for those who were not located near certain local authorities and for those living in isolated communities to access the scheme.

Further victims, community-based organizations and local NGOs emphasized that it was not always clear who got what and why from the BRA assistance programme. Many raised the

fact that some people got a new house but not others,<sup>176</sup> or questioned why some people would get financial assistance for one year, and others for two or three years. Some local victims' representatives expressed concerns that some victims had not received any help from the government.<sup>177</sup> In one case, a relative explained to Amnesty International that she had yet to receive any financial compensation for the loss of her father in 1990, although her sister was able to access the scheme. In another case, a relative who had lost her husband in 1999, and who had been promised financial assistance, had yet to receive any help.<sup>178</sup>

According to some of those interviewed, the lack of consistency in providing assistance to people in Aceh following the 2005 peace agreement is fuelling conflict between those who accessed the BRA scheme and benefited from it and those who did not.<sup>179</sup> This feeling of injustice among some victims and relatives of the Aceh conflict, who may not have received as much assistance as others, appears to have been fuelled also by the fact that some people in Aceh had access to compensation schemes from the Aceh Rehabilitation and Reconstruction body (*Badan Rehabilitasi dan Rekonstruksi*, BRR) because they were also affected by the December 2004 earthquake and tsunami. Funds allocated for tsunami reconstruction victims were much larger than funds allocated for post-conflict assistance, which resulted in a poorer quality of the assistance in conflict-affected areas, for example in relation to house reconstruction. These inequalities have led to significant tensions within and between communities.<sup>180</sup>

#### B. ASSISTANCE, NOT REPARATION

Some victims who received BRA assistance complained that the programme fell short of directly linking the assistance provided to an acknowledgement of the human rights abuses they had suffered. Some who accessed the programme explained that they did not feel satisfied about accepting the financial compensation, but they felt they did not have any other choice but to accept it due to their limited financial means (see the case of Ennie, above). A number of victims also explained that they had been uncomfortable about signing a paper to access the scheme as they were not clear what they were signing.<sup>181</sup>

Many told Amnesty International that the central government should start by saying sorry (*maaf*) to the people, and acknowledging what happened. Some also stressed that for women in particular there has been no acknowledgement whatsoever of the sort of violence they had suffered during the Aceh conflict. As explained earlier (see Chapter 2.1 B: The humanitarian pause, p17), some senior military and government officials made partial and qualified apologies in 1998-1999 for wrongdoing during the years of military operations under DOM in the 1990s. However, there has yet to be a formal apology by the government or the parliament for human rights abuses committed during the conflict.

### 5.3 BARRIERS FACED BY WOMEN SURVIVORS OF VIOLENCE IN ACCESSING REPARATION AND ASSISTANCE

“I think about some of those [victims of sexual violence] who are still sick. Their reproductive organs still have problems until now, injured, not healed and various other problems... this needs to be addressed... they cannot be asked to access the health insurance programme. There needs to be something specific for them. There needs to be a specific avenue... so that they can get access to health services without having to explain publicly what has happened to them. The government needs to think about these issues. Also they are poor. How can they continue their life? They also need some protection because they are still stigmatized by society until now.”

A women's rights activist in Aceh, 8 May 2012.

Rape and other crimes of sexual violence committed by Indonesian security forces during the conflict in Aceh have been well documented by Amnesty International and other organizations.<sup>182</sup> Crimes of sexual violence included rape and other forms of sexual violence, including as torture. For example Indonesian security forces targeted some female relatives of suspected “rebels”, by arbitrarily detaining them and subjecting them to rape and other forms of torture. However, the culture of silence that surrounds sexual and gender-based violence, stemming from gender stereotypes, feelings of shame, fear of social stigma, the low status of women in society, as well as the sensitivity in talking about these violations, means that many cases remain unreported.<sup>183</sup>

Research on rape and other crimes of sexual violence committed during the conflict has tended to focus on women and girls, and it is unclear the extent to which men and boys also experienced such crimes.<sup>184</sup> Women and girls were also subjected to a wide range of human rights abuses during the conflict, including unlawful killings, torture and other ill-treatment and arbitrary detention.<sup>185</sup> They suffered not only as direct victims of human rights abuses, but indirectly as family members of those who were killed and disappeared. Many were forced to assume the role of economic provider and primary caregiver for the family, and this has had long-lasting consequences for women and their families, for example in limiting and preventing their access to education and healthcare.

The BRA scheme was restrictive and did not specifically include women survivors of sexual violence.<sup>186</sup> However, some NGOs have attempted to broaden the category of “people suffering from an ongoing disability as a result of the conflict” (*korban cacat*) to victims/survivors of sexual violence. Despite these attempts, many survivors of sexual violence were unable to receive any financial or medical assistance as part of the scheme.<sup>187</sup> One of the main challenges they faced was proving the sexual violence committed against them during the conflict. An expert on violence against women in Aceh told Amnesty International that the level of proof required by local officials to enable survivors of sexual violence to access the scheme was the same as that required under the Criminal Procedure Code. As explained in Chapter 4.1.C, under the Criminal Procedure Code two elements of proof are required which may be very difficult to obtain in practice for this type of crime.

Although there has been a free health insurance scheme in place in Aceh since June

2010,<sup>188</sup> women survivors of sexual violence continue to face a number of barriers to access the sort of services they need. As there is no programme targeting their specific needs, they must first go to a local health centre (*puskesmas*) to request assistance, prior to being referred to a hospital. Local NGOs told Amnesty International that, as a result, it can take months for survivors to get necessary, even urgent, medical treatment. Further, it forces them to disclose their story several times which can exacerbate feelings of shame or expose them to stigmatization in a region where women and girls are under pressure to adopt attitudes which reflect narrow stereotypes of a woman's sexuality.<sup>189</sup>

A 2010 report by Amnesty International, which included research in Aceh, found that women and girls face a range of barriers in law, policy and practice in accessing health services, and in particular, information and services on reproductive health.<sup>190</sup> Barriers can include discriminatory attitudes towards women, and in particular women's sexuality; communities' cultural beliefs; and discriminatory attitudes within the medical profession. Women and girls from remote communities, and the poor and marginalized are often left at an even greater disadvantage.

Amnesty International's 2010 research<sup>191</sup> and recent interviews with NGO representatives have confirmed that it is very difficult for survivors of sexual violence to speak about their situation and access information and services on reproductive health in Aceh. For married women, seeking such information and services can create problems with their husbands, especially if they already live in a situation of domestic violence (e.g. they may be accused of adultery),<sup>192</sup> whereas for unmarried women, they can be rejected and stigmatized by the local community as a result ("*jangan buat malu kampong*").<sup>193</sup> Those who speak out about such types of abuse have long been perceived as bringing shame to their families and villages.<sup>194</sup> With the implementation of Shari'a-based law in Aceh, this situation has been compounded by increased restrictions in law and practice on women's freedoms.<sup>195</sup>

In its 2012 Concluding Observations, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed "deep concern" that sexual violence, and in particular rape, has been a "recurring form of violence against women during conflict", including during the Aceh conflict. The Committee recommended that the Indonesian government investigate, prosecute and punish acts of violence against women, including acts of sexual violence, and provide survivors with full and effective reparation. The Committee recommended that this include comprehensive measures to provide medical and psychological support to women survivors of violence and the establishment of counselling centres for them.<sup>196</sup> In its response the Indonesian government said that reparations were:

*"a complex matter since identification of victims was difficult after so long... collective recognition, apology and remembrance, along with educational measures, would address reparations... However, the complexity of the issue meant that the Government had to be realistic".<sup>197</sup>*

## THE SIMPANG KKA TRAGEDY



Monument erected at the location of the Simpang KKA in North Aceh to remember those who were killed when soldiers opened fire on 3 May 1999. © Amnesty International

On 3 May 1999, dozens were killed when military personnel opened fire at a crossroads near the Kertas Kraft Aceh (KKA) pulp and paper mill, known widely as *Simpang KKA*, at Cot Morong village in Dewantara sub-district in North Aceh.

A soldier from Lilawangsa Command's Missile Detachment 001 (Den Rudal 001/Liliwangsa) had reportedly gone missing a few days earlier near the village and soldiers from the regiment were searching houses in the village as well as intimidating the villagers. On the morning of 3 May, four military trucks entered the village raising fears among the people. The local sub-district head (*camat*) attempted to negotiate with the military to leave the area as people began to gather. At about 12.30pm, the military reportedly opened fire as thousands of unarmed people began to flee the area. Two reporters who were coincidentally at the location filmed the incident which has now been widely circulated.<sup>198</sup>

According to the North Aceh Human Rights Victims Community (K2HAU), 21 people were killed while 156 people were injured during the attack. Many of the victims were reportedly shot in the back or side.<sup>199</sup> The incident was one of the five cases recommended for prosecution by the 1999 Independent Commission for the Investigation on Violence in Aceh. In November 1999 the Attorney General set up an investigation into the case.<sup>200</sup> Despite this step no one has been charged in relation to the crimes.

## 5.4 COMMUNITY-BASED INITIATIVES AIMED AT ACKNOWLEDGING AND REMEMBERING VICTIMS

There have been a number of community-sponsored initiatives to address some of the past suffering. Although these events and structures have been positive measures for victims' groups and NGOs to remember the past, they have been disappointed there has been so far very limited support from the authorities for these initiatives, in stark contrast with support to commemorate the 2004 tsunami and earthquake,<sup>201</sup> and in some cases marked opposition, including from the military.<sup>202</sup>

Victims groups have organized annual commemoration ceremonies to mark the dates when crimes under international law and other human rights violations occurred during the conflict. Commemoration monuments have also been erected in some locations to remember past events. For example, a monument was erected in 2011 to commemorate people who were killed at *Simpang KKA* (see details about the incident at *Simpang KKA* in the box above).<sup>203</sup> In South Aceh, there is also a monument and a commemoration event every 17 May to remember the 12 men who were burned alive on 17 May 2003 by members of the security forces in the village of Jamboe Keupok in South Aceh district (see *Men shot and burned alive in 2003 in South Aceh*, p36).<sup>204</sup>

Victims' groups and NGOs have also organized their own public events for victims to testify publically on what had happened to them. In May 2010 a "public hearing," modelled on the draft legislation for a local truth commission, was held in North Aceh on the *Simpang KKA* tragedy. More than a thousand people attended the hearing, which was presided over by five "commissioners" drawn from representatives of Acehnese civil society.<sup>205</sup> At the time of writing, there are also plans to develop further the Aceh Human Rights Museum, which is currently located in Banda Aceh as a place where people can learn more about the past.

Victims groups and NGOs continue to demand that the local government support the development of more commemoration structures to commemorate and memorialize past events which occurred during the Aceh conflict, and in particular where killings and acts of torture occurred.



## 6. CONCLUSION AND RECOMMENDATIONS

**“[My hope is that the] authorities in Aceh or at the central level resolve past [abuses] and ensure what has happened previously in Aceh will not reoccur today and not occur in other parts of Indonesia. Make this conflict and the human rights abuses in Aceh as [a] learning for the authorities.”**

An activist from North Aceh speaking to Amnesty International<sup>206</sup>

The willingness by both the Indonesian government and the Free Aceh Movement to put aside their differences through the 2005 peace agreement has led to a successful end to the armed conflict in Aceh. However, seven years on, the two parties to the conflict have chosen to ignore some of the fundamental provisions of the peace agreement and Indonesia's obligations to ensure truth, justice and reparation for victims of past human rights abuses. Instead, the past has been buried with ongoing delays in setting-up a truth commission, investigating and prosecuting the crimes, and providing reparation for victims and their families. It is now time for the national and local authorities to fulfil their international legal obligations and re-build the rule of law in the country to end impunity and protect, guarantee and strengthen the peace process.

In this Chapter, Amnesty International provides a series of key recommendations to the central government, and in particular to the President and his Advisory Council, to the Co-ordinating Minister for Political, Legal and Security Affairs, the Minister of Law and Human Rights, the Minister of Home Affairs, the Minister for Defence, the Minister for Education and Culture, and the Minister of Women's Empowerment and Child Protection. Some recommendations are also directed towards local authorities in Aceh and representatives of the former Free Aceh Movement, including the Aceh Governor's Office, leaders of local political parties such as the Aceh Party,<sup>207</sup> and members of the Aceh House of People's Representatives. Some of the recommendations are also aimed at the House of People's Representatives at the national level, Komnas HAM, and the Attorney-General's Office. As many of these crimes are crimes under international law, there are also recommendations particularly geared towards other states, including EU and ASEAN states who monitored the peace agreement, and other donor countries.

In order to ensure that the right of victims of past human rights abuses and their families to truth, justice, and reparation is implemented at the earliest opportunity, Amnesty

International recommends that Indonesian authorities, and in particular the President, the Co-ordinating Minister for Political, Legal and Security Affairs, the Minister of Justice and Human Rights and the National House of People's Representatives:

- Acknowledge publicly that human rights violations and abuses, including possible war crimes and crimes against humanity, were committed during the Aceh conflict and commit publicly that there will be no impunity for crimes under international law;
- Make a formal and public apology to all victims of human rights violations committed by Indonesian security forces and their auxiliaries during the Aceh conflict;
- Ensure that the findings of all investigations/inquiries of human rights abuses during the Aceh conflict are made available to the public, and implement all recommendations made in past reports which are aimed at ensuring truth, justice and reparation and which are in line with international human rights law and standards; and
- Support investigations and prosecutions into human rights abuses during the Aceh conflict, and ensure that those who may have perpetrated crimes under international law are not granted amnesties.

Further, Amnesty International recommends that representatives of the former Free Aceh Movement, including the Aceh Governor and representatives of the Aceh Party:

- Acknowledge publicly that human rights violations and abuses, including possible war crimes and crimes against humanity, were committed during the Aceh conflict and commit publicly that there will be no impunity for crimes under international law;
- Make a formal and public apology to all victims of human rights abuses committed by GAM during the Aceh conflict;
- Call on the findings of all investigations/inquiries of human rights abuses during the Aceh conflict to be made available to the public, and for all recommendations made in past reports which are aimed at ensuring truth, justice and reparation and which are in line with international human rights law and standards to be implemented.
- Support investigations and prosecutions into human rights abuses during the Aceh conflict, and ensure that those who may have perpetrated crimes under international law are not granted amnesties.

## 6.1 TOWARDS THE ESTABLISHMENT OF THE TRUTH

In order to ensure the right to truth for victims, their families and affected communities and ensure that they have access to full disclosure about what happened during the conflict, including the fate and whereabouts of the disappeared, Amnesty International recommends that the House of People's Representatives and in particular Komisi III which specializes in Law, Human Rights and Security, the Law and Human Rights representative on the Presidential Advisory Council, the government-sponsored multi-agency team tasked to resolve past human rights violations, and the Aceh House of People's Representatives:

- Establish without further delay an independent and impartial truth commission, in accordance with Amnesty International's Checklist for the establishment of an effective truth commission,<sup>208</sup> to establish the facts about human rights abuses committed by both sides during the conflict, including preserving evidence and identifying perpetrators, recommending reparation measures to address the suffering of victims as well as institutional reforms to ensure that such abuses will not be repeated;
- Establish effective mechanisms, including possibly as part of the truth commission, to investigate and record the details of all missing and disappeared persons and search for, locate and release disappeared persons or, in the event of death, to respect and return their remains to their families and communities;
- Immediately accept and facilitate a request from the Working Group on Enforced or Involuntary Disappearance (WGEID), pending since 2006, to visit Indonesia. Ensure the WGEID is granted unimpeded access to Aceh and all other relevant locations and is able to meet freely with a wide range of stakeholders, including victims and their families, civil society organizations, government officials and members of the security forces; and
- Invite the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to visit Aceh and all other relevant locations in Indonesia at the earliest opportunity. Ensure the Special Rapporteur is granted unimpeded access to all relevant locations and is able to meet freely with a wide range of stakeholders, including victims and their families, civil society organizations and members of the security forces.

Amnesty International also recommends that Komnas HAM:

- Ensure that the findings of all past inquiries of human rights abuses in Aceh are made available to the public. Where reports contain the names and other personal identifiers of victims, witnesses and suspects, these should be removed before publication to protect all victims/relatives and witnesses as well as to guarantee that persons prosecuted for these crimes in the future are guaranteed fair trials in accordance with international standards.

Amnesty International recommends that the Minister for Education and Culture:

- Ensure that the national curriculum in schools in Aceh, and elsewhere in Indonesia includes sections on the history of the Aceh conflict and human rights abuses which occurred at the time to ensure that future generations know about what happened in the past.

## 6.2 JUSTICE FOR PAST HUMAN RIGHTS ABUSES

To ensure that Indonesia meets its obligations to investigate and prosecute crimes under international law – including possible war crimes and crimes against humanity, torture, extrajudicial executions, enforced disappearances – and ensure justice for victims, Amnesty International recommends that the Indonesian government, and in particular the Indonesian President, the Co-ordinating Minister for Political, Legal and Security Affairs, the Minister of Women's Empowerment and Child Protection and the Minister of Law and Human Rights:

- Take immediate steps to ensure that all crimes including those under international law alleged to have been committed by Indonesian security forces, their auxiliaries and GAM during the conflict are investigated. Ensure, whenever there is sufficient admissible evidence, that those suspected of the crimes are prosecuted before national courts in proceedings which meet international fair trial standards and which do not impose the death penalty;
- Ensure that any amnesty granted under the peace agreement does not prevent the investigation and prosecution of crimes under international law;
- Ensure that survivors of sexual violence have access to justice and that the justice system has the full capacity and resources to promptly, independently, impartially and effectively investigate and prosecute all cases of sexual violence; and
- Establish a branch of the Witnesses and Victims Protection Agency in Aceh with sufficient resources to provide effective protection and support to victims of crimes under international law.

Amnesty International recommends that Komnas HAM:

- Conduct further inquiries into possible crimes under international law committed during the Aceh conflict.

Amnesty International recommends that the Attorney General's Office:

- Review all information that it has received in relation to crimes under international law committed in Aceh, including from the 1999 Independent Commission for the Investigation of Violence in Aceh (KPTKA), Komnas HAM and all other investigations into human rights abuses during the Aceh conflict, and complete full investigations. Whenever sufficient admissible evidence exists, those suspected of the crimes should be prosecuted before national courts in proceedings which meet international fair trial standards and which do not impose the death penalty.

Further Amnesty International recommends that the House of People's Representatives:

- Revise the Criminal Code and the Criminal Procedure Code in compliance with Indonesia's obligations under international human rights law and standards, and as a priority define all crimes under international law and principles of criminal responsibility in accordance with international law and standards, as recommended in Amnesty International's *International Criminal Court: Updated checklist for effective implementation*.<sup>209</sup> The revised

Criminal Code should include a definition of torture consistent with Article 1.1. of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and a definition of rape consistent with the Elements of Crimes of the Rome Statute of the International Criminal Court;

- Amend the Law on Human Rights Courts (Law No. 26/2000) to:
  1. Expand its jurisdiction over other crimes under international law, including war crimes, torture, extrajudicial executions and enforced disappearance;
  2. Ensure that Komnas HAM can conduct *pro-justicia* inquiries effectively, including that it has subpoena powers to call witnesses, and that it submits all inquiries regarding crimes under international law to an independent prosecutor for investigation, without any possibility of political interference in the process by the Attorney General or other political officials; and
  3. Ensure that Komnas HAM and victims are kept informed of the status of investigations and that they can seek legal review of any decision not to investigate or prosecute crimes under international law.
- Revise the Law on Military Tribunals (Law No. 31/1997) so that military personnel suspected of crimes under international law are prosecuted only before independent civilian courts.

Considering some of the crimes which occurred during the Aceh conflict constitute crimes under international law, other states including EU and ASEAN states should:

- Exercise jurisdiction, including, where necessary and where there is sufficient admissible evidence, universal jurisdiction, over persons suspected of crimes under international law, including possible war crimes and crimes against humanity, committed during the Aceh conflict.

### 6.3 THE RIGHT TO FULL AND EFFECTIVE REPARATION

To ensure that victims of human rights abuses have access to full and effective reparation, Amnesty International recommends that the Indonesian government, and in particular the Indonesian President, the Co-ordinating Minister for Political, Legal and Security Affairs, the Minister of Law and Human Rights, the Minister of Home Affairs, the Minister of Women's Empowerment and Child Protection, Komnas HAM and the Aceh Governor:

- Establish a programme to provide full and effective reparation (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to all victims of past human rights abuses in Aceh. The programme should be devised in consultation with victims, both women and girls and men and boys, to ensure that the reparation programme is effective and reflects the different needs and experiences of victims/survivors of the conflict, including women and men based on their gender or any other status, and taking in to account the nature of the violations and abuses and previous access to measures of reparation, in order to properly address the harm suffered. To avoid further delays in

addressing the suffering of victims, the programme should be established immediately to start providing reparation to victims as soon as possible. If recommendations are made by a truth commission in relation to reparation, these should be considered and addressed at that time as part of a review of the programme; and

- Any reparation programme should ensure that women and girl survivors of sexual violence in the conflict can access reparation and that specific measures are taken to identify and respond to their needs. The programme should be developed with the involvement of the survivors and non-governmental organizations that represent and/or work with them. It should include provisions guaranteeing, to those who seek it, access to health care, psychological assistance and other support, including measures designed to eliminate the stigma and discrimination experienced by survivors of sexual violence and gender-stereotypes that underlie violence against women. Any information supplied by survivors should be treated confidentially to respect privacy and to avoid retraumatization or other suffering.

Amnesty International recommends that the Aceh Governor, the Aceh House of Peoples' Representatives, and the Aceh Reintegration Agency (now called the Aceh Peace Strengthening Agency):

- Review and independently evaluate past compensation mechanisms to ensure that all victims and their relatives received compensation equally, and free from threats, harassment and discrimination. Particular attention should be paid to victims and their relatives who live away from major cities, or may suffer stigma for the crimes committed against them, as is the case for survivors of crimes of sexual violence; and
- Erect monuments or other signs acknowledging what happened in particular sites in Aceh in consultation with civil society organizations and victims' groups.

Amnesty International recommends that the House of People's Representatives:

- Amend the Law on Witness and Victim Protection (Law No. 13/2006) to ensure that the Agency can facilitate access to medical services and psycho-social rehabilitation services to victims and witnesses of all crimes under international law, including war crimes, torture, extrajudicial executions and enforced disappearances.

## 6.4 THE RULE OF LAW AND SECURITY SECTOR REFORM

In order to strengthen the peace process, and ensure that human rights in Aceh are embedded through structures that are respectful of the rule of law and with professional security forces, Amnesty International recommends that the Indonesian government, and in particular the Indonesian President, the Co-ordinating Minister for Political, Legal and Security Affairs, the Minister for Defence and the Minister of Law and Human Rights:

- Strengthen internal and external accountability mechanisms to deal with suspected human rights violations by members of the security forces; and
- Establish a vetting system to ensure that, pending investigation, law enforcement or

security officials about whom there is evidence of serious human rights violations do not remain, or are not placed, in positions where they could repeat such violations.

Amnesty International recommends that the House of People's Representatives:

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance at the earliest opportunity, making declarations under Articles 31 and 32 recognizing the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals claiming to be victims of enforced disappearance or abduction, incorporate its provisions in to domestic law and implement it in policy and practice; and
- Ratify the Rome Statute of the International Criminal Court and the Agreement on Privileges and Immunities of the International Criminal Court, incorporate their provisions in to domestic law and implement them in policy and practice.

Amnesty International calls on all states, in particular the EU and ASEAN to:

- Call for the full implementation of the MOU between the Indonesian government and the former Free Aceh Movement without further delay, including its commitment to establish a truth commission;
- Urge Indonesian authorities to investigate crimes under international law and other crimes committed by both sides during the Aceh conflict and, whenever there is sufficient admissible evidence, those suspected of the crimes should be prosecuted before national courts in proceedings which meet international fair trial standards and which do not impose the death penalty; and
- Urge the Indonesian authorities to establish a reparation programme to ensure full and effective reparation for all victims of human rights abuses committed during the Aceh conflict, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Amnesty International also recommends that donor countries:

- Provide necessary funding and support to NGOs, including women's groups and other civil society actors working on truth, justice and reparation for victims of the Aceh conflict; and
- Provide technical assistance to support reforms of the security sector and the criminal justice system in Indonesia.

## ENDNOTES

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<sup>1</sup> Aceh was designated a “Military Operations Zone” (*Daerah Operasi Militer*, DOM) by the Indonesian government twice during the 29 year conflict. The first DOM period ran from 1989-1998, with the second period – “DOM 2” – in 2003-2004. Further information on these periods can be found in Chapter 2.1 of this report. See also Rizal Sukma, *Security Operations in Aceh: Goals, Consequences, and Lessons*, East-West Center Washington, 2004, p8; and Edward Aspinall and Harold Crouch, *The Aceh Peace Process: Why it Failed*, East-West Center Washington, 2003, (Aspinall and Crouch, *The Aceh Peace Process: Why it Failed*), p3, p40, and p43.

<sup>2</sup> Estimates about the number of deaths during the Aceh conflict vary between 10,000 and 30,000 people. Conservative estimates bring the death toll to between 12,000 and 20,000 people. In Edward Aspinall, “*Islam and Nation – Separatist rebellion in Aceh, Indonesia*”, NUS Press, 2009, (Aspinall, *Islam and Nation*), p2 and footnote 1. A recent report from the Crisis Management Initiative (CMI), a non-governmental organization which helped broker the 2005 peace agreement, estimated that about 10,000 people died during the Aceh conflict. See CMI, *Aceh Peace process follow-up project*, Final Report, 2012, (CMI, *Final Report*), p9, weblink: [http://www.cmi.fi/images/stories/publications/reports/2012/aceh\\_report5\\_web.pdf](http://www.cmi.fi/images/stories/publications/reports/2012/aceh_report5_web.pdf), accessed 4 March 2013. The Aceh Reintegration Agency (*Badan Reintegrasi Aceh*, BRA) estimates that almost 30,000 people were killed during the conflict. See *Multi-Stakeholder Review of Post-Conflict Programming in Aceh: Identifying the Foundations for Sustainable Peace and Development in Aceh*, December 2009, p4, weblink: [http://www.internal-displacement.org/8025708F004CE90B/%28httpDocuments%29/B445B05292F05A4DC125776700297362/\\$file/MSR+Aceh+July+2010.pdf](http://www.internal-displacement.org/8025708F004CE90B/%28httpDocuments%29/B445B05292F05A4DC125776700297362/$file/MSR+Aceh+July+2010.pdf), accessed 4 March 2013.

<sup>3</sup> See for example KontraS (The Commission for the “Disappeared” and Victims of Violence), *Aceh, Damai dengan Keadilan? Mengungkap Kekerasan Masa Lalu [Aceh, Peace with Justice? Revealing Past violence]*, Jakarta. February 2006; National Commission on Violence against Women (*Komnas Perempuan*), *Pengalaman Perempuan Aceh Mencari dan Meniti Keadilan Dari Masa ke Masa [Experiences of Aceh Women seeking and accessing justice from one era to the next]*, (Komnas Perempuan, *Experiences of Aceh Women*) January 2007; and Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara: Mengungkap Pelanggaran HAM di Aceh 1989-2005 [Facts speak: Revealing human rights abuses in Aceh]*, Koalisi NGO HAM Aceh, 2011 (Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*).

<sup>4</sup> See *Indonesia: “Shock therapy”: Restoring order in Aceh 1989-1993* (Index: ASA 21/007/1993), (Amnesty International, “*Shock therapy*”); *Indonesia: A cycle of violence for Aceh's children* (Index: ASA 21/059/2000); *Indonesia: The impact of impunity on women in Aceh* (Index: ASA 21/060/2000), (Amnesty International, *The impact of impunity on women in Aceh*); *Indonesia: Activists at risk in Aceh* (Index: ASA 21/061/2000), (Amnesty International *Indonesia: Activists at risk in Aceh*); and *Indonesia: New military operations, old patterns of human rights abuses in Aceh (Nanggroe Aceh Darussalam, NAD)* (Index: ASA 21/033/2004), (Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*).

<sup>5</sup> Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No4, pp37-40.

<sup>6</sup> In this report, human rights violations refer to violations committed by state agents (e.g. members of the security forces) while human rights abuses refer to abuses committed by non-state actors. The term



“human rights abuses” is also used in a general way to refer to both human rights violations and abuses committed by state and non-state actors.

<sup>7</sup> The conflict between Indonesian authorities and the Free Aceh Movement dates back to 1976 when the Free Aceh Movement unilaterally declared independence. However, most human rights abuses were committed between 1989 and 2004 during which military operations were conducted by Indonesian security forces.

<sup>8</sup> There have been sporadic incidents of violence in Aceh since the end of the conflict in particular around elections in 2006, 2009 and 2012. These include shootings (many of them fatal), grenade attacks and arson. In most cases the police were not able to bring the perpetrators to justice.

<sup>9</sup> Article 2.2 of the Helsinki MOU states that “a Human Rights Court will be established in Aceh” and Article 2.3 states that “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”. See Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (Helsinki MOU), 15 August 2005, weblink: <http://www.aceh-mm.org/download/english/Helsinki%20MoU.pdf>, accessed 4 March 2013.

<sup>10</sup> See for example Edward Aspinall, *Peace Without Justice?: The Helsinki Peace Process in Aceh*, Centre for Humanitarian Dialogue, 2007, (Aspinall, *Peace Without Justice?*), p27, weblink: [http://www.hdcentre.org/fileadmin/user\\_upload/Resources/Publications/pdf/56JusticeAcehfinalrevJUNE08.pdf](http://www.hdcentre.org/fileadmin/user_upload/Resources/Publications/pdf/56JusticeAcehfinalrevJUNE08.pdf), accessed 13 March 2013.

<sup>11</sup> See International Crisis Group (ICG), *Indonesia: Averting Election Violence in Aceh*, Asia Briefing N°135, 29 February 2012, (ICG, *Indonesia: Averting Election Violence in Aceh*), weblink: <http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/b135-indonesia-averting-election-violence-in-aceh.pdf>, accessed 4 March 2013.

<sup>12</sup> *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General* (UN Doc: S/2004/616), 24 August 2004, (*The rule of law and transitional justice in conflict and post-conflict societies*), para 17.

<sup>13</sup> These include, but not exclusively, victims of gross human rights violations that occurred in the aftermath of the 1965 abortive coup and the conflicts in Aceh, Papua and Timor-Leste (formerly East Timor), the enforced disappearances of 13 political activists in 1997-98 and victims of widespread sexual violence which took place during the May 1998 riots.

<sup>14</sup> See for example: Article 32, Additional Protocol I to the 1949 Geneva Conventions; Article 24 (2) of the International Convention for the Protection of All Persons from Enforced Disappearance; Principles 2 and 4 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, addendum to the Report of the independent expert (UN Doc: E/CN.4/2005/102/Add.1), 8 February 2005; Principle 24 of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly Resolution 60/147, 21 March 2006; and Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights, (UN Doc: E/CN.4/2006/91), 8 February 2006, para38 and Conclusions.

<sup>15</sup> See for example: Article IV of the Convention on the Prevention and Punishment of the Crime of Genocide; Articles 49, 50, 129 and 146 of the Geneva Conventions; Article 85 of Protocol Additional to

the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, 1950, Principle I; Article 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Articles 3, 4 and 5 of the International Convention for the Protection of All Persons from Enforced Disappearance; Preamble of the Rome Statute of the International Criminal Court, para 6; Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, adopted by General Assembly Resolution 3074 (XXVIII) of 3 December 1973; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions endorsed by General Assembly Resolution 44/162 of 15 December 1989; Principle 4 of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and Rule 158 of International Committee of the Red Cross's (ICRC) Customary Rules of International Humanitarian Law.

<sup>16</sup> See for example: Article 3 of 1907 Hague Convention IV; Article 91 of Protocol I, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 24 (4) of the International Convention for the Protection of All Persons from Enforced Disappearance; Article 75 of the Rome Statute of the International Criminal Court; United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and Rule 150 of ICRC's Customary Rules of International Humanitarian Law.

<sup>17</sup> *The Factory at Chorzów case (Germany v. Poland)*, Judgment, Permanent Court of International Justice, 13 September 1928, p47.

<sup>18</sup> See for example *Indonesia: Briefing to the UN Committee Against Torture* (Index: ASA 21/003/2008), (Amnesty International, *Indonesia: Briefing to UNCAT*), in particular Section 7.3: Ongoing impunity; *Indonesia: Briefing to the UN committee on the elimination of discrimination against women* (Index: ASA 21/022/2012), (Amnesty International, *Indonesia: Briefing to the CEDAW Committee*); *Timor-Leste: "We cry for justice": Impunity persists 10 years on in Timor-Leste* (Index: ASA 57/001/2009); *Indonesia and Timor-Leste: Amnesty International & Judicial System Monitoring Programme (JSMP), Justice for Timor-Leste: The Way Forward* (Index: ASA 21/006/2004).

<sup>19</sup> See Amnesty International, *Indonesia: Briefing to the CEDAW Committee*, Supra No18.

<sup>20</sup> On January 2013, the Aceh Reintegration Agency changed its name to the Aceh Peace Strengthening Agency (*Badan Penguatan Perdamaian Aceh, BP2A*). See *Serambi Indonesia*, "BRA Ganti Nama Jadi BP2A" [BRA replaces name to become BP2A], 12 February 2013, weblink: <http://aceh.tribunnews.com/2013/02/12/bra-ganti-nama-jadi-bp2a>, accessed 11 March 2013.

<sup>21</sup> Aceh became known as Nanggroe Aceh Darussalam in 2001 after the adoption of Law No. 18/ 2001 on Special Autonomy for Aceh. However Article 251(1) of Law No. 11/2006 on the Governing of Aceh reinstated the name of Aceh. In 2009 the Aceh Governor issued regulation No. 46/2009 to implement the change of name.

<sup>22</sup> Population survey according to provinces 1971, 1980, 1990, 1995, 2000 and 2010, Central Bureau of Statistics, weblink: [http://www.bps.go.id/tab\\_sub/view.php?kat=1&tabel=1&daftar=1&id\\_subyek=12&notab=1](http://www.bps.go.id/tab_sub/view.php?kat=1&tabel=1&daftar=1&id_subyek=12&notab=1), accessed 5 March 2013.

<sup>23</sup> In comparison, 3.48 per cent of the population is considered as poor in Jakarta, 6.77 per cent in Central Kalimantan, and 4.88 per cent in Bali. Papua province has the highest level of poverty with an estimated 36.80 per cent of the population poor. The national average is 13.33 per cent. Number and Percentage of poor inhabitants, Poverty Index per provinces [Indeks Kedalaman Kemiskinan (P1), and Indeks Keparahan Kemiskinan (P2)], 2010, Central Bureau of Statistics, weblink: [http://www.bps.go.id/tab\\_sub/view.php?kat=1&tabel=1&daftar=1&id\\_subyek=23&notab=1](http://www.bps.go.id/tab_sub/view.php?kat=1&tabel=1&daftar=1&id_subyek=23&notab=1), accessed 5 March 2013.

<sup>24</sup> See for example Amnesty International press releases, *Indonesian government must repeal caning bylaws in Aceh*, 22 May 2011, weblink: <http://www.amnesty.org/en/news-and-updates/indonesian-government-must-repeal-caning-bylaws-aceh-2011-05-20>, accessed 5 March 2013; and *Indonesia must repeal "cruel" new stoning and caning law*, 17 September 2009, weblink: <http://www.amnesty.org/en/news-and-updates/news/indonesia-must-repeal-cruel-new-stoning-caning-law-20090917>, accessed 5 March 2013.

<sup>25</sup> See United Nations Environment Programme, *After the Tsunami: Rapid Environmental Assessment*, February 2005, p18, weblink: [http://www.unep.org/tsunami/reports/TSUNAMI\\_report\\_complete.pdf](http://www.unep.org/tsunami/reports/TSUNAMI_report_complete.pdf), accessed 12 March 2013.

<sup>26</sup> The Free Aceh Movement was then known as Aceh/Sumatra National Liberation Front, ASNLF.

<sup>27</sup> See Tim Kell, *The Roots of Acehese Rebellion, 1989-1992* (Kell, *The Roots of Acehese Rebellion*), Equinox Publishing, 2010. See also Anthony Reid, *Verandah of Violence: The Background to the Aceh Problem*, University of Washington Press, 2006, in particular Chapter 6 "Colonial transformation: A bitter legacy".

<sup>28</sup> See Kell, *The Roots of Acehese Rebellion, 1989-1992*, Supra No27.

<sup>29</sup> Hasan di Tiro's grandfather, Teungku Cik di Tiro, had been one of the leaders of the resistance to the Dutch in the 1890s. Hasan Tiro had gone to the United States a student in 1950 and remained there as a businessman until 1976 where he returned to found the Aceh-Sumatra National Liberation Front (ASNLF). He fled to Sweden three years later but returned to Indonesia in 2008 and died in 2010, a day after he was reinstated as an Indonesian citizen. See Harold Crouch, "Resolving the Separatist Challenge in Aceh" *Political Reform in Indonesia after Soeharto*, 2010; and *BBC News*, "Free Aceh rebel group founder Hasan di Tiro dies", 3 June 2010, weblink: <http://www.bbc.co.uk/news/10225928>, accessed 29 March 2013.

<sup>30</sup> Others who escaped to Sweden include Dr. Zaini Abdullah, the former GAM "foreign minister" who was elected as Governor of Aceh in 2012. In *Visi dan Misi, Dr H. Zaini Abdullah – Muzakir Manaf, Periode 2012-2017*.

<sup>31</sup> Amnesty International, "*Shock therapy*", Supra No4.

<sup>32</sup> Amnesty International, "*Shock therapy*", Supra No4, p2 and p12-13.

<sup>33</sup> See Section 2.3 "Human rights abuses by Aceh Merdeka", in "*Shock therapy*", Supra No4, p10 and Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3.

<sup>34</sup> See for example Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No4, p6.

<sup>35</sup> In the early 1990s, military authorities described the violence by some members of the Free Aceh Movement (then Aceh Merdeka) as “acts of terrorism”. These claims were then used to justify the deployment of additional troops and the start of an intensive counter-insurgency campaign. In November 1990, the Regional Military Commander, Major General H.R. Pramono, said: “*I have told the community, if you find a terrorist, kill him. There's no need to investigate him. Don't let people be the victims. If they don't do as you order them, shoot them on the spot, or butcher them. I tell members of the community to carry sharp weapons, a machete or whatever. If you meet a terrorist, kill him*”. Extract from Amnesty International report “*Shock Therapy*”, Supra No4, quoted from interview with Major General H.R. Pramono, *Tempo*, 17 November 1990; translation as cited in JPRS-SEA-90-034, 26 December 1990. See generally, Michelle Ann Miller, *Rebellion and Reform in Indonesia: Jakarta's security and autonomy policies in Aceh*, Routledge, 2010, (Miller, *Rebellion and Reform in Indonesia*) ; Elizabeth F. Drexler, *Aceh, Indonesia: Securing the Insecure State*, University of Pennsylvania Press, 2009; Edward Aspinall, *Islam and Nation: Separatist Rebellion in Aceh, Indonesia*, NUS Press, 2009.. See also previous Amnesty International reports on the conflict in Aceh, Supra No4.

<sup>36</sup> See also Dyah Rahmany P., *Rumoh Geudong: Tanda luka orang Aceh [Rumoh Geudong: The Scar of the Acehnese]*, Cordova Institute for Social Empowerment, 2001, (Dyah Rahmany P., *Rumoh Geudong*), pp41-42; Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3, pp120-136; and KontraS, *Aceh, damai dengan keadilan?: Mengungkap Kekerasan Masa lalu [Aceh, peace with justice: Resolving past violence]*, KontraS 2006, pp63-64.

<sup>37</sup> Dyah Rahmany P., *Rumoh Geudong*, Supra No36, p104.

<sup>38</sup> See also Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3, pp120-136; Dyah Rahmany P., *Rumoh Geudong*, Supra No36, p160.

<sup>39</sup> Amnesty International, *Activists at risk in Aceh*, Supra No4, pp11-12.

<sup>40</sup> In March 1999, President B. J. Habibie, visited Aceh where he apologized “for what has been done by the security forces, by accident or deliberately”. See Aspinall and Crouch, *The Aceh Peace Process: Why it Failed*, Supra No1, p6.

<sup>41</sup> *Serambi Indonesia*, “ABRI Minta Maaf kepada Rakyat Aceh” [Military apologizes to Acehnese people], 8 August 1998. General Wiranto was Commander of the Indonesian Armed Forces from February 1998 until October 1999. He also served as Indonesia's Minister of Defence from March 1998 until October 1999. In February 2003 General Wiranto was indicted by the UN Serious Crimes Unit for crimes against humanity committed in the context of the 1999 independence referendum in Timor-Leste (formerly East Timor) and its aftermath. However General Wiranto has yet to be prosecuted for these crimes by any court in Indonesia, Timor-Leste or elsewhere.

<sup>42</sup> See also Amnesty International, *Indonesia: Recent Violence in Aceh: An internal briefing for governments* (Index: ASA 21/01/99); Amnesty International, *Indonesia: renewed violence plunges Aceh province back into terror* (Index: ASA 21/02/99); Amnesty International, *Indonesia: A cycle of violence for Aceh's children* (Index: ASA 21/059/2000); Amnesty International, *Indonesia: The impact of impunity on women in Aceh*, Supra No4, Amnesty International, *Indonesia: Activists at risk in Aceh*, Supra No4.

<sup>43</sup> See Schulze *The Free Aceh Movement (GAM): Anatomy of a Separatist Organization*, pp26-28 and p39 and Human Rights Watch, *The War in Aceh*, August 2001, Vol. 13, No. 4 (HRW, *The War in Aceh*), pp 22-25, weblink: <http://www.hrw.org/reports/2001/aceh/indacheh0801.pdf>, accessed 20 March 2013.

<sup>44</sup> See KontraS Aceh Press Statement, "4,908 peoples were victims of violence in Aceh", 3 December 2002 (on file with Amnesty International); and the NGO Shadow report submitted to the Committee against Torture, *The practice of torture in Aceh and Papua 1998-2007 with an annex on the situation of human rights in Timor Leste*, 2007, p56, (NGO Shadow report to the Committee against torture), weblink: <http://www2.ohchr.org/english/bodies/cat/docs/ngos/ShadowReportIndonesia40.pdf>, accessed 5 March 2013.

<sup>45</sup> President Abdurrahman Wahid (October 1999 – July 2001), initiated a dialogue between the two parties to the conflict mediated by the Switzerland-based Centre for Humanitarian Dialogue (HDC), then called the Henry Dunant Centre. At the same time, a law was drafted with a view to offering the Acehnese a greater level of autonomy in the government and administration of the province and greater control over revenues from natural resources. The law on special autonomy was regarded by observers as being intended to provide an alternative to independence and thereby undercut support for GAM's armed struggle. See Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No4, p4.

<sup>46</sup> Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No4, p5.

<sup>47</sup> See Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No4, p6.

<sup>48</sup> Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No4, p2.

<sup>49</sup> Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No4, p19.

<sup>50</sup> See Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No4, p6 and pp44-46.

<sup>51</sup> Prior to his election as President of the Republic of Indonesia, Susilo Bambang Yudhoyono was Co-ordinating Minister of Political, Legal and Security Affairs (2001-2004) under the then President Megawati Sukarnoputri. He had reportedly tried to keep negotiations between the Indonesian government and GAM alive after it halted on 24 April 2003 and seek alternatives to an all-out war. On 18 May 2003 he announced the presidential decision to impose martial law on Aceh province and was made the Head of the Central Implementing Agency for the Military Emergency (*Badan Pelaksana Harian Penguasa Darurat Militer Pusat*). See ICG, *Aceh: Why The Military Option Still Won't Work*, Asia Briefing N°26, 9 May 2003, pp2-3; *BBC*, "Martial law declared in Aceh", 18 May 2003, weblink: <http://news.bbc.co.uk/2/hi/asia-pacific/3038605.stm>, accessed 5 March 2013; and *Liputan6.com*, "Aceh Darurat Militer", 19 May 2003, weblink: <http://news.liputan6.com/read/54846/aceh-darurat-militer>, accessed 5 March 2013.

<sup>52</sup> See for example Accord Issue 20, "Delivering Peace For Aceh: An interview with President Martti Ahtisaari" in Conciliation Resources, *Reconfiguring politics: the Indonesia - Aceh peace process*, 2008, weblink: [http://www.c-r.org/sites/c-r.org/files/Accord%2020\\_5Delivering%20peace%20for%20Aceh\\_2008\\_ENG.pdf](http://www.c-r.org/sites/c-r.org/files/Accord%2020_5Delivering%20peace%20for%20Aceh_2008_ENG.pdf), accessed 29 March 2013.

<sup>53</sup> See Damien Kingsbury, *Peace in Aceh: a personal account of the Aceh peace process*, Equinox Publishing, Jakarta, Indonesia 2006 and Edward Aspinall, "Aceh's no win election" *Inside Indonesia*, 106: Oct-Dec 2011, weblink: <http://www.insideindonesia.org/weekly-articles/aceh-s-no-win-election>,

accessed 29 March 2013.

<sup>54</sup> See *Agence France Presse (AFP)*, "Three Aceh rebels die in clash with military despite apparent ceasefire", 2 January 2005; *AFP*, "Indonesian troops kill 120 Aceh rebels in past two weeks", 20 January 2005; *Reuters*, "Indonesia soldier killed in clash with Aceh rebels" 21 February 2005; and *Associated Press (AP)*, "Aceh Rebels Accuse Jakarta of Stepping Up Campaign Ahead of Peace Talks", 10 April 2005.

<sup>55</sup> International monitors and international staff of humanitarian agencies were subject to restricted access to Aceh during 2003-2004, and were required to obtain permits to travel to the provincial capital, Banda Aceh, and to obtain further permission to travel beyond the capital. Such permits were issued infrequently, and even then, often with strict time and location restrictions. In February 2005, Amnesty International delegates were refused access to conduct research in Aceh.

<sup>56</sup> See paragraph three of the preamble, Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, signed in Helsinki, Finland 15 August 2005 (Or Supra No9).

<sup>57</sup> In a document published in September 2005, Amnesty International welcomed the release of those who may have been imprisoned solely due to their peaceful activities in Aceh, however it recommended that those who may have perpetrated serious human rights violations and abuses were not granted amnesties and all cases of past abuses be investigated and perpetrators brought to justice. See Amnesty International, *Indonesia: A briefing for EU and ASEAN countries concerning the deployment of the Aceh Monitoring Mission to Nanggroe Aceh Darussalam Province* (Index: ASA 21/017/2005), (Amnesty International, *A briefing for EU and ASEAN*).

<sup>58</sup> Most prisoners were released on 31 August 2005 following the issuance of Presidential Decision No. 22/2005 the day before. "After the initial release in August 2005, GAM informed the Government of Indonesia and [the Aceh Monitoring Mission] that there were still individuals incarcerated throughout Indonesia whom, according to GAM, should be amnestied and released pursuant to the MOU. In order to resolve these cases, a tri-partite working group was established. This group succeeded in facilitating agreement between the parties in a number of cases. However, in an attempt to facilitate further progress, [the Aceh Monitoring Mission] recruited a former Swedish judge internationally experienced in handling amnesty issues. As the parties mutually agreed on cases, individuals were granted amnesty and released. By way of these facilitation efforts, the parties finally reached consensual agreement on all pending amnesty cases and declared that there were no disputed amnesty cases requiring the decision of the Head of Mission". Extract from Aceh Monitoring Mission website, weblink: [http://www.aceh-mm.org/english/headquarter\\_menu/amnesty.htm](http://www.aceh-mm.org/english/headquarter_menu/amnesty.htm), accessed 5 March 2013. See also *Keppres No: 22 Tahun 2005 tentang Pemberian Amnesti Umum dan Abolisi kepada setiap orang yang terlibat dalam Gerakan Aceh Merdeka* [Presidential Decision No. 22 Year 2005 on granting amnesty and abolition to any person involved in the Free Aceh Movement], weblink: [http://dapp.bappenas.go.id/website/peraturan/file/pdf/KEPPRES\\_2005\\_022.pdf](http://dapp.bappenas.go.id/website/peraturan/file/pdf/KEPPRES_2005_022.pdf), accessed 5 March 2013.

<sup>59</sup> In Indonesia non-organic troops are those not deployed on a regular basis in a given region but deployed when a conflict situation escalates to a level that "organic" territorial units cannot handle.

<sup>60</sup> On 15 September 2005, the Aceh Monitoring Mission was launched. It included representatives from the European Union, Norway, Switzerland, Thailand, the Philippines, Singapore, Malaysia and Brunei Darussalam. See CMI website, <http://www.cmi.fi/activities/past-projects/aceh-1>, accessed 12 March 2013.

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<sup>61</sup> Megawati Sukarnoputri, the head of the PDI-P party claimed the MOU “threatened the existence of the nation” while her party Secretary General, Pramono Anung said that the MOU “clearly contains the substance of giving independence to Aceh”. Akbar Tanjung the former head of the Golkar party also protested against the MOU claiming that it “is in conflict with the spirit of the NKRI”. Former army Deputy Chief Lt. Gen (Ret) Kiki Syahnakri said that “the MOU amputates Indonesian sovereignty”. See Crouch, *Political Reform in Indonesia after Soeharto*, ISEAS Publishing, 2010, p305.

<sup>62</sup> The issue of local political parties in Aceh became the main stumbling block during the Helsinki talks, and almost derailed it. There was opposition to local political parties by government officials, members of the House of Representatives and the military. See Edward Aspinall, *The Helsinki Agreement: A More Promising Basis for Peace in Aceh?*, East-West Center, Washington, 2005, p39; and Crouch, *Political Reform in Indonesia after Soeharto*, Supra No61, p302.

<sup>63</sup> See EU Secretariat “EU monitoring mission in Aceh (Indonesia) Factsheet”, 22 May 2006, weblink: [http://www.consilium.europa.eu/uedocs/cmsUpload/060522-Aceh\\_Council\\_Factsheet-REV5.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/060522-Aceh_Council_Factsheet-REV5.pdf), accessed 12 March 2013. See also AP, “Former Aceh rebels disband military wing, more Indonesian troops pull out”, 27 December 2005; AP, “Indonesian Rebels End 30-Year Insurgency”, 27 December 2005; AFP, “EU welcomes troop pullout from Aceh”, 30 December 2005; and *Tempo Interactive*, “TNI Completes Withdrawal of Troops from Aceh”, 30 December 2005.

<sup>64</sup> See CMI website, Supra No2.

<sup>65</sup> Law No. 44/1999 on the implementation of the Specialty of the Special Province of Aceh, which was enacted on 4 October 1999, defines the special characteristics of Aceh and was not invalidated by the LoGA. However, Law No. 18/2001 on Special Autonomy for the Special Province of Aceh as Province of Nanggroe Aceh Darussalam (NAD) was invalidated by the LOGA. In CMI, *Final Report*, Supra No2.

<sup>66</sup> Acehnese political parties have contested both elections held in the province since the MOU was signed. However, the creation of Acehnese political parties has led to a rift between different factions of GAM, with former allies running against each other in closely fought election campaigns. For further information see ICG, *Indonesia: Gam vs Gam in the Aceh Elections*, Asia Briefing N°123, 15 June 2011, (ICG, *Indonesia: Gam vs Gam in the Aceh Elections*), weblink: <http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/indonesia/B123%20Indonesia%20---%20Gam%20vs%20Gam%20in%20the%20Aceh%20Elections.pdf>, accessed 12 March 2013.

<sup>67</sup> See for example ICG, *Indonesia: Averting Election Violence in Aceh*, Supra No11; ICG, *Indonesia: Gam vs Gam in the Aceh Elections*, Supra No66; and ICG, *Indonesia: Deep Distrust in Aceh as Elections Approach*, Asia Briefing N°90, 23 March 2009.

<sup>68</sup> Interview with Zulkifli, Banda Aceh, 8 May 2012. His real name has been changed.

<sup>69</sup> During its visit to Aceh in May 2012, Amnesty International met with relatives of victims of enforced disappearances by members of the security forces, however it did not meet with relatives of victims of abductions conducted by GAM, or unknown persons.

<sup>70</sup> Article 32, Additional Protocol I to the 1949 Geneva Conventions; Rule 117, ICRC's Rules of Customary International Humanitarian Law.

<sup>71</sup> It states: “Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.”

<sup>72</sup> Human Rights Committee, *Elena Quinteros Almeida and Maria del Carmen Almeida de Quinteros v.*

Uruguay, (Communication No. 107/1981), (UN Doc: CCPR/C/19/D/107/1981), 21 July 1983, para 14; European Court of Human Rights, *Cyprus v. Turkey* (application no. 25781/94), Judgment of 10 May 2001, Reports of Judgments and Decisions, 2001-IV, para 157; Inter-American Court of Human Rights, *Ernest Rafael Castillo Páez v. Peru* (petition no. 10.733), Judgment, 3 November 1997, para. 90; Inter-American Court of Human Rights, *Efraín Bámaca Velásquez v. Guatemala* (petition no. 11.129), Judgment, 25 November 2000, para 200-201.

<sup>73</sup> Human Rights Chamber for Bosnia and Herzegovina, *The 'Srebrenica Cases' (49 applications) v. The Republika Srpska* (case no. CH/01/8365 et al.), Decision on admissibility and merits, 7 March 2003, paras 174-178.

<sup>74</sup> Addendum to the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher (UN Doc: E/CN.4/2005/102/Add.1), 8 February 2005.

<sup>75</sup> In 2006 Komnas Ham issued its report on the enforced disappearances of 13 pro-democracy activists in Jakarta that occurred in 1997 and 1998 recommending the establishment of an *ad hoc* Human Rights Court and the investigation of those suspected of criminal responsibility for these abductions. Following on from this, in September 2009, the Indonesian Parliament made a number of recommendations to the Indonesian President including creating an *ad hoc* Human Rights Court to try those responsible for enforced disappearances in 1997-1998; conducting an immediate search for the 13 disappeared activists; the provision of "rehabilitation and compensation" to the victims' families; and the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. These recommendations have yet to be implemented.

<sup>76</sup> Amnesty International interview, Banda Aceh, 8 May 2012.

<sup>77</sup> See Amnesty International, *Indonesia: Protecting the protectors: human rights defenders and humanitarian workers in Nanggroe Aceh Darussalam*, (Index: ASA 21/024/2003), (Amnesty International, *Protecting the protectors*).

<sup>78</sup> Komnas HAM's mandate is laid out in Presidential Decree No. 50: it is to "*monitor and investigate the implementation of human rights and present views, considerations and suggestions to state institutions on the implementation of human rights*" (Article 5c). The Human Rights Act (Law No 39/1999) clarifies that Komnas HAM "*functions to study, research, disseminate, monitor and mediate human rights issues*" (Article 16). In particular, Komnas HAM is charged with and authorized to: investigate and examine incidents occurring in society which either by their nature or scope are likely to constitute violations of human rights (Article 89.3b) and submit recommendations concerning cases of human rights violations to the Government or the House of Representatives for their follow-up (Article 89.4.d & e). Under Article 18 of the Law on Human Rights Courts (Law No.26/2000), Komnas HAM is also specifically mandated to conduct inquiries into cases of gross abuse of human rights. In order to do so, it may form an *ad hoc* team comprising Komnas HAM and public constituents.

<sup>79</sup> See Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3, p50; and Amnesty International, *Activists at risk in Aceh*, Supra No4, p11.

<sup>80</sup> See Miller, *Rebellion and Reform in Indonesia*, Supra No35, p20.

<sup>81</sup> *Sydney Morning Herald*, 25 August 2008, "Rights watchdog says 781 people killed in Aceh", weblink: <http://www.antenna.nl/indonesie/mn07020.html>, accessed 27 March 2013.

<sup>82</sup> Amnesty International, *Activists at risk in Aceh*, Supra No4, p11.



- <sup>83</sup> See International Center for Transitional Justice (ICTJ) and KontraS (The Commission for the Disappeared and Victims of Violence), *Derailed: Transitional Justice in Indonesia since the Fall of Soeharto*, April 2011, p19 (ICTJ and KontraS, *Derailed*); ICG, "Indonesia: Impunity versus Accountability", 2 February 2001; *Atjehpost*, "Wiranto Cabut DOM di Aceh" [Wiranto repeals DOM in Aceh], 7 August 1998, weblink: <http://atjehpost.com/read/2012/08/07/17078/0/39/7-Agustus-1998-Wiranto-Cabut-DOM-di-Aceh>, accessed 25 March 2013; and *Berita Utama Waspada*, "Ada 7000 Pelanggaran HAM Di Aceh:Lima Kasus Segera Dituntaskan" [There are 7000 cases of human rights abuses in Aceh: 5 cases should be resolved immediately], weblink: <http://www.library.ohiou.edu/indopubs/1999/11/16/0000.html>, accessed 31 March 2013.
- <sup>84</sup> Amnesty International, *Activists at risk in Aceh*, Supra No4.
- <sup>85</sup> See ICTJ and KontraS, *Derailed*, Supra No83, p19.
- <sup>86</sup> Article 3 (h) of the Presidential Decree No. 88/1999.
- <sup>87</sup> In May 2004, the status of Aceh (then called Nanggroe Aceh Darussalam, NAD) was downgraded from a military to a civil emergency status.
- <sup>88</sup> See *Jakarta Post*, "Violations rampant during martial law: Rights body", 24 May 2004, weblink: <http://www.thejakartapost.com/news/2004/05/24/violations-rampant-during-martial-law-rights-body.html>, accessed 12 March 2013; *Inilah.com*, "Komnas Didesak Tuntaskan 70 Pelanggaran HAM Aceh" [National Human Rights Commission urged to resolve 70 cases of human rights violations], 8 October 2011, weblink: <http://www.inilah.com/read/detail/1783000/komnas-didesak-tuntaskan-70-pelanggaran-ham-aceh>, accessed 12 March 2013; Amnesty International interviews in Jakarta, April 2012.
- <sup>89</sup> Amnesty International E-mail conversation with confidential contact, 26 March 2013.
- <sup>90</sup> Amnesty International E-mail correspondence with Koalisi NGO HAM, 20 March 2013. See also *Serambi Indonesia*, "Koalisi HAM Gugat Komnas HAM" [Human rights coalition files a legal challenge against the National Human Rights Commission], 5 March 2013, weblink: <http://aceh.tribunnews.com/2013/03/05/koalisi-ham-gugat-komnas-ham>, accessed 18 March 2013.
- <sup>91</sup> See *Kompas*, "Komnas HAM Bentuk KPP HAM Aceh" [Komnas HAM forms a human rights investigation commission], 19 August 2008, weblink: <http://www1.kompas.com/read/xml/2008/08/19/1543104/komnas.ham>, accessed 12 March 2013.
- <sup>92</sup> KontraS Aceh, *Laporan Situasi HAM Aceh Tahun 2009 [Report on Human Rights Situation in Aceh year 2009]*, February 2010, pp30-31, weblink: <http://www.kontrasaceh.org/wp-content/uploads/2011/07/Laporan-HAM-2009.pdf>, accessed 12 March 2013.
- <sup>93</sup> Updated Set of principles for the protection and promotion of human rights through action to combat impunity (UN Doc: E/CN.4/2005/102/Add.1), 8 February 2005.
- <sup>94</sup> *The rule of law and transitional justice in conflict and post-conflict societies*, Supra No12, para 50.
- <sup>95</sup> See Law on the Truth and Reconciliation Commission (Law No. 27/2004), struck down in 2006.
- <sup>96</sup> Constitutional Court of Indonesia, Decision on the Petition for Judicial Review on the Law of the Republic of Indonesia number 27 year 2004 concerning the Truth and Reconciliation Commission against the 1945 Constitution of the Republic of Indonesia, Number 006/PUU-IV-2006, 8 December 2006. Article 27 of the Law on a Truth and Reconciliation Commission had provided that: "Compensation and rehabilitation... may be awarded when a request for amnesty is granted."

<sup>97</sup> April 2012 draft, on file with Amnesty International.

<sup>98</sup> Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, signed in Helsinki, Finland 15 August 2005.

<sup>99</sup> See Article 229 (2) of the Law No. 11/2006 on the Governing of Aceh. The law is silent on what would happen should the national Truth and Reconciliation Commission fail to be established.

<sup>100</sup> The first public controversy about the meaning of the MoU started one day after it was signed, and concerned the interpretation of the Human Rights Court. GAM negotiator Nur Djuli said that the court would have retroactive authority and would be able to rule on past human rights abuses (quoted from *Tempo Interactive*, August 16, 2005). National military and government leaders immediately countered, saying that this would not be the case, and that 'scratching open' the old sores left from the past would "endanger the peace" (quoted from *Analisa*, 26 August 2005). In Aspinall, *Peace Without Justice?*, Supra No10, p27. See also comments from member of the House of People's Representative Sidharto Danusubroto, who criticized the MOU for containing provisions for the setting-up of a human rights court, saying that it was not needed for Aceh. In *Gatra* "Anggota DPR: SBY dan Kalla Layak Diberi Nobel" [Parliamentarians: SBY and Kalla deserve the Nobel prize], 31 August 2005. Another member of the House of People's Representatives Effendy Choirie said that there should be no retroactive clause to look at past abuses and emphasized the need to look to the future, especially as GAM also committed abuses over the last decades and they were granted an amnesty. In *Tempo*, "Panglima TNI : Pelanggaran HAM di Aceh Jangan Berlaku Surut" [Military Chief: Human rights abuses in Aceh should not be judged retroactively ], 18 August 2005. The head of the military Endriartono Sutarto further emphasized the need for both parties to look to the future and not the past such as the human rights abuses which were committed in Aceh by both the military and GAM. In *Tempo* "Jenderal Sutarto: Jangan Melihat ke Belakang" [General Sutarto: Don't look back], 17 August 2005.

<sup>101</sup> See Visi dan Misi Dr. H Zaini Abdullah-Muzakir Manaf: Pasangan Perjuangan dan Perdamaian untuk Pemerintah Aceh 2012-2017 [Vision and Mission of Dr. H Zaini Abdullah-Muzakir Manaf: Partnership of Struggle and Peace for Aceh Government 2012-2017], weblink: <http://zaini-muzakir.com/images/stories/visimisi.pdf>, accessed 12 March 2013. Dr H. Zaini Abdullah, a Sweden based senior GAM representative and Muzakir Manaf, a former GAM field commander and head of the Aceh Party (2007 -2012), the local political party created by the leadership of GAM, were elected as governor and vice governor respectively.

<sup>102</sup> Amnesty International sent a letter to the Aceh Governor (Ref: TG ASA 21/2013.001) on 31 January 2013 to seek clarification about the local government's position on truth, justice and reparation for victims during the Aceh conflict however, at the time of writing the organization had yet to receive a response.

<sup>103</sup> Interview with Amnesty International, Banda Aceh, 7 May 2012. See also CMI, Final Report, Supra No2, and International Center for Transitional Justice (ICTJ), *Considering victims, the Aceh Peace Process from a Transitional Justice Perspective*, January 2008.

<sup>104</sup> Article 230, Law on Governing Aceh (LoGA), Law No. 11/2006.

<sup>105</sup> Amnesty International E-mail correspondence, May 2012.

<sup>106</sup> See Amnesty International, *Indonesia: Aceh parliament must not deny victims their rights*, (Index: ASA 21/036/2012).

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<sup>107</sup> See *Atjehlink*, "Qanun KKR Prioritas DPRA 2013" [Truth and Reconciliation commission bylaw prioritized by Aceh parliament for 2013], weblink: <http://atjehlink.com/qanun-kkp-prioritas-dpra-2013/>, accessed 25 February 2013.

<sup>108</sup> See *Suara Pembaruan*, "Aksi Demontran Masih Duduki Gedung DPR Aceh" [Demonstrators still occupying Aceh parliament], 10 December 2010, weblink: <http://www.suarapembaruan.com/home/aksi-demontran-masih-duduki-gedung-dpr-aceh/1831>, accessed 12 March 2013; and *VIVA News*, "Korban Konflik Aceh Tuntut Pembentukan KKR"[Aceh conflict victims demand formation of Truth and Reconciliation commission], 8 December 2010, weblink: <http://us.nasional.news.viva.co.id/news/read/192803-korban-konflik-aceh-tuntut-pembentukan-kkk>, accessed 12 March 2013.

<sup>109</sup> CMI, Final Report, Supra No2.

<sup>110</sup> Not her real name. Amnesty International interview, 10 May 2012.

<sup>111</sup> Not his real name. Interview with Amnesty International, 8 May 2012.

<sup>112</sup> The definition of rape in the Elements of Crimes contain the following aspects: (1) "The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body", and (2) "The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent". In Report of the Preparatory Commission for the International Criminal Court Elements of Crimes Article 8 (2) (e) (vi)-1, UN Doc. PCNICC/2000/1/Add.2, 2 November 2000.

<sup>113</sup> These can either be a testimony from a witness (including victim), the defendant, an expert, a letter, or a sign/ indication (*petunjuk*) (Articles 183-184). In practice most cases will require evidence of semen through medical records (*visum et repertum*).

<sup>114</sup> According to the Article 185(2) of the current Criminal Procedure Code "the testimony of one witness alone is not sufficient to prove an accused is guilty" and therefore the courts require a corroborating witness. See also National Commission on Violence against Women (Komnas Perempuan), "Indonesia's Compliance with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment: Issues for Discussion with the Committee Against Torture", April 2008, p2.

<sup>115</sup> See Amnesty International, *Indonesia: Briefing to the CEDAW Committee*, Supra No18, Section 4.1 Gender-based violence and the law and Section 4.3 Gender sensitive procedures for crimes of gender-based violence.

<sup>116</sup> See Amnesty International, *Indonesia: Open letter to the House of People's Representatives on the reviewing and passing of a new Criminal Code* (Index: ASA 21/022/2009), and Amnesty International, *Indonesia: Briefing to the CEDAW Committee*, Supra No18, pp21-22.

<sup>117</sup> See Indonesia's 2011-2014 National Human Rights Action Plan (Kegiatan RANHAM Indonesia Tahun 2011 – 2014), weblink: [http://www.depdagri.go.id/media/documents/2011/08/26/f/i/i-1\\_1.pdf](http://www.depdagri.go.id/media/documents/2011/08/26/f/i/i-1_1.pdf), accessed 5 March 2013.

<sup>118</sup> The permanent human rights court based in Medan encompasses the provinces of North Sumatra, the Special district of Aceh, Riau, Jambi, and West Sumatra (Article 45). Article 45 also provides for the establishment of three other permanent human rights courts in Central Jakarta (covering Greater Jakarta

and the provinces of West Java, Banten, South Sumatra, Lampung, Bengkulu, West Kalimantan, and Central Kalimantan), Surabaya (covering the provinces of East Java, Central Java, the Special District of Yogyakarta, Bali, South Central Java, South Kalimantan, East Kalimantan, West Nusa Tenggara and East Nusa Tenggara) and Makassar (covering the provinces of South Sulawesi, Southeast Sulawesi, Central Sulawesi, North Sulawesi, South East Sulawesi, Central Sulawesi, North Sulawesi, Maluku, North Maluku, and Papua. To date only one case has been tried before a permanent court. The two accused were both acquitted. See Amnesty International, *Indonesia: Briefing to UNCAT*, Supra No18, Section 7.3.2: The Human Rights Courts – The Abepura case.

<sup>119</sup> Presidential Decision 31/2001 states that the permanent human rights court in Medan will be based at the Medan District Court. According to the Indonesian government the permanent human rights courts have been set up and judges have been appointed. See *Committee on the Elimination of Discrimination against Women, Fifty-second session, Summary record of the 1043<sup>rd</sup> meeting, 5 December 2012* (UN Doc: CEDAW/C/SR.1043) (CEDAW Committee, *Fifty-second session, Summary record of the 1043<sup>rd</sup> meeting*), para 20.

<sup>120</sup> For additional comments on the Law on Human Rights Courts by Amnesty International, see *Amnesty International's Comments on the Law on Human Rights Courts (Law No.26/2000)* (Index: ASA 21/005/2001).

<sup>121</sup> The definition is not consistent with the definition of crimes against humanity in the Rome Statute of the International Criminal Court. In particular, it excludes: "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".

<sup>122</sup> See for example Amnesty International, *Indonesia: Briefing to UNCAT*, Supra No18, sections 7.2.1 and 7.2.2.

<sup>123</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>124</sup> *R v Sussex Justices, Ex parte McCarthy* ([1924] 1 KB 256, [1923] All ER Rep 233

<sup>125</sup> Article 25 Law No. 26/2000.

<sup>126</sup> Article 2.2 states: "A Human Rights Court will be established for Aceh."

<sup>127</sup> Article 3.1.1.

<sup>128</sup> CMI, Final Report, pp20-21, Supra No2.

<sup>129</sup> There are two types of criminal offences covered under the Military Criminal Code: those that are set out in Indonesia's Criminal Code, and those which are specific military criminal offences such as crimes against national security (Articles 64-72 of the Military Penal Code), crimes against a superior (Articles 97-117), and crimes related to performance of mandatory military duties (Articles 118-139).

<sup>130</sup> They can be tried by a mixed panel of civilian and military judges with power for the Chief Justice of the Supreme Court to refer the case to a military court. This is in accordance with Law No4/2004, which amended Law No.35/1999 on Judicial Power.

<sup>131</sup> See Human Rights Watch, *Letter to Chairman Stamboel on Indonesia's Military Court System*, 22 April 2010, weblink: <http://www.hrw.org/news/2010/04/21/letter-chairman-stamboel-indonesias-military-court-system>, accessed 5 March 2013.

<sup>132</sup> CMI, Final Report, Supra No2, p18.

<sup>133</sup> See Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3, pp56-57.

<sup>134</sup> Concerning the case which involved the rape of a woman in Pidie district in 1996, a military tribunal in Medan reportedly ruled that the perpetrator should pay the victim 50,000 rupiah per month (Equivalent of 5 USD) as maintenance for the child she had conceived following the rape. See Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2000/49, Addendum Communications to and from Governments, UN Doc: E/CN.4/2002/83/Add.1, 28 January 2002, para 41 and Amnesty International, *The impact of impunity on women in Aceh*, Supra No4, pp1-2.

<sup>135</sup> See Amnesty International, *Activists at risk in Aceh*, Supra No4, pp11-12.

<sup>136</sup> See Human Rights Watch, *Indonesia: Aceh Trial - Amnesty International and Human Rights Watch Call for Full Accountability*, 17 May 2000, weblink: <http://www.hrw.org/news/2000/05/16/indonesia-aceh-trial-amnesty-international-and-human-rights-watch-call-full-accounta>, accessed 18 March 2013.

<sup>137</sup> See Otto Syamsuddin Isyak, *Peristiwa Idi Cut, Aceh: Dari tragedi ke impunitas [Idi Cut Incident: From Tragedy to Impunity]*, Cordova, 2001; Amnesty International, *Urgent Action: Indonesia: Risk of torture or ill-treatment* (Index: ASA 21/07/99), 9 February 1999; NGO Shadow report to the Committee against torture, Supra No44, p58.

<sup>138</sup> See Amnesty International, *Activists at risk in Aceh*, Supra No4, pp11-12.

<sup>139</sup> Under Article 18 of the Law on Human Rights Courts, preliminary *pro-justicia* "inquiries" into cases of gross violations of human rights, including torture as a crime against humanity, may only be conducted by Komnas HAM, which may form an *ad hoc* team comprised of the National Commission on Human Rights and public constituents to carry out the inquiry.

<sup>140</sup> Article 20 (1), Law No. 26/2000.

<sup>141</sup> "The Attorney General's office in Jakarta argued that to change the charges from murder to serious human rights violations would mean that the investigation would have to start from scratch and all suspects would have to be released" in Human Rights Watch, *The War in Aceh*, Supra No43, p34.

<sup>142</sup> See *Tempo Interactive*, "Komnas HAM Teliti Kasus Pembantaian di Aceh Timur" [Komnas HAM investigates East Aceh massacre], 25 August 2001. Further information obtained during Amnesty International interviews in Jakarta, April 2012.

<sup>143</sup> Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3, pp187-191; and KontraS/Koalisi NGO HAM investigation report (on file with Amnesty International).

<sup>144</sup> Amnesty International is aware of two cases which occurred during the humanitarian pause which led to prosecutions: (1) the case of Teungku Bantaqiah highlighted earlier as part of the KPTKA process, and (2) the KNPI case. In January 1999, members of the security forces beat dozens of people at the Indonesia National Youth Council building which left four dead. A major and four soldiers were subsequently sentenced to six and seven years respectively by a military court and dismissed from military service. The army provided no information about the location of the detention or date of their dismissal. See ICTJ and KontraS, *Derailed*, Supra No83 p52.

<sup>145</sup> See *The Jakarta Post*, "TNI admits to wrongdoings in Aceh", 6 June 2004, weblink:

<http://www.thejakartapost.com/news/2004/05/06/tni-admits-wrongdoings-aceh.html>, accessed 23 March 2013.

<sup>146</sup> Lesley McCulloch, *Aceh: Then and Now*, Minority Rights Group International, 2005, p21, weblink: [www.minorityrights.org/download.php?id=136](http://www.minorityrights.org/download.php?id=136), accessed 5 March 2013. See also *Jakarta Post*, "Soldiers sentenced in Aceh rape cases", 20 July 2003, weblink: <http://www.thejakartapost.com/news/2003/07/20/soldiers-sentenced-aceh-rape-cases.html>, accessed 5 March 2013.

<sup>147</sup> See *Yayasan Lembaga Bantuan Hukum Indonesia*, "Resume hasil observasi proses peradilan kasus Aceh" [Observation of the judicial process in Aceh], 1991 (on file with Amnesty International) and Amnesty International, *New military operations, old patterns of human rights abuses in Aceh*, Supra No4, p19-21.

<sup>148</sup> Amnesty International, *A briefing for EU and ASEAN*, Supra No57.

<sup>149</sup> Article 6.

<sup>150</sup> See for example *SHNews.Co*, "Penguatan LPSK Butuh Revisi Undang-undang" [Strengthening of LSPK needs revision of law], 17 September 2012, weblink: <http://www.shnews.co/detile-7992-penguatan-lpsk-butuh-revisi-undangundang.html>, accessed 7 April 2013.

<sup>151</sup> See Amnesty International, *Indonesia: Authorities must ensure accountability for police violence in South Sumatra* (Index: ASA 21/003/2013); Amnesty International, *Indonesia: Excessive use of force by police against demonstrators in Papua* (Index: ASA 21/041/2012); Amnesty International, *Indonesia: Investigate military attacks on villagers in Wamena, Papua* (Index: ASA 21/020/2012); and Amnesty International, *Indonesia: Excessive force: Impunity for police violence in Indonesia* (Index: ASA 21/010/2012).

<sup>152</sup> See for example, *Jakarta Globe*, "TVRI Journalists Victims of Mob Attack in Gorontalo", 26 March 2013, weblink: <http://www.thejakartaglobe.com/home/tvri-journalists-victims-of-mob-attack-in-gorontalo/582110>, accessed 7 April 2013; *Jakarta Globe*, "Police Blame Victim for Aceh Mob Violence, Fail to Identify Attackers", 19 November 2012, weblink: <http://www.thejakartaglobe.com/home/police-blame-victim-for-aceh-mob-violence-fail-to-identify-attackers/556902>, accessed 7 April 2013; *Antara*, "Violence against Shiite muslims in Sampang condemned", 27 August 2012, weblink: <http://www.antaraneews.com/en/news/84214/violence-against-shiite-muslims-in-sampang-condemned>, accessed 7 April 2013; and *Jakarta Post* "Irshad Manji injured in mob attack in Yogya", 10 May 2012, weblink: <http://www.thejakartapost.com/news/2012/05/10/irshad-manji-injured-mob-attack-yogya.html>, accessed 7 April 2013.

<sup>153</sup> According to the Central Statistical Agency unemployment figures in Aceh were at 9.1 percent in 2012. See *Badan Pusat Statistik Provinsi Aceh*, "Indikator Ketenagakerjaan Provinsi Aceh Agustus 2012", August 2012, p11, weblink: <http://aceh.bps.go.id/index.php?r=publikasi/view&id=38>, accessed 21 March 2013.

<sup>154</sup> See Aguswandi, *The political process in Aceh: a new beginning?*, in Conciliation Resources, *Reconfiguring politics: the Indonesia - Aceh peace process*, Accord Issue 20, 2008, (Conciliation Resources, *Reconfiguring politics*), p53; and *Serambinews.com*, "Menggugat 'Kedaulatan Aceh'", by Munawar A. Djalil, 7 February 2013, weblink: <http://aceh.tribunnews.com/m/index.php/2013/02/07/menggugat-kedaulatan-aceh>, accessed 19 March 2013.

<sup>155</sup> In April 2012, Dr H. Zaini Abdullah, a Sweden based senior GAM representative and Muzakir Manaf,

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a former GAM field commander and head of the Aceh Party (2007 -2012) were elected as governor and vice governor respectively. They succeeded Irwandi Yusuf, a former GAM spokesperson, and Muhammad Nazar, a former pro-independence activist (2007-2012). The divide between two different political factions from the former Free Aceh Movement is believed to have led to violence in the context of the 2012 local elections. See ICG, *Indonesia: Averting Election Violence in Aceh*, Supra No11.

<sup>156</sup> See ICG, *Indonesia: Averting Election Violence in Aceh*, Supra No11.

<sup>157</sup> CMI Final report, 2012, Chapter 5.4: The security situation in Aceh, pp34-35.

<sup>158</sup> See Human Rights Watch, *Indonesia: Accountability for Human Rights Violations in Aceh*, March 2001, weblink: <http://www.hrw.org/reports/2002/aceh/Aceh0302.pdf>, accessed 5 March 2013; NGO Shadow report to the Committee against torture, Supra No44; and *Tempo Interactive*, "Pembunuhan Massal di Afdeling IV PT Bumi Flora Aceh Timur", 17 June 2004, weblink: <http://www.tempo.co.id/hg/narasi/2004/06/17/nrs,20040617-08,id.html>, accessed 29 March 2013

<sup>159</sup> Their names have been changed.

<sup>160</sup> In 1998, the Aceh governor announced a programme, which would include scholarships for students and medical assistance, to assist those who suffered during the DOM period. E-mail correspondence with human rights defender, 20 March 2013. See also 1998 article in *Serambi Indonesia*, "Gubernur Berjanji Serius Rehabilitasi Korban DOM" [Governor makes serious promise to rehabilitate DOM victims], weblink: <http://groups.yahoo.com/group/bhinneka/message/2619?var=1>, accessed 4 April 2013. A 2002 article indicates that up to 280,000 Acehnese children received scholarship assistance in that year, in *Liputan.com*, "Anak Korban DOM Aceh Mendapat Beasiswa" [Child victims of DOM receive scholarship], 10 June 2002, weblink: <http://news.liputan6.com/read/35724/anak-korban-dom-aceh-mendapat-beasiswa>, accessed 4 April 2013.

<sup>161</sup> See for example Indonesia's response to the CEDAW Committee, cited in this report in Section 5.3: Barriers faced by women survivors of violence in addressing reparation and assistance, CEDAW Committee, *Fifty-second session, Summary record of the 1043<sup>rd</sup> meeting*, Supra No119, para 19.

<sup>162</sup> ICTJ and KontraS, *Derailed*, Supra No83, p65.

<sup>163</sup> The Law on Governing Aceh also stresses in Article 228 that "[r]ulings of the Human Rights Court [for Aceh]... shall include, among others, granting of compensation, restitution, and/or rehabilitation to victims of human rights violations". However, as described in section 4.1, the Law precludes the proposed Court from dealing with crimes prior to its enactment in 2006.

<sup>164</sup> See Article 3(1) of Regulation No. 3/2002 on the Compensation, Restitution, and Rehabilitation of Victims of Gross Human Rights Violations, and policy briefing by ICTJ, Association for the Families of the Disappeared in Indonesia (IKOHI) and Coalition for Justice and Truth (KKPK), *Indonesia's Obligations to Provide Reparation for Victims of Gross Human Rights Violations*, December 2011 (*Indonesia's Obligations to Provide Reparation for Victims of Gross Human Rights Violations*), p5.

<sup>165</sup> No one is currently imprisoned as a result of trials before the permanent human rights court in Makassar (Abepura case, 2000), or as a result of trials before the *ad-hoc* human rights courts (Tanjung Priok, 1984 and East Timor, 1999). See ICTJ and KontraS, *Derailed*, Supra No83, p46-51.

<sup>166</sup> See Article 6 and 7 of Law No. 13/2006 on Witness and Victim Protection.

<sup>167</sup> Article 12 of Law No. 13/2006 states that the Witness and Victim Protection Agency is responsible

for providing protection and assistance to witnesses and victims in accordance with its tasks and authorities as stipulated in this law.

<sup>168</sup> See *Indonesia's Obligations to Provide Reparation for Victims of Gross Human Rights Violations*, Supra No164, p5.

<sup>169</sup> See Article 3 & 4 (2e) of Regulation No. 44/2008 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.

<sup>170</sup> Amnesty International interview with a representative from an Aceh victim's group, 11 May 2012.

<sup>171</sup> The total number of 62,000 is an estimate rather than based on any actual data-collecting. See Leena Avonius, *Reintegration: BRA's roles in the past and its future visions*, 2011, (Leena Avonius, *Reintegration*), p18, weblink: <http://www.acehpeaceprocess.net/images/stories/publications/avonius.pdf>, accessed 12 March 2013.

<sup>172</sup> The BRA programme provided assistance to over 2,000 post-MOU amnestied political prisoners, to over 6,000 PETA (Pembela Tanah Air) supporters, an umbrella group of anti-separatist militias during the conflict; over 6000 GAM non-combatants, and some pre-MoU surrendered GAM. In *Laporan Bantuan Sosial dan Pemberdayaan Ekonomi Masyarakat Aceh dalam rangka reintegrasi [Report on Social Assistance and Economic Empowerment of Aceh Society in the reintegration framework]*, Year 2005-2008, p6.

<sup>173</sup> See also Leena Avonius, *Reintegration*, Supra No171, p21.

<sup>174</sup> *Diyat* is a cash compensation programme based on Islamic law for families of victims killed or lost during the conflict. It is based on the principle found in the Qur'an, that in cases of intentional or unintentional murder, the victim's family should receive compensation of one hundred camels. In Aceh, it was difficult to calculate the equivalent in Indonesian rupiah. At first three million rupiah was given per household. A 2009 consultative meeting, which included experts and representatives from different government departments, recommended that each family should receive a total of fifteen million rupiah, paid over five years. This decision was then supposed to be confirmed in writing by the Aceh Governor, however, by the end of 2010 no such letter had yet been issued by the Governor's office. See Leena Avonius, *Reintegration*, Supra No171, p21.

<sup>175</sup> *Sayam* is a category that includes all kinds of miscellaneous assistance given for local rituals, events or individuals who come to the office to ask money. It is a common practice in Aceh. See Leena Avonius, *Reintegration*, Supra No171, p11.

<sup>176</sup> Amnesty International interview with a former head of a victim's association, Banda Aceh, 8 May 2012.

<sup>177</sup> Amnesty International interview with NGO, 11 May 2012.

<sup>178</sup> Amnesty International interview with victims of the Aceh conflict, Lhokseumawe, 10 May 2012.

<sup>179</sup> Amnesty International interview with NGO, 9 May 2012.

<sup>180</sup> See for example Patrick Barron "Managing the resources for peace: Reconstruction and peacebuilding in Aceh" in Conciliation Resources, *Reconfiguring politics*, Supra No154; Lina Frodin "The challenges of reintegration in Aceh" in Conciliation Resources, *Reconfiguring politics*, Supra No154; and Leena Avonius, *Reintegration*, Supra No171, p12-13.



<sup>181</sup> Amnesty International interview with NGO worker, 10 May 2012.

<sup>182</sup> See for example, National Commission on Violence against Women (*Komnas Perempuan*), *Pengalaman Perempuan Aceh Mencari dan Meniti Keadilan*, January 2007; Komnas Perempuan report, *Kondisi Tahanan Perempuan di Naggroe Aceh Darusalam* (the Condition of Women Detainees in Naggroe Aceh Darusalam), Februari 2009; Amnesty International, *Indonesia: The impact of impunity on women in Aceh*, Supra No4; Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3.

<sup>183</sup> A 2007 report on Aceh by the National Commission on Violence against Women (Komnas Perempuan) which found 103 cases of violence against women from the period of the military operations zone up until after the signing of the 2005 Helsinki MOU acknowledged that these cases represented only a fraction of the cases of violence against women there. See Komnas Perempuan, *Experiences of Aceh Women*, Supra No3, p5.

<sup>184</sup> Amnesty International did not interview male victims/survivors of sexual violence for this report.

<sup>185</sup> See Section 8 on Violence against women in Amnesty International, *Indonesia: New military operations, old patterns of human rights abuses in Aceh*, Supra No4.

<sup>186</sup> Samsidar, a former Commissioner for the National Commission on Violence against Women (*Komnas Perempuan*) and an Acehnese women's rights activist, explains: "in Langsa, East Aceh, we met a doctor who was scared when he treated a rape victim. The victim suffered from heavy blood loss as a result of the rape. Until now, she still loses blood very frequently. However when she went to the camat [district government official] office to ask for financial compensation (dana diyat), it was refused. The reason she was given was that rape victim are not considered as 'big cases'. Financial compensations (diyat) was only for those who had suffered disappearances, loss of a loved one, or injuries." In Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3, p210.

<sup>187</sup> Amnesty International interview with woman's right activist, 9 May 2012.

<sup>188</sup> See *Kompas*, "KTP Jadi Jaminan Kesehatan Gratis" [Identity cards guarantee free healthcare], 2 June 2010, weblink: <http://regional.kompas.com/read/2010/06/02/0909461/KTP.Jadi.Jaminan.Kesehatan.Gratiss>, accessed 12 March 2013; and *Waspada*, "Program Jaminan Kesehatan Aceh disosialisasikan" [Aceh healthcare guarantee programme socialized], 11 August 2012, weblink: [http://www.waspada.co.id/index.php?option=com\\_content&view=article&id=256897:program-jaminan-kesehatan-aceh-disosialisasikan&catid=13:aceh&Itemid=26](http://www.waspada.co.id/index.php?option=com_content&view=article&id=256897:program-jaminan-kesehatan-aceh-disosialisasikan&catid=13:aceh&Itemid=26), accessed 5 March 2013.

<sup>189</sup> See Amnesty International, *Left without a choice: Barriers to reproductive health in Indonesia* (Index: ASA 21/013/2010), (Amnesty International, *Left without a choice*), pp15-20.

<sup>190</sup> See generally Amnesty International, *Left without a choice*, Supra No189.

<sup>191</sup> Amnesty International, *Left without a choice*, Supra No189.

<sup>192</sup> Violence against women remains prevalent throughout the country. Komnas Perempuan reported 216,156 cases of violence against women in 2012. See Komnas Perempuan, "Lembar Fakta Catatan Tahunan (CATAHU) Komnas Perempuan Tahun 2012" [Komnas Perempuan Annual Notes Fact Sheet Year 2012], 7 March 2013, weblink: [http://www.komnasperempuan.or.id/wp-content/uploads/2013/03/Lembar-Fakta-Catahu-2012-Launching-7-Maret-2013\\_.pdf](http://www.komnasperempuan.or.id/wp-content/uploads/2013/03/Lembar-Fakta-Catahu-2012-Launching-7-Maret-2013_.pdf), accessed 21 March 2013.

<sup>193</sup> See Amnesty International, *Indonesian woman persecuted for the 'shame' of being raped and*

*pregnant*, 4 November 2010, weblink: <http://www.amnesty.org/en/news-and-updates/indonesian-woman-tells-expulsion-village-shame-being-raped-and-pregnant-2010-11-04>, accessed 5 March 2013. Among the obstacles for married women is the fear of divorce for married women, and the fear of not been able to marry in the future for unmarried women, in Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3, p211.

<sup>194</sup> See Nashrun Marzuki and Adi Warsidi (Eds), *Fakta Bicara*, Supra No3, Chapter "Kehidupan Korban Yang Semakin Sulit", p209; and Amnesty International, *Left without a choice*, Supra No189, pp21-22.

<sup>195</sup> Amnesty International interview, 10 March 2013.

<sup>196</sup> *Concluding observations of the Committee on the Elimination of Discrimination against Women: Indonesia, 27 July 2012* (UN Doc: CEDAW/C/IDN/CO/6-7), paras 27-28.

<sup>197</sup> CEDAW Committee, *Fifty-second session, Summary record of the 1043<sup>rd</sup> meeting*, Supra No119, para 19.

<sup>198</sup> Nashrun Marzuki and Adi Warsidi (Eds), *Fakta bicara*, Supra No3.

<sup>199</sup> See *KBR68H*, "Mengenang Peristiwa Berdarah Simpang KKA Aceh" [Remembering the bloody Simpang KKA incident], 2 May 2012, weblink: accessed 7 March 2013.

<sup>200</sup> See Amnesty International, *Activists at risk in Aceh*, Supra No4, pp11-12.

<sup>201</sup> Amnesty International interview with human rights defender, Banda Aceh, 8 May 2013. There is a commemoration monument in Banda Aceh to commemorate the loss of people during the earthquake and tsunami in December 2004.

<sup>202</sup> Amnesty International phone correspondence with NGO contact, 12 March 2013.

<sup>203</sup> It took four years of campaigning by victims groups before the monument was setup. Funds for the monument were provided by the North Aceh district authorities who also have participated in the commemoration ceremonies. Amnesty International interview with activist in North Aceh, 10 May 2012.

<sup>204</sup> See *VHR media*, "Tugu Pelanggaran HAM Berdiri di Jamboe Keupok" [Monument stands at Jamboe Keupok], 28 October 2011, weblink: <http://www.vhrmedia.com/2010/detail.php?.e=4758>, accessed 21 March 2013.

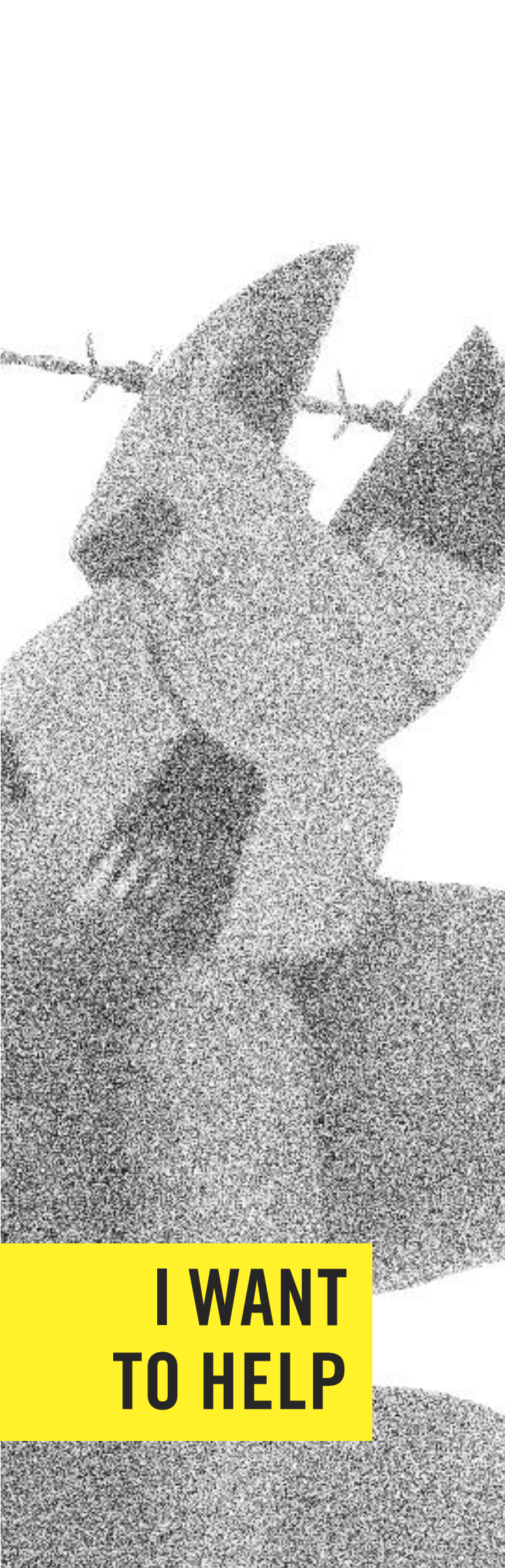
<sup>205</sup> See ICTJ, *The need for Accountability: The Helsinki Memorandum Five Years on*, August 2010; and *Radio Komunitas Dewantara FM*, "Pengungkapan Kebenaran Oleh Rakyat Pada Puncak Peringatan 11 Tahun Tragedi Simpang KKA" [People revealing the truth on the 11<sup>th</sup> anniversary of the Simpang KKA tragedy], 6 May 2010, weblink: <http://m.suarakomunitas.net/baca/8228/pengungkapan-kebenaran-oleh-rakyat-pada-puncak-peringatan-11-tahun-tragedi-simpang-kka.html>, accessed 5 March 2013.

<sup>206</sup> Amnesty International interview with Acehese activist, 10 May 2012.

<sup>207</sup> The Aceh Party was formed following the 2005 peace agreement as the political party representing GAM in Aceh province.

<sup>208</sup> Amnesty International, *Checklist for the establishment of an effective truth commission* (Index: POL 30/020/2007).

<sup>209</sup> Amnesty International, *International Criminal Court: Updated checklist for effective implementation* (Index: IOR 53/009/2010).



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## **TIME TO FACE THE PAST**

### **JUSTICE FOR PAST ABUSES IN INDONESIA'S ACEH PROVINCE**

On 15 August 2005, the Indonesian government and the Free Aceh Movement, an armed pro-independence group, signed a historic peace agreement that led to a successful end to 29 years of violence in Aceh.

The conflict had a devastating impact on the civilian population, especially from 1989 to 2004 when the authorities used security forces to suppress demands for Acehnese independence. Serious human rights abuses were committed, including enforced disappearances, killings and torture. Although rarely labelled as such, some of these abuses constitute crimes under international law.

Seven years on, the central government and authorities in Aceh have failed to implement provisions contained in the peace agreement pertaining to truth and justice. Lessons from the past have not been learned. Instead, the past has been buried with ongoing delays in setting up a truth commission, effective justice mechanisms and comprehensive measures to provide full reparation for victims and their families.

Meanwhile, victims and their families continue to demand that the authorities acknowledge what happened to them during the conflict and deliver on their earlier promises. It is time for the central government and local authorities in Aceh to respond to these demands and ensure that effective measures are taken to secure victims' rights to truth, justice and reparation. Such measures will protect, guarantee and strengthen Aceh's future peace.

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