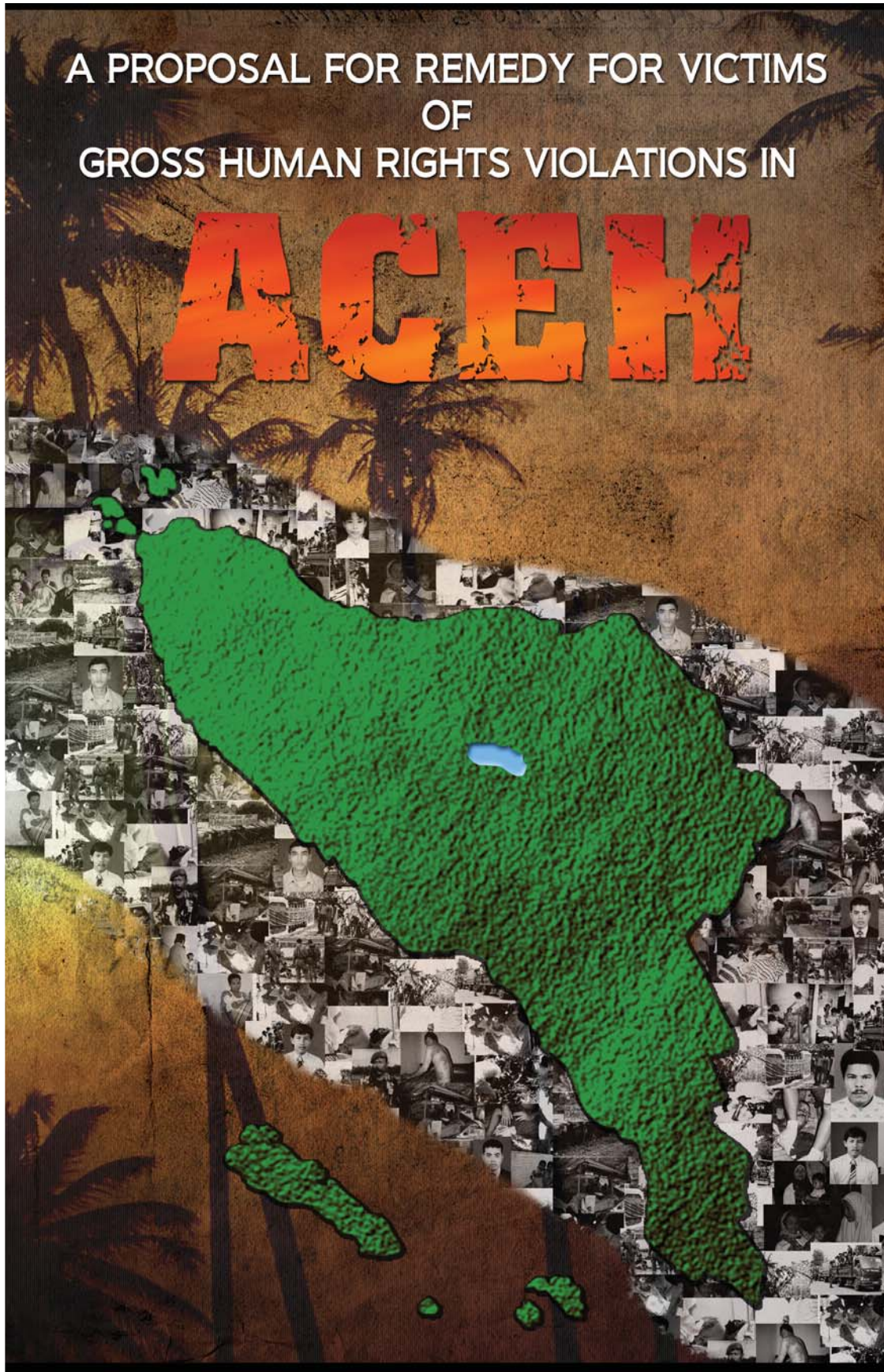


A PROPOSAL FOR REMEDY FOR VICTIMS  
OF  
GROSS HUMAN RIGHTS VIOLATIONS IN

**ACEH**



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for Remedy for Victims of  
Gross Human Rights Violations in Aceh**

**Prepared by the  
Coalition for Aceh Truth Recovery (KPK)  
2007**



## Foreword

This book, entitled **A Proposal for Remedy for Victims of Gross Human Rights Violations in Aceh**, is presented by civil society members of the Aceh Coalition for Truth to the central and Aceh governments, in an effort to remedy the past violence in Aceh during the period of armed conflict.

A truth commission is one of the mechanisms developed in various parts of the world, in order to fulfill victim's yearning for justice in contexts where an authoritarian regime has just fallen or conflict just ended. A truth commission is recognized as one of the ways to deal with Aceh's violent past, as mandated in the Memorandum of Understanding signed by the Government of Indonesia and GAM in Helsinki on August 15, 2005 and in Law 11/2006 on the Governance of Aceh.

Based on this fact, civil society organisations in Aceh and Jakarta, having been involved in advocacy and promotion of human right, gender equality, peace building and conflict resolution, strengthening civil society, have supported the establishment of a truth as a way to recover the truth about the violence that took place in Aceh.

If the government has already a concept on a truth commission in Aceh, it is hoped that this proposal can be a useful comparison, a way to debate the model in order to find the best options for improving the situation of victims and to prevent the recurrence of violence in Aceh. But if there is yet a concept on a truth commission for Aceh, it is hoped that this proposal can provide a starting point for debate while encouraging the creation of a policy from the government that sides with victims.

The Aceh Coalition for Truth (KPK-- *Koalisi Pengungkap Kebenaran*), whose members include (in Aceh) AJMI, KontraS Aceh, RPUK, LBH Aceh, Solidaritas Perempuan, Flower Aceh, PASKA, ACSTF, JKMA, Koalisi NGO HAM, PPHAM, PHIA, Aceh *Institute*, Aceh Kita, SMUR, LeuHAM, ISMAHI, Tikar Pandan, (in Jakarta) KontraS, Imparsial, Elsam, HRWG, YLBHI, PBHI, ICTJ Indonesia, express our gratitude to all those who supported the work to develop this concept, in the

form of inputs and criticism, support for workshops, seminars, and informal discussions. We would also like to thank Yayasan TIFA that has provided support for publishing this book.

Jakarta-Banda Aceh, 30 November 2007

Aceh Coalition for Truth

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# CHAPTER I INTRODUCTION





The Helsinki Peace Accord signed on 15th August 2005 has become a starting point for peace in Aceh. Previous attempts to forge peace were attempted but did not last. The Helsinki Memorandum of Understanding is the foundation for the formulation of peace in Aceh and to-date the Helsinki MoU has brought the people of Aceh away from violence and conflict while the *tsunami* recovery efforts on the *tsunami*, that hit Aceh on 26th December 2004, has been the catalyst for an impressive development of the province.

### Aceh Peace Accords

<i>Year</i>	<i>Name</i>
1999	JU ( <i>Joint Understanding</i> )
2003	CoHA ( <i>Cessation of Hostilities</i> )
2005	MoU ( <i>Memorandum of Understanding</i> ) Helsinki

An effective measure of the peace accord is the cessation of violence and a drastic reduction of human rights violations, both in terms of quality and quantity; and the significant social and political changes in Aceh. One of the most important aspects in the peace process based on the Helsinki MoU is that the people of Aceh and all concerned parties are given the space to continue the process, identifying and implementing the agenda for peace.

A crucial element in the peace process in Aceh is providing a remedy for past human rights violations. Violence and the armed conflict has caused gross human rights violations that have deeply impacted in the daily reality of the Acehnese civilian population. Violence has been part of Acehnese life throughout the conflict.

It is critical that a remedy for past human rights violations in Aceh is immediately formulated and implemented. Not only as it relates to fulfilling the rights of victims of human rights abuses or bringing perpetrators to justice, but ultimately ensuring that cycle of violence, conflict and crimes is stopped, ousting these practices the Veranda of Mecca, Aceh. Therefore, the people of Aceh must evaluate the past violence, conflict and crimes based on truth and justice.

Thus, efforts towards a remedy for past human rights violations is not only limited to meeting the requirements of the Helsinki MoU or Law 11/2006 on the Government of Aceh or any other legal provision, but is a need felt by the people of Aceh to determine measures of justice and to recover the truth regarding the conflict. The period of inquiry must begin from the introduction of the Military Operations Zone (DOM) in Aceh until the signing of the Helsinki MoU.

This paper has been written as an initiative to finding a formula for the remedy of past human rights violations in Aceh. The *first* chapter is an introduction on the importance of forging a remedy for past human right abuses. The *second* chapter deals with present context and describes the current political and social situation in Aceh since the inception of the new government and Aceh's relations with the national government in Jakarta. The *third* chapter describes “urgent unfinished business” related to past serious crimes, their origins and patterns, and past efforts around investigations to expose these gross human rights violations. The *fourth* chapter proposes an extra-judicial mechanism for remedy, a Truth and Reconciliation Commission (TRC), describing why a TRC-model is proposed, its legal basis, and how it should be implemented. The *fifth* chapter provides a more detailed TRC model for Aceh that is based on Acehnese values and consistent with international principles of human rights.

This paper has been prepared by a coalition of NGOs from Aceh and Jakarta. These organizations are active in the field of advocacy, human rights, community empowerment, social change, peacebuilding and conflict resolution, legal aid, women's empowerment, transitional justice, and those working the post-conflict and post-*tsunami* efforts in Aceh. These organisations, united under a Coalition for Truth Recovery, have organised several meetings and activities in order to formulate a model for the resolution of gross human rights violations in Aceh.

This paper came out of intensive discussions with several parties and we wish to acknowledge all those who have contributed in many ways to this process. We are aware that this paper is only a first step towards a remedy for past human rights abuses in Aceh. Criticisms, input, and constructive dialogue are welcomed in the interest of a new and better Aceh, that is more humane and just.



## CHAPTER II PRESENT CONTEXT





In reality, the demand for justice began since violence first erupted in Aceh. The accumulation of violence over the decades that ended with the signing of the MoU on 15th August 2005 has continued to motivate the quest for justice for victims and the Acehese community.

The military operations in Aceh was a critical issue in the period of Reformation that began in 1998. At a national level a rallying agenda for reformation was the resignation of President Soeharto. In Aceh, the main agenda was to abolish Aceh's political status as a Military Operation Zone (DOM *Daerah Operasi Militer*). The two agendas were linked given that Aceh as a military operation zone, code-named *Operasi Jaring Merah*, (Operation Red Net), was a policy decision issued by President Soeharto.

For the people of Aceh, and in particular the victims of massive atrocities the recovery of truth, a human rights court and the improvement reparations for victims' are demands that cannot be denied. These are important measures that the government of Indonesia must take to restore people's trust in their government. These measures provide a meaningful contribution towards a peaceful resolution of the Aceh conflict.

### 2.1. A New Government

The election of Irwandi Yusuf and Muhammad Nazar (known as IRNA) as the post-MoU Governor and Vice-Governor of Aceh both independents shows that the people of Aceh expect total change from their new government structure. The use of violence, corruption, inappropriate handling of victims of human rights violations and other forms of discriminations from the past, are patterns of the past that must be addressed by the new administration.

The people of Aceh hope that the peace process in Aceh will be sustained by their new government. Peace is the prerequisite to the reconstruction of Aceh from disaster and conflict: this is the message of the people to their new leaders. To meet the Acehese people's expectations, the Helsinki MoU and the Law on the Governing of Aceh [LOGA] must be implemented appropriately, transparently and holistically.

Aceh today is attempting to build a better life within a supportive transitional period. One important indicator is the first democratically elected government a historical milestone in the establishment of democracy in Aceh.<sup>1</sup>

There are high expectations regarding the role and function, activities and strategies to be undertaken by the new government to ensure prosperity, peace and justice for all its people. This is a natural expectation given that past bitter experiences of physical and mental suffering, still manifested in their memories. They may continue to be trapped in a cycle of poverty, conflict and violence, if groundbreaking policies are not forged.

Therefore, the people of Aceh, particularly victims, hope and believe that the crimes of the past must not happen to the future generation.<sup>2</sup> These hopes hinge on one point: a transitional period where the agenda for justice and peace must have a substantial place in development and democratization under the newly elected administration. Most important, there must be justice and an improvement in the condition of those who became the victims and whose rights were violated in the past. An over-prolonged process will cause this society to lose the momentum for transition, as it will become increasingly impossible to call it “a transitional period”<sup>3</sup>

## 2.2. Islamic Syariah in Aceh

The application of Islamic Syariah in Aceh in the present context can be seen from both a legal and cultural approach. In legal terms, the application of Islamic Syariah is accommodated in Aceh-related legislation: the Nanggroe Aceh Darussalam (NAD) law and the Law of Governance in Aceh.

<sup>1</sup> See comparison on previous elections “Otto Syamsuddin Ishak “*Dari Maaf ke Panik Aceh, sebuah sketsa sosiologi politi (from Pardon to Panic, a socio-political sketch of Aceh)* , Lembaga Studi Pers dan Pembangunan – LSPP, Jakarta 2000, hal;121,

<sup>2</sup> idem page;15

<sup>3</sup> [www.ictj.org](http://www.ictj.org) article Menanti Keadilan (Waiting for Justice); Urgensitas Penyelesaian Masalah Pelanggaran HAM Berat Masa Lalu di Ujung Masa Transisi (the urgency to resolve past gross human rights violations in the transitional era) by: Manunggal K. Wardaya S.H., LL.M

Its cultural application may be seen through the history of Islamic law in Aceh. The history of Islam in Indonesia places Aceh as the entrance point of Islam in Indonesia, beginning with the Kingdom of Samudera Pasai that embraced Islam in the thirteenth century. From that time onwards Islam spread and gained dominance, principally in Aceh. Islamic values became the foundation for everyday life, and used as guidance to respond and face challenges and issues, including political and social problems. Since the beginning of Dutch colonization, the period of struggle for Indonesian independence, to the Old Order, New Order and Reformation governments, Islam has been a force to contend with in Aceh.

A small but illustrative example to show the uniqueness of Aceh in its Islamic values is the story of a Dutch anthropologist, Snouck Hourgronje, who had to convert to Islam to study the people of Aceh. This shows that it is impossible to separate Aceh from Islam, thus Aceh is known as the “veranda of Mecca”.

However, Islam in Aceh is not a version of Islam that is particular to Aceh. Islam, specifically Islamic Syariah, in Aceh is one that is understood universally. Islam as a religion does not only regulate the transcendental God to human relationship but also influences the pattern of social relations among people. Since the beginning, Islam has the vision of developing an ethical society where the values and the laws of God's teachings (text) are interpreted in accordance to the dynamics of a social condition (context). This is reflected in the two approaches in the understanding and the application of Islamic concepts, namely, the textual approach (Al-Qur'an) and the contextual approach (the life of the prophet Muhammad). The Al Qur'an teaches the truth of Islam and the life of the prophet teaches its practice. In Islam values of truth and justice do not remain static on the pages of the Holy Book but must live among the people and be genuinely applied by all Muslims.

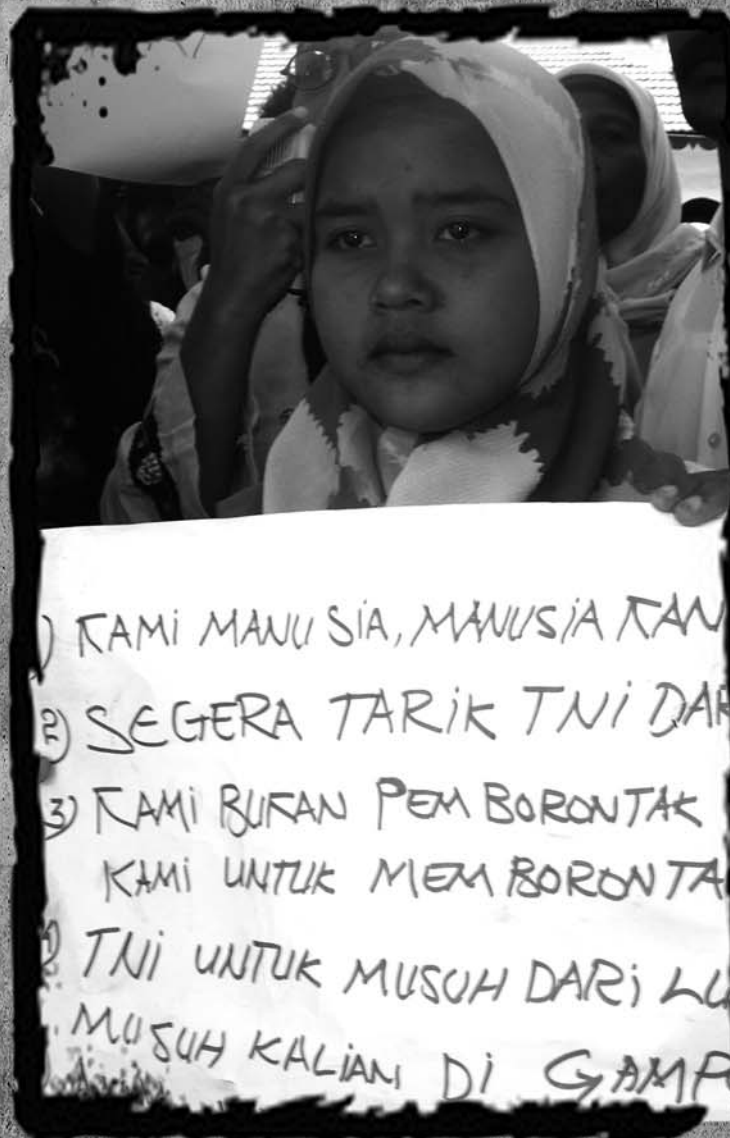
Truth, justice and reconciliation are known in Islamic law as philosophical principles that prioritize the protection of life, honor, property, faith and freedom. Classical and contemporary Islamic literature explains the existence of basic guarantees on (1) physical safety for the people against physical action outside the law, (2) guarantees of faith without forced religious conversions, (3) safety of the family and its descendants, (4) safety of property from illegal procedures, and (5) professional safety (Abdurrahman Wahid,

1995). In practice, Islamic law enshrines the principles of equality before the law, protection of the people against tyranny and oppression; it protects the rights of the weak and limits the power of the ruler, and includes an attitude reconciliation. The genuine concept of jihad is the preservation of goodness (*ma'ruf*) and the rejection of crime (*munkar*), where believers will not allow themselves to be victims but also will not reject a peaceful resolution because the character of Islam is one of peace (the root of the word "Islam" is *salam*, meaning peace). Truth is described as an ethical value that, if achieved, then justice will prevail. Reconciliation is an integral part of the ethical values of Islamic truth in the process of achieving justice. This is reflected in the quote from the following Quranic verse: *"And they (the faithful) when oppressed defend themselves. Revenge against oppression is a balanced act of defence. However, anyone who forgives and seeks peace will receive merits from Allah. Truly, He does not favor tyrants. But the person who defends himself after being oppressed because there is no way (to condemn them). Conversely the way (to condemn) leads to those who oppress their fellow human and without any good reason act despotically on the face of the earth. Those are the ones who will suffer terrible torture. However, in truth whoever shows patience and is prepared to forgive, that is the firmness of heart in all cases (truth)."*<sup>4</sup>

This view is an integral part of the life of many Muslim communities in Indonesia, including the province of Nanggroe Aceh Darussalam (NAD). To the people of Aceh, Islam is not only a theological doctrine but is central to the Acehnese identity. It has the ability to adapt its universal values and the spirit of Islamic alliance, prioritizing social relations consistent with Islamic ethical values above primordial relations. To the people of Aceh, human rights violations, in whatever form, cannot be tolerated even if they are perpetrated by people of the same ethnicity, nationality and creed. Therefore a truth and reconciliation commission can be seen as one way to address the dead-end in dealing with past human rights violations in Aceh, in order to restore social order based on the shared Islamic ethical values.

<sup>4</sup> QS. Al-Syura/42:39-43.





### CHAPTER III

## URGENT “UNFINISHED BUSINESS”





### 3.1. Past Human Rights Violations

**P**eriods of violence in Aceh go back to the 1950s, marked by the DI/TII rebellion (1953-1963), the political conflict of 1965 (1965-1970), and the periods before, during and after the DOM military operations, respectively 1976-1989, 1989-1998, and 1998-2005. Thus, Aceh has high levels of human rights violations, and that the responsibility for these crimes lie ultimately with the state: Indonesia.

The period during which human rights violations took place in Aceh was protracted, spanning several generations and interspersed with short periods of calm that were insignificant. The period of violence pre-dates, goes beyond the New Order, and includes the leadership of all the presidents of Indonesia.

The intensity of the violence spread to almost all corners of Aceh -- the province became synonymous with violence. Victims of violence in Aceh belonged to every generation (men, women, adults and children) through the region.

Although Aceh has a long history of violence that occurred at a massive scale, a decision regarding the period of inquiry of past human rights violations in Aceh must be based on a range of considerations: availability of evidence, victims and witnesses who can testify to the violence; whether the violations during a particular period show how they were planned and carried out; whether they were based on state or organisational policy, and were systematic or widespread; and the scale of impact on the community. Based on knowledge of the conflict, it is recommended that the period of inquiry should begin with the *Operasi Jaring Merah* [Operation Red Net] (1989) indicating the beginning of the Military Operations Area (DOM) in Aceh, and include the period of Martial Law and Civil Emergencies.

### 3.2. Investigations Preceding the MoU

A number of official investigations and fact-finding on violations of human rights in Aceh began in July 1998. Each investigation collected evidence from hundreds of cases of violations from 1989 and pointed to the involvement of the security forces in the human

rights violations that took place. However, there has been little follow-up to these investigations.

- July 1998: Joint Parliamentary Fact-Finding Team established. In October 1998 the team reported interim findings stating that the team had received reports of more than 1700 cases of human rights violations, including 426 involuntary disappearances and 320 cases of extrajudicial executions.
- July and August 1998: The National Human Rights Commission (Komnas HAM) conducted an investigation in Aceh. The initial report found evidence of at least 781 deaths, 163 disappearances, 368 cases of torture and 102 cases of rape between 1989 and 1998.
- July 1999: The Independent Commission for the Investigation of Violence in Aceh (KPTKA) was established by Presidential Decree (during the presidency of former president Habibie). The Commission reported gathering testimonies regarding 5000 cases of violations of human rights in Aceh over the past ten years, including extrajudicial killings, torture, involuntary disappearances, arbitrary detentions, rape and sexual assault. The Commission recommended that five cases be immediately tried.
- November 1999: Parliamentary Commission's Hearing on Aceh took place where senior military and government officials were questioned regarding their role in human rights violations in Aceh since 1989.
- November 1999: The Office of the Attorney General investigated the five cases the KPTKA recommended for trial. The five cases were: a case of rape in Pidie - August 1996.; cases of torture and involuntary disappearance between 1997 and 1998 in a place known as *Rumoh Geudong* in Pidie; extrajudicial executions of seven civilians in Idi Cut, East Aceh - February 1999; extrajudicial executions of 35 civilians in Simpang KKA, North Aceh in May 1999; and extrajudicial execution of an ulema and his followers in the village of Blang Meurandeh, Beutong Ateuh, West Aceh - July 1999.

### 3.3. Impact of the Conflict

Aceh is an example of a region that has been caught in a cycle of violence, resulting in untold loss in Aceh, that has contributed to the problems regarding the feeling of Indonesian-ness. Included here are:

- Destruction of property and public facilities, including public facilities impacting on education, health and economic development.
- The destruction of the social fabric of Aceh the conflict has impacted the smallest family unit to the traditional structures of Acehnese society.
- Social and regional fragmentation, in-fighting based on regional and ethnical differences. Increased suspicion and social tension leading to discrimination against another.
- Degradation of the dignity of the people of Aceh: labelled as “separatists, rebels, having a culture of violence,” discriminated against as symbolised by the special identity cards for Aceh. The Acehnese became second class Indonesian citizens through official and unofficial policies.
- The isolation of Aceh from the rest of the world under a systematic effort to conceal humanitarian issues from the outside world, where access to information from and to Aceh was tightly controlled.
- Exploitation of human and natural resources. Aceh is a region rich in natural resources and one of the main contributors to national revenues, however the majority of Acehnese still live below the poverty line.
- The limitation of political and civil rights of the people of Aceh, such as freedom of expression, association, and movement, freedom from fear and right to access the government.
- The intensive violence also resulted in a variety of psychological and mental problems. The psycho-social trauma of the people of Aceh can be seen in the official figures of the Aceh Regional Health Office showing that half of the population suffers from mental problems, with the highest impact on women and children.

The facts presented above at least indicate that past gross human rights violations in Aceh have not yet been resolved and, most important, there has been no justice for the victims. Finding and

disclosing the truth on past human rights violations is in the interest of national unity by making efforts at reconciliation although such reconciliation must always be mindful of humanitarian principles that there can be no pardon or amnesty for those most responsible for the most serious crimes.

### **3.4 Consequences if the Past Remains Unresolved**

The question is whether the present government is serious about disclosing gross human rights violations of the past. In this context, the commitment of the government to implement the Helsinki MoU's human rights provisions will be put to the test. Without addressing past human rights violations it will be difficult to determine government responsibility and accountability. In particular, if past cases of human rights violations are not immediately resolved, there will be serious consequences on the social and political structures of Aceh, such as:

#### **3.4.1 On Victims**

Unresolved human rights violations in Aceh leave victims in despair. This in turn may result in an increasing lack of confidence in the government. Society at large will find it difficult to distinguish right from wrong in the corrupt and militaristic regime of the past. The difference between the new Aceh today and Aceh in the past will remain unclear, without disclosure and accountability for past human rights violations.

A consequence of this political attitude will be mass amnesia regarding the thousands of violent cases of the past. In this context, victims and their families become neglected. As a result, lack of redress of past violations will give rise to moral ambiguity among the people, which in turn may cause the recurrence of violence and human rights violations. Victims, out of a feeling of hopelessness, may accept to “reconcile” with the perpetrators outside a legal context, but that this kind of reconciliation is counterproductive for upholding the rule of law and human rights. This situation, in turn, creates conflict among victims who have “reconciled” and those who have not, like in the case of accepting *islah* as a settlement for the massacre in Tanjung Priok in 1984. Denying the



past becomes a threat to the people of “the new Aceh,” as consequence of not acknowledging those who have a right to be respected.

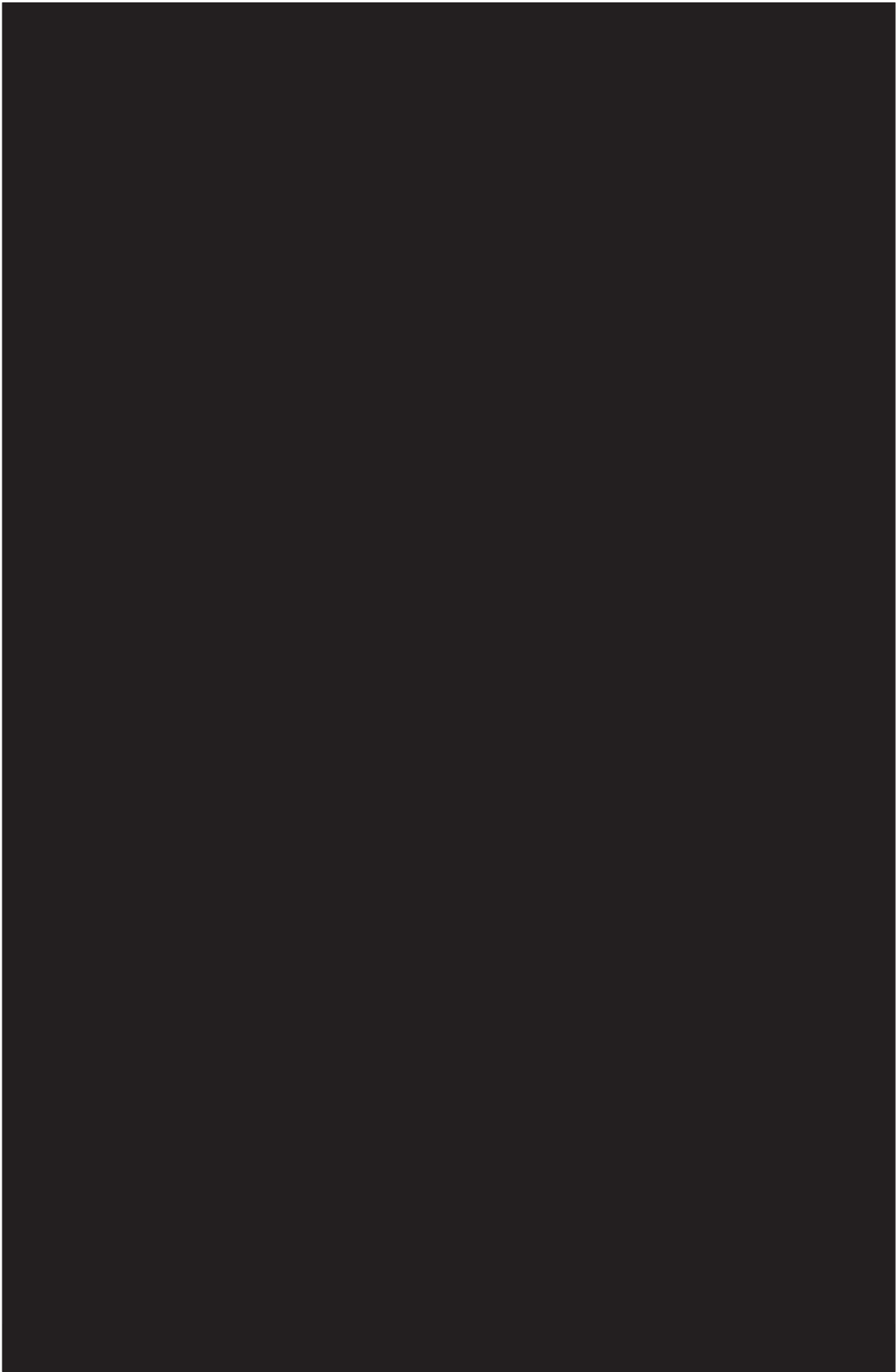
### ***3.4.2 On Perpetrators***

Unresolved human rights violations will sustain a culture of impunity among perpetrators, and may lead to the repetition of past patterns of violations, with no deterrent to repeating crimes. Impunity will become entrenched, and a new wave of violence could potentially occur. Impunity can bring the whole transitional process towards democracy to a standstill both in Aceh and in Indonesia. Impunity for past violations contribute to a weakening of the rule of law, and may affect the performance of government and non-government actors.

### ***3.4.3 On the future of Aceh and Indonesia.***

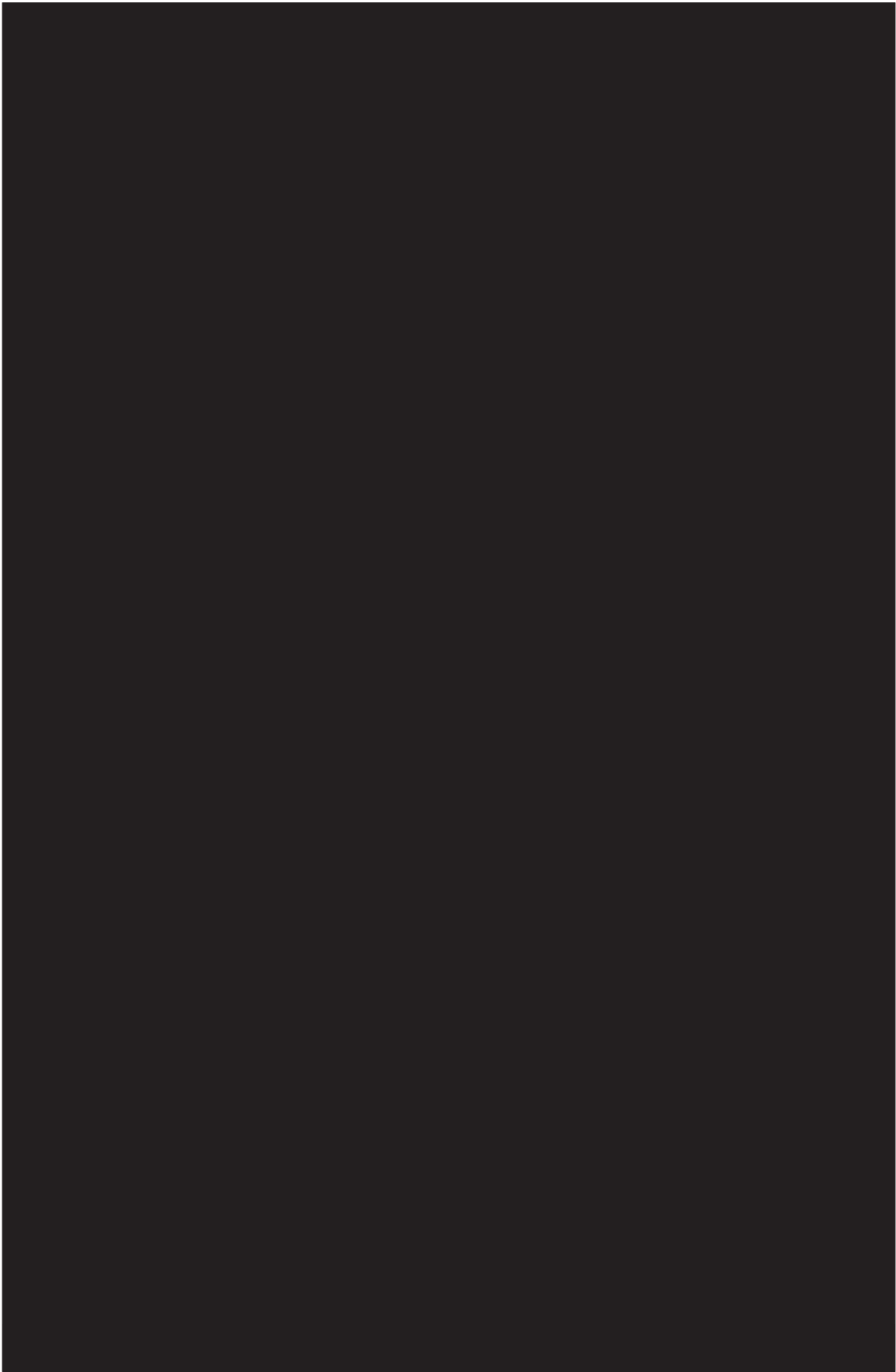
By not addressing past human rights violations in Aceh, people who were involved on different sides of the conflict or who were dragged into the violence by the conflict may remain as enemies. This sets a bad precedent for the upholding of human rights in Aceh and opens the potential for future repetition of violence. Violence could remain as the predominant method to solve problems, and new policies could be made against human rights principles. If this were to happen, the Governor and the Regional Parliament will be “accused” by the people of Aceh, first of all the victims of human rights violations themselves, for not applying the mandate of the Law on the Governing of Aceh [LOGA] on human rights.

The denial of past human rights violations will weaken the rule of law in Aceh, which may impact the political, social and economic life of the province. The rule of law is a prerequisite for democracy and economic development. The denial of the past human rights abuse may become a threat to what has been achieved by post-tsunami reconstruction, jeopardizing millions of dollars poured into this province. Clearly, there can be no development without peace and there cannot be peace without the disclosure of truth.





## **CHAPTER IV PROPOSED MECHANISM TO DEAL WITH THE PAST**



#### 4.1. Why is a TRC Necessary?

Best practices in other parts of the world show that one of the mechanisms of a political transition from a period of conflict or authoritarianism is the establishment of a truth and reconciliation commission (TRC). Most of these commissions share the following characteristics: they are officially established, are non-permanent, non-judicial, and conduct investigations, research, take statements and organise public hearings, before issuing a public report. Although truth commissions share common characteristics, it nonetheless is very flexible, and is modeled according to each specific context, as demonstrated in many countries. Over the past 30 years, truth and reconciliation commissions have made a positive contribution to the development of peace and democracy in more than 30 countries throughout the world. These commissions can also recommend institutional and policy reform.

Most countries that have experienced prolonged conflict often experience problems related to the past, as they enter a peace-building phase. Conflicts usually cause a large number of victims, who suffer physical and mental pain, material loss, human rights abuses, such as killings, involuntary disappearances, rape, confiscation of property or political discrimination. All these problems from the past conflict cannot all be addressed by conventional judicial mechanisms. These limitations are sometimes of a technical nature, such as limited evidence, witnesses, or a massive number of crimes that cannot be dealt with given the institutional capacity of the judicial system.

The limitations may also be of a political nature, relating to the commitment made between parties of the conflict. At the same time, victims and their families need information on the whereabouts of their disappeared families, they need to understand why they became victims. The general public also has a right to know the causes, patterns and consequences of the conflict in order to learn the lessons from the past, preventing its recurrence in the future.

In order to ensure effectiveness, a TRC requires three very important elements. First, the conflict situation (violence) must be (relatively) over. A level of security is important for the victims, witnesses and “perpetrators” to find the courage to testify or make



statements at a public hearing in cooperation with the commission. The second element is government support or commitment. Official support may take the form of financial support for the work of the commission, provision of political or legal guarantees for its work and access to information, including to public officials. The third element is the trust of the victims, in particular, victims' families and witnesses.

Public support will also make or break the performance of a commission. Therefore the establishment of a commission must be the outcome of genuine consultation. Of course, a truth commission may seek truth and reconciliation based on non-formal community mechanisms. However, an officially established and supported commission is more significant in political terms and can demonstrate state accountability towards past human rights violations.

Aceh is not alone in facing a violent past filled with human rights violations; similar patterns can be seen in other regions or countries that have also emerged from conflict. For decades the people of Aceh were victimised by conflict. However, Aceh is presently enjoying a situation of peace. The parties of the conflict have agreed to engage in political negotiations, no longer using violence as a means to resolve differences. But the post-conflict situation has left residual suffering for the majority of the people of Aceh: the loss of family members, physical handicaps, loss of property and the women in particular bear a heavier burden of pain. After the fall of Soeharto many important State officials recognized that the people of Aceh had been the victims of human rights violations. Therefore it is a political fact that the State has recognized that human rights violations occurred in Aceh. What is still missing is how the State will take responsibility for the past and ensure a new future for the people of Aceh.

A first step towards accountability is to disclose the patterns of violence through a truth seeking mechanism. From the point of view of victims, a truth-seeking mechanism and a human rights tribunal can fulfill the demands for justice. This step can also restore the trust of the people in the government, a meaningful contribution towards the peace process in Aceh. From the point of view of the perpetrators of human rights violations, this step will set a precedent which may prevent the repetition of similar crimes in the future. All parties who may potentially commit human rights

violations will face a deterrent to repeating these crimes in the future.

The establishment of a truth commission in Aceh must be in accordance to the context of the conflict, relevant to the human rights abuses committed and the local capacity that can strengthen the process of seeking truth and reconciliation. Therefore, a TRC in Aceh should aim to achieve the following:

#### **4.2. Reconciliation at all Levels of the Community**

The people of Aceh must begin living again, after a prolonged conflict which involved a myriad of actors at different levels and with different roles. A truth-seeking process, which allows for confessions, the expression regret, and acceptance by the community is the foundation for a new life for Aceh.

There cannot be genuine reconciliation without truth. Nor can there be reconciliation without acknowledgment of the truth and the acceptance of those who played a role in the conflict. A TRC in Aceh must create genuine reconciliation and not the mere semblance of one.

All actors, GAM, the Indonesian government and those who acted on behalf of the government and GAM must confess to their actions and their individual roles in order to regain acceptance into their community. This is the first prerequisite for reconciliation. Without full disclosure, the foundations for true reconciliation are not established.

For the people of Aceh, in particular the victims, a TRC in Aceh must give sufficient space to speak about the violations that they experienced and what they know. They must be given the opportunity to question perpetrators so that the truth regarding specific events are known and recognized.

Reconciliation facilitated by a TRC in Aceh should be a reconciliation process stemming from the smallest communities. The process must be facilitated openly, with support from the community. Local culture and traditional ceremonies play an important role to forge reconciliation. At the completion of reconciliation at community-

level, a wider reconciliation process shall be done involving an official apology and acknowledgement of the crimes of the past, promising that there will not be repetition future.

#### **4.3. Truth-seeking Process**

The wider community and victims have an inalienable right to know the truth. A TRC is a means to fulfill this right. A TRC may disclose those facts that have been intentionally hidden. Disclosing these facts can clarify history, and record it as a lesson for the future. These facts are critical for resolving past crimes, including the search for victims of forced disappearances and the graves of those who were killed. Disclosure of the truth is the first prerequisite for reconciliation.

Furthermore, admissions and testimonies given must be clarified so that there will be no room for manipulation. Here is the important role of the Aceh TRC in seeking the truth and reporting it based on the clarified testimonies of several parties and through the collection of supporting documents.

The Aceh TRC must also give the widest possible space to the victims to recount their experiences. To date, the voices of the victims have not been heard. This process must be facilitated by a TRC in Aceh, putting the experiences of victims in the center of its truth-seeking process.

#### **4.4. Fulfilling Victims Right to Reparations and Protection**

When human rights abuses occur, the State has the duty to fulfill the victim's right to reparations. The fulfilment of victims' rights is one of the main elements of reconciliation. The Aceh TRC must be tasked to facilitate the immediate and just fulfilment of these rights.

The victims in the community have suffered for a long time. Their suffering will come back to haunt them if they have to go through a long and convoluted process or, worse, if they must jump through hurdles in order to receive reparations. The Aceh TRC has an important role in helping to fulfill these rights while at the same

time lighten the victim's burden.

Additionally, the Aceh TRC must also be able to protect the victims. By testifying on past events of human rights violations the victims might be at risk. The Aceh TRC must be able to provide genuine measures for victim protection.

#### **4.5. Recommendations for Reform And Ensuring Non-recurrence**

As a non-judicial commission established to disclose past crimes, the commission must make recommendations to improve the situation of victims and community suffering from the impact of violations of the past. Although it focuses on the past, the recommendations of the commission must look to the future to ensure that the atrocities of the past will not be repeated. Therefore, the Commission will make recommendations to reform systems and structure, policies and procedures that allowed mass violence. The recommendations may include sentencing, vetting, changes and or restructure of the bureaucracy.

#### **4.6. Legal Foundation**

The foundation to remedy past human rights violations in Aceh is found in a number of Indonesian legislations and are the consequences of Indonesia's international obligations as a state party of international treaties and member of various UN mechanisms.<sup>5</sup> There are no legal or procedural obstacles to the establishment of a TRC for Aceh.

##### ***4.6.1. National Legal Framework***

Far before the provisions for the establishment of a truth and reconciliation commission was included in the Helsinki MoU, the proposal for a commission to deal with past violations in Aceh was

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<sup>5</sup> At the time of writing, Indonesia has ratified 6 Human Rights treaties presently sits in the UN Human Rights Council and the Security Council)

contained in several national legal products, promulgated in the spirit of the 1998 reforms. Although Law no 2/2004 on the Truth and Reconciliation Commission was revoked by a decision of the Constitutional Court in December 2006 (Constitutional Court Decree 006/PUU-4/2006), other legal products including those with a status above legislation provide a legal framework for the resolution of past human rights violations in Aceh. The legal products are:

- 1). MPR [upper house of the parliament] Decision no. IV/MPR/1999 regarding the GBHN [broad outlines of state policy] 1999-2004 on Aceh:

*“In developing regional autonomy within the Unitarian State of the Republic of Indonesia, and to resolve in a just and wholesome manner, the problems in regions that must be addressed immediately and genuinely, the following steps are necessary:*

*- Special Region of Aceh*

- a. Maintaining national integrity within the Unitarian State of the Republic of Indonesia by respecting equality and diversity of the social and cultural life of the people of Aceh by declaring the Special Region of Aceh as a special autonomy region regulated by law.*
- b. Remedy the case of Aceh case in a way that is just and dignified by conducting genuine investigations and prosecution of those who violated human rights, during the implementation of the Military Operation Zone and after”.*

- 2). MPR Decision no. V/MPR/2000 on the Strengthening of National Unity and Unification:

*”Establish a National Truth and Reconciliation Commission as an extra-judicial body whose number of members and criteria are determined by law. This Commission's task shall be to uphold the truth by disclosing abuses of power and past violations of human rights pursuant to applicable laws and implement reconciliation within the perspective of a common interest as a people. After recovery of the truth, the steps that may be taken are the confession of wrongdoing,*



*asking forgiveness, granting forgiveness, reconciliation, upholding the rule of law, provision of amnesty, rehabilitation or other alternative measures that can strengthen the unity and unification of the nation by fully recognising the feeling of justice in the community.”*

- 3). Law No. 26 /2000 regarding Human Rights Court. Law 26/2000 also regulates the establishment of a TRC:

*“Article 47;*

- (1) Gross Violations of Human Rights perpetrated before the enactment of this law do not exclude the possibility of resolution by the Truth and Reconciliation Commission.*
- (2) The Truth and Reconciliation Commission as intended under paragraph (1) shall be established by legislation”.*

- 4). Law no. 11 / 2006 regarding the Government of Aceh.<sup>6</sup> In Law 11/2006 the idea of the TRC is reiterated:

*Article 229;*

- (1) In the interest of truth and reconciliation, with this law the Aceh Truth and Reconciliation Commission is established.*
- (2) The Aceh Truth and Reconciliation Commission as intended under paragraph (1) is an integral part of the Truth and Reconciliation Commission.*
- (3) The Aceh Truth and Reconciliation Commission workings are based on legislation.*
- (4) In resolving cases of human rights violations in Aceh, the Truth and Reconciliation Commission may consider the traditional principles which live in the community.*

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<sup>6</sup> TRC provisions in Law 11/2006 are the implementation of the Helsinki MoU signed on 15th August 2005 between GOI and GAM in Helsinki. Point 2.3. states that “a TRC shall be established in Aceh with the task to formulate and determine the terms of reconciliation”.

#### 4.6.2. *Indonesia's International Obligations; State Duties and Obligations towards Victims of Human Rights Violations*

Out of several international human rights treaties<sup>7</sup> ratified by the Indonesian government, there are at least two instruments ICCPR and CAT- which demand that state to provide victims with an effective remedy for human rights violations. The provision of a remedy is the responsibility and duty of the state as guarantors of the ICCPR and CAT.

An effective remedy<sup>8</sup> does not only relate to the specific incident of human rights violation, but also provides a guarantee against the repetition of such human rights violations in the future. An effective remedy includes judicial (legal) mechanism, and the obligation to investigate, prosecute, conduct a trial and punish perpetrators. At the same time, victims must receive reparations, including rehabilitation, restitution or compensation. The failure to fulfill these obligations may result in impunity. Impunity is defined as:

the impossibility, de jure or de facto, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.<sup>9</sup>

<sup>7</sup> Indonesia has become a state party of ICCPR, ICESR, CEDAW, CERD, CRC, and CAT

<sup>8</sup> The effective remedy itself can be categorized as a *rights to remedy*, where the victim group is the one with the most interest and *inalienable rights*. This right category is often known as the *Victim's Rights*. This mechanism and *effective remedy* right is included in several international instruments: DUHAM (Article 8), Civil and Political Rights Covenant (Article para. 3 and Article 9 para. 5), Convention on Torture (Article 14), CERD (Article 6), Convention on the Rights of the Child (Article 39), *Declaration on the Protection of All Persons from Enforced Disappearance* (Article 19), *Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power* (Principles 11, 18, and 19) and *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (Principle 20). Finally, integrated study on effective remedy issue particularly for serious crimes or gross human rights violations into [Set of Principles for The Protection and Promotion of Human Rights through Action to Combat Impunity](#).

<sup>9</sup> [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.

The above impunity principles reflect what is known as “victim's rights” which are holistically owed to victims of human rights violations. The victims' rights here include the right to know, the right to justice and the right to reparations.<sup>10</sup>

- 1) Indonesia' obligations under the ICCPR (*International Covenant on Civil and Political Rights*) (ratified through Law no.12/2005), in relation to human rights violations are stated under Article 2 (paragraf 3) of the Covenant on Civil and Political Rights:

*“Each State Party to the present Covenant undertakes :*

*(a) To ensure that any person whose rights or freedoms as herein recognized are violated, there have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

*(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*

*(c) To ensure that the competent authorities shall enforce such remedies when granted.”*

Additionally, the Covenant also demands that the state party provide remedy to arbitrarily arrested and detained victims (Article 9) and miscarriage of justice's victims (Article 14).

Article 9 (paragraph 5) states:

*“Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”*

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<sup>10</sup> [\*Basic Principles and Guidelines on the Right to a Remedy and Reparations\*](#), UN General Council Resolution 60/147 of 16 December 2005.

Article 14 (paragraph 6) states:

*“When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly attributable to him”*

- 2). Indonesia' obligations under the CAT (*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*), ratified under Law no.5/1998, includes to seek the truth (Article 13) with regards to a victim's claim and provide fair and adequate compensation (Article 14) if a violation is found.

Article 13:

*Each State Party shall ensure that every individual who alleges has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authority. Steps shall be taken to ensure that the complainant and witnesses are protected against ill treatment or intimidation as a consequence of his complaint or any evidence given.*

Article 14:

1. *Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.*
2. *Nothing in this Article shall affect any right of the victim or any other person to compensation which may exist under national law*

Thus, an option for a mechanism to remedy violations that took place in Aceh is the immediate establishment of a truth and reconciliation commission. There are many reasons for this

proposal for Aceh at this point in time, among them:

- *The post-conflict* period has created a momentum and a space for the victims to demand justice for past violations.
- A new government in Aceh and changes in the political constellation has brought Aceh to a transition period. The transition period provides space and opportunities to expose problems that need to be resolved.
- The 15th August 2005 Helsinki MoU, article 2 (3), provides a mandate for a TRC. This is the first step to bringing justice for victims.
- Local capacity can support the fulfillment of justice for the victims. This is relevant in terms of facilitating the integration and involvement of victims in resolving the past.
- Human rights abuses starting in the 80s have given rise to many cases, which until now have not been brought to justice. These cases must be investigated and dealt with because of the important implications for understanding of what constitutes a violation of human rights in the future.
- The violence committed in Aceh has heightened victim's feelings for revenge and hostility. This situation may trigger the possibility of new violence and a protracted conflict.
- The rights of the victims must be protected; strengthening and support for victims, including fulfilling their rights to know and to truth, their right to justice, right to reparations and guarantees that the violence will not reoccur.
- Lessen mutual suspicion among the people of Aceh by seeking truth and justice for human rights abuses.
- Collection of information, *historical archives* and memory as evidence of the human rights story in Aceh that, throughout its recent history, is fraught with violence.

The above context paints a picture of the need to respond to the victims' voices as they struggle for truth and justice. Most urgently, is the need to reconcile victims of horizontal violence (victims of GAM and of state violence), seek the truth, facilitate reparations and protection of victims, develop recommendations on serious crimes and policy reforms.



#### 4.6.3. Local Capacity in Adat Law

##### A. DI'IET

The word *di'iet* originates from the Arab term *diyat*. In linguistic terms *diyat* means the replacement of life or a body/limb lost or damaged. This replacement can take the form of assets, either movable or fixed. *Diyat* is a concept found in Islamic criminal law. Scholars of Islamic law understand *diyat* as a form of compensation or redress from a person (or his family) guilty of a crime to the victims or his family heirs in a crime of murder or crime involving damage to another person's body.

The payment of *diyat* in the life of the Acehnese community starts with a judicial process against the perpetrator so as to know the level of forgiveness granted by the victim or his heirs. If forgiveness is granted then traditional leaders or village elders will deliberate with the perpetrator or his heirs to negotiate the amount of *diyat* payable. Generally the payment of *diyat* takes place during a traditional ceremony, which include events called *peusijuek* and *peumat jaroe*. Traditional and cultural institutions are involved in resolving the crime to prevent any residual feeling of revenge between the quarrelling parties.

The venue for the payment of the *di'iet* is usually a *musholla* or *meunasah*, the house of the victim or another venue depending on the agreement of the two parties involved. The guilty party or his family must contribute a buffalo or a cow, the complete *peusijuek* comprising: yellow sticky rice, coconut stir-fried with palm sugar (*ue miera*), baked chicken, *tumpoe* (flour mixed with palm sugar and stir-fried), *senijuek*, and ilalang leaves (*naleung samboe*), rice stalks mixed with rice, flour water or water for washing hands, and incense. A traditional knife (*rencong*) wrapped in a sarong will be added for the resolution of a murder case. In some areas there will be also a monetary compensation ranging between 2 to 5 million rupiah. The *diyat's* objective is to resolve crimes such as murder and put an end to the conflict that resulted in murder.

In the resolution process of a *diyat* issue the *keuchik* (village head), *teungku meunasah* (ulema), and *tetua gampong* (village elder) will act as negotiators while the *pemangku adat* (traditional leader) will facilitate. They will initiate the talks with the perpetrator and the victim or their heirs. The involvement of the extended families of

both parties is important in these discussions to prevent future acts of revenge.

### B. SAYAM

*Sayam* is a method of conflict resolution found in the life of the Acehese community. This is an old tradition and in fact it has been practiced for much longer than the *di'iet* or *suloeh*. *Sayam* is a form of compensation in terms of property paid by the guilty party to the victims or his heirs, especially in cases of damaged limbs or organs. In fact in some places in Aceh *sayam* is the compensation for having drawn blood from the victim as a result of violence.

The Acehese philosophy of *sayam* originates from the old adage “*luka disipat, darah disukat*”, meaning that blood drawn through violence must be calculated. This shows that the people of Aceh highly value and protect the human body as a creation of Allah.

Similar to *diyat*, the *sayam* process starts after the conflicting parties are contacted by the *keuchik* and the *teungku meunasah*. If the two parties are in agreement then the process takes place in the house of the victim or in the *meunasah*. The material prepared by the guilty party or his family is similar to that of the *diyat*, but usually differ in the quantity. This shows the importance of closure of conflict through traditional means to reach sustainable peace, foster continuous good relations, strengthen family relations and awaken a sense of Islamic unity in the village.

*Sayam* is only applied for minor crimes where the victim has been wounded or blood has been drawn.

### C. SULOEH

The Acehese word *suloeh* originates from the Arabic term *al-sulhu-islah*, meaning a peace effort. *Suloeh* is an effort to achieve peace between disputing parties.

In the traditional resolution of conflict among Acehese, *suloeh* is more directed towards reaching peace outside of a criminal case and is more oriented towards civil disputes not involving wounds to body organs or limbs. Therefore, in this process there is no slaughtering of buffaloes, cows or goats because there is no

connection with death or damage to the body of the victim.

The resolution of a case through *suloeh* usually takes place at the location of the incident with the officiation of the traditional elders who have authority over that area, without involving the *keuchik* or the *teungku meunasah*. This resolution usually applies to very simple cases where a handshake is sufficient to resolve the dispute (*peumat jaroe*).

Civil disputes resolved through *suloeh* are usually related to economic disputes such as land boundaries, water line disputes in rice fields, rights to land for vending stalls, fish-catching river areas (*seuneubok*) etc.

#### D. PEUMAT JAROE

Traditional and cultural activities related to *di'iet*, *sayam*, and *suloeh* are known as *peusijuek* (literally, to cool down) and *peumat jaroe* (handshaking). Both institutions play an important role in fostering good relations (*ukhuwah*) between the disputing parties. Acehnese believe that a conflict is not completely resolved without *peusijuek* and *peumat jaroe*.

Therefore in the *peumat jaroe* process the facilitating parties will say special words, like “*Nyoe kaseb oh no dan bek na deundam le. Nyoe beujeut keu jalinan silaturrahmi, karena nyan ajaran agama geutanyoe*” (let's leave it and let's not drag things on. A handshake shall be the beginning of good relations between the two of you as our religion teaches us”.)

The *peumat jaroe* ceremony is witnessed by many invited guests. The order of activities is *peusijuek*, *peumat jaroe* and sharing of food (*kenduri*). This activity is made up of a series of longer activities in the process of conflict resolution within an Acehnese framework. The role of the ulema and the *pemangku adat* is dominant in the pre-*kenduri*, *peusijuek* and *peumat jaroe* phases. However, after the event their role diminishes gradually.



**CHAPTER V**  
**Komisi Betui Ngon Dame**  
**(Aceh Truth and Reconciliation Commission)**





### 5.1. Principles.

A TRC shall be established to promote and fulfill human rights, therefore its principles shall include:

***Independence;*** The Commission shall not depend on or be influenced by any other party.

***Non-discrimination;*** This Commission shall not discriminate against or make exceptions on any basis: gender, race, beliefs, religion, ethnicity or any other difference (refer to the Constitution, law no 13/2005)

***Participation and transparency;*** The Commission must ensure that the people, in particular victims of human rights violations and women are involved in the formulation, implementation and performance evaluation of the Commission. Therefore, community access to information must be made available in relation to the work of the Commission and the institution shall be transparent and accountable to the public.

***Prioritize Victim Protection and Recovery.*** The Commission shall prioritize victim protection, especially for victims of sexual violence, including provide assurances of confidentiality of identity if requested by the victim. Also, it will undertake an urgent program of reparations for victims in great need and will recommend to the government a comprehensive reparations program for the victims according to the findings of the Commission.

***Against Impunity.*** Clearly name those most responsible for gross human rights violations. There shall be no amnesty recommendations for those most responsible for gross human rights violations. The Commission shall work in a complementary manner with the courts for serious crimes, namely, crimes against humanity, genocide and war crimes. The Commission shall give legal immunity recommendations **only** to the perpetrators who have confessed their crimes during the process of reconciliation facilitated by the Commission.

***Due Process The Perpetrator's Right to Respond.*** In the interest of a fair process the perpetrator who has been named during the

disclosure process or in the Commission's findings has the right to respond to the accusations.

***Evidence Standard 'on the Balance of Probability'.*** As a non-judicial mechanism determining the truth does not need to meet the standards of evidence as required in a judicial process and therefore the Commission may use indirect evidence or other forms of evidence.

***Individual Responsibility.*** The process of reconciliation begins with the individual confession of the perpetrator.

## **5.2. The objectives of the Commission**

- a) Inquire into human rights violations that took place in the context of the Aceh's political conflict from 1st January 1989 till 15th August 2005;
- b) Establish the truth of human rights violations in Aceh from 1st January 1989 till 15th August 2005;
- c) Report all findings including patterns of human rights violations and identify all contributing factors;
- d) Identify policies and practices of the government of Indonesia, GAM and other armed groups which caused human rights violations, to prevent recurrence of violence;
- e) Make recommendations to government to prosecute cases of gross human rights violations;
- f) Refer the findings of the Commission to other existing legal mechanisms as required;
- g) Make recommendations to policy makers to restore the rights of the victims, improve the government and security systems to prevent recurrence of human rights violations;
- h) Promote a process of psycho-social recovery for victims and communities;
- i) Facilitate the process of reconciliation through truth disclosure and rehabilitation of victims, including efforts to support community acceptance of individuals who have confessed to their crimes against individuals and or communities;
- j) Ensure safekeeping and public access to all findings, documents and Commission work as a historical and learning source by taking into account victims' protection;
- k) Report findings and recommendations to the President, Governor and the Aceh Parliament for legal, political,

administrative changes and other actions including the security sector reform to prevent the recurrence of human rights violations and to respond to the victims' needs;

### 5.3. Establishment of the Commission and its Structure

The Aceh TRC shall comprise of 7 Commissioners with the provision that at least three of them be women. The role of the Commissioners is:

- a) Ensure the implementation of the Commission's principles and tasks, including the completion of the Final Report
- b) Make policies and design a program in relation to all aspects of the Commission's work, including gender policies
- c) Coordinate with the Regional Commissioners
- d) Build a network with authorities and other parties
- e) Ensure the availability of resources and control the budget

The Commissioners are assisted by 24 Regional Commissioners in 8 regions, namely:

<b>Region I:</b> 1. Sabang 2. Banda Aceh 3. Aceh Besar	<b>Region V:</b> 4. Aceh Timur 5. Langsa 6. Tamiang
<b>Region II:</b> 7. Pidie	<b>Region VI:</b> 8. Singkil 9. Aceh Selatan 10. Simeulu 11. Aceh Barat Daya
<b>Region III:</b> 12. Bireun	<b>Region VII:</b> 13. Nagan Raya 14. Aceh Barat 15. Aceh Jaya
<b>Region IV:</b> 16. Lhokseumawe 17. Aceh Utara	<b>Region VIII:</b> 18. Gayo Luwes 19. Aceh Tenggara 20. Aceh Tengah 21. Benar Meriah

There shall be 3 Regional Commissioner [per region], of which at least one shall be a woman. The role of the Regional Commissioners is:

- a) Make decisions related to truth-seeking and reconciliation in their regions
- b) Implement the truth-seeking program
- c) Facilitate the reconciliation process at community level
- d) Implement the urgent reparations program
- e) Ensure public participation and access to information
- f) Report to the Commission on findings, process and make recommendations based on work undertaken at regional level

At the first Plenary Session the Commission shall appoint a Chair, Vice-Chair, Secretary General, allocate tasks and draw Commission's responsibilities.

The Secretary General prepares and runs the supporting systems for all the Commission work, including the coordination of the executive staff.

Alternative A [above]:	Alternative B:
7 Commissioners make the TRC policies. The 24 Regional Commissioners do not attend Plenary Sessions but only implement the work of the Commission in their regions	Same as per alternative A but here the Regional Commissioners are involved in policy-making, therefore there shall be 7 plus 24 Commissioners or, 31 members of the Aceh TRC  Although a more democratic alternative, the problem is that the Plenary Session will be too big.
Alternative C:	Alternative D:
5 Commissioners in Banda Aceh with coordinating tasks: <ul style="list-style-type: none"> <li>• Chair</li> <li>• Vice Chair (doubling as Secretary General) " Truth disclosure</li> <li>• Reconciliation</li> <li>• Recovery</li> </ul> Plus 16 Commissioners focusing on 8 regions (minimal 1 woman per region), making a total of 21 TRC members	7 Commissioners in Banda Aceh, plus 1 Regional Commissioner who sits in the Plenary Session as the voice of the representatives in the region. So, a total of 7 + 8 = 15

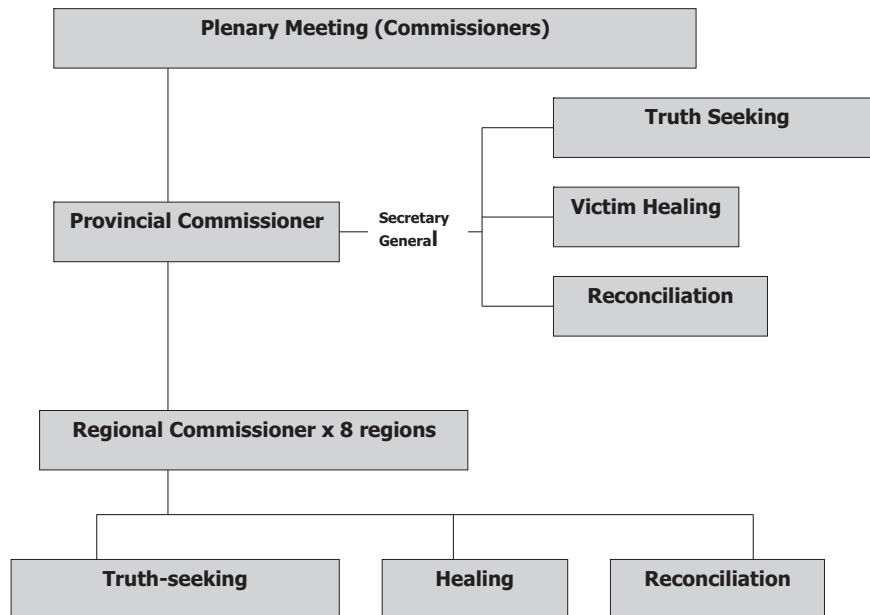
Commissioners selected shall fulfill the following criteria:

- a) Not a perpetrator nor a suspected perpetrator of human rights violations or implicated in crimes of corruption
- b) Has shown a commitment towards victims, especially victims of human rights violations
- c) Has a track record showing a commitment to human rights
- d) Has an understanding and vision on the work of truth-seeking, victim healing and reconciliation
- e) Understands local wisdom in the context of the Aceh conflict

The Governor shall appoint the Commissioners by establishing a Selection Panel to facilitate the process of public nominations. The Selection Panel shall be constituted of 5 members, each representing victims' group, Human Rights NGOs, women's groups, traditional leaders and religious leaders. Women shall represent 30% of the Selection Panel membership.

The Selection Panel shall recruit according to determined procedures, concurrently at regional and provincial levels. The Selection Panel shall prepare process nominations based on Commissioners criteria from the submitted nominations. The number of names nominated shall be equal to the number of Commissioners. Recommended nominations shall be submitted to the Governor for determination and ratification.

### Aceh TRC Structure



#### Duration

Given the geographic spread of the area, the number of cases and their complexity, the Commission shall be established for a limited period of two years. If deemed necessary, provisions shall be made to extend the mandate of the Commission for two additional periods of 6 months each. The extension shall be agreed and ratified by the Governor.

Commission members shall not hold multiple offices and shall **work full time for the Commission**.

#### Funding

The primary source of Commission funding shall be the NAD provincial budget. The possibility of alternative sources of funding from donors may be contemplated, if required.

#### Technical Preparation prior to Commencing Work

The government shall provide all working facilities before the commencement of the TRC activities to facilitate, expedite and further the work of the Commission (ex: required office equipment, transportation, communications etc)

#### Commissioner Replacement



The Commissioners' term of office shall be for the entire duration of the Commission. A Commissioner may resign by submitting a written resignation to the Commission. The Commission may recommend to the Governor to terminate a Commissioner if such decision has been made at the Plenary Session with 2/3 of the votes that the Commissioner is incompetent or has acted in a way that threatens the credibility of the Commission in the eyes of the people.

If a Commissioner should resign or be terminated, or die during his/her period in office then the replacement shall be by appointment of the Governor, based on a proposed candidate supported by 2/3 of the Commission's membership.

#### Dissolution of the Commission

The Commission shall be dissolved at the latest 4 months after the submission of the Final Report.

Provisions for the dissolution of the Commission shall be: final audit, return or transfer of assets, organization of the archives and follow-up on the recommendations. The dissolution of the Commission shall be announced to the public through the press and electronic media.

### 5.4. Truth-seeking

#### 1. Truth-seeking shall be conducted by:

- a. Investigations and research to seek facts regarding human rights violations.
- b. Collecting evidence from the victims, witnesses or perpetrators and other members of groups or communities, in writing.
- c. Hold hearings<sup>11</sup> at local and provincial levels.
- d. Collect and analyse specific documents or information including official state documents.
- e. Receive submissions from any party with competency on human rights violations in Aceh.
- f. Solicit or accept expert testimony.

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<sup>11</sup> What is intended by session is testifying before the Commission and the hearings can be closed or open to the public depending on victim's protection consideration.

- g. Exhume graves where victims of human rights violations are suspected to have been buried.

2. The powers of the Commission in truth-seeking:

- a. To hold hearings with the objective of seeking the truth;
- b. To invite and ask questions to victims, witnesses, perpetrators or members of groups and or community;
- c. To demand that those testifying before the Commission be sworn-in before testifying;
- d. To request documents required from State institutions and related organizations;
- e. To demand the handover of documents requested from State institutions and other related organizations;
- f. To demand the intervention of the local District Court to subpoena official State documents; The provision for document handover by the District Court shall be issued within 7 days following the request by the Commission.

3. Commission Obligations

- a. To provide protection and special measures for the victims of sexual abuses, children and other vulnerable groups.
- b. To keep the identities of witnesses confidential if sought by the witness either in writing or directly to the Commissioners.
- c. To give the right to respond to all parties;
- d. To allow perpetrators to be named in the report to provide a response to the Commission;

**5.5. Community Reconciliation**

1. Definition

Community reconciliation is the process of bringing together victims and perpetrators of human rights violations at community-level; to facilitate a confession from perpetrators; forgiveness from victims; and the acceptance of the perpetrators back into their community.

## 2. Principles

Community reconciliation may take place according to the following principles:

- a. On a voluntary basis, initiated by the perpetrator and/or the victim;
- b. Between perpetrators at community-level with the victim or the victim's family.
- c. Not eligible for those most responsible for the commission of the most serious crimes
- d. Public participation

## 3. Community Reconciliation Process

- a. Reconciliation must be preceded by a process of preparation, including the strengthening of the victim, urgent reparations to the most vulnerable victims, community strengthening and sufficient provision of information to the victim and the community.
- b. Reconciliation is facilitated by a reconciliation panel composed of 1 regional commissioner and 4 community leaders from the local community, of whom 2 are women.
- c. Community reconciliation must be attended by the victim or a representative appointed by the victim or his/her family, the perpetrator, the reconciliation panel and the community.
- d. If the victim and the perpetrator originate from different communities then the Commission shall take the perpetrator to the reconciliation panel in the community of the victim.
- e. The form of reconciliation is decided by the reconciliation panel after having heard the victim, the representative or victim's family, and from the community. The victim shall be heard either directly or in writing should the victim be unwilling to speak.

## 4. Standards for the implementation of reconciliation shall be an integral part of the law establishing the Commission. These standards will include:

- a. Preparation;
- b. Criteria and appointment process, training and dissolution of reconciliation panel;
- c. Implementation procedure including how to examine the perpetrator, conduct documentation and clarification, and

- decision-making mechanisms;
  - d. Criteria of local traditions that can be used and types of social sanctions that promote reconciliation;
  - e. Guaranteed protection for perpetrators who have confessed and have been forgiven by the victims, including guarantees of legal immunity for the confessed crimes. This guarantee does not apply to those most responsible for the most serious crimes.
5. Protection for Perpetrators. Following confession of past crimes the perpetrator must be ensured of:
- a. Protection by the State from acts of violence and protection against discrimination towards him/her, including family members, that may result from the crimes confessed.
  - b. Legal immunity for the crimes confessed where the perpetrator has been forgiven by his/her community, with the exception for those most responsible for the most serious crimes.
  - c. Appropriate social sanctions, not arbitrary or degrading, in accordance to principles of human rights.

For the purpose of reconciliation the Commission may undertake other activities, including research and public hearings in order to discover and clarify local incidences of human rights violations related to the political conflict and its impact on the population.

#### **5.6. Reparations**

1. Reparations is the improvement of the victim's conditions, his or her family and community, in relation to gross human rights violations causing loss of life, mental a physical suffering as a result of the violence, economic losses, trauma, mental stress, destruction of public infrastructure, stigmatization and denial of historical truth.

In a UN document outlining principles on remedies and reparations for victims of gross human rights violations by the UN Commission for Human Rights (19th April 2005) reparations is formulated as follows:

- Restitution (restoring the victim to the original situation before the violation, including restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property);
- compensation (for any economical damages in proportion to the extent of the violation);
- rehabilitation (medical and psychological care, legal and social services). The document further stipulates two important forms of symbolic and institutional reparations, i.e. satisfaction and guarantees of non-repetition;
- Satisfaction includes “the cessation of continuing violations...; public disclosure of the truth... the search for the whereabouts of the disappeared, (and) for the identities of the children abducted, ...; an official declaration or a judicial decision restoring the dignity (of victims); public apology, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for the violations; commemorations and tributes to the victim; (and) inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels;”
- guarantees of non-repetition include institutional reform of state organs (military and security forces, the judiciary) to ensure effective protection of human rights.

2. The objective of reparations is the restoration of the basic rights of the victim, the victim's family and community, towards an acceptable standard of life, where the victim is acknowledged and respected as a human being and as a citizen.

3. Reparations should be based on acknowledgement of the suffering and losses experienced by victims caused by the violence.
4. Reparations shall be supported by the Provincial Budget until the ideal condition of recovery is achieved. These costs may also be the responsibility of parties responsible for the violations of the human rights that took place.
5. Reparations may not be delayed for any reason, such as lack of State finances.
6. The Commission may receive foreign assistance or for its reparations program.
7. The reparations program is made up of two elements: Urgent Reparations and Comprehensive Reparations.

#### Urgent Reparations

Urgent Reparations is the immediate action taken by the Commission to support the recovery and rehabilitation of the most vulnerable of human rights violation victims in terms of health (physical and mental) and security as well as all other aspects of their lives impacted by the human rights violations.

The objective of urgent reparations is, primarily, to strengthen the most vulnerable victims who participate in the process of truth-seeking and as part of the comprehensive healing process.

In implementing the urgent reparations program the Commission shall develop mechanisms and procedures including criteria and priorities to determine the most vulnerable victims. In its implementation the Commission can work together with service-providing organizations experienced in supporting victims.

For urgent reparations in relation to security, the Commission may cooperate with the police.

The Commission can develop independent mechanisms to provide and to ensure protection to victims and witnesses.



Protection is provided before and after the truth-seeking process and victims are entitled to:

- a. Refuse to provide evidence that may incriminate them.
- b. Refuse to provide evidence that may incriminate husbands or wives, parents, children and close family members.
- c. Receive psychological and legal support, if required.
- d. Guaranteed security before, during and after testifying, including the right to keep their identity confidential and to testify in a safe place.

#### Comprehensive Reparations

The Commission will make recommendations to the government on the implementation of a comprehensive reparations program. To ensure implementation of this recommendation a special unit should be established, reporting directly to the Governor on the implementation of the comprehensive recovery program in Aceh.

A comprehensive reparations program aims to facilitate the recovery of individuals, families, groups and or communities to collectively become strong, able to function optimally, become productive and resilient after their traumatic experiences.

The reparations program shall emphasize a victim empowerment approach, namely:

- Increase victim's resilience
- Break the cycle of violence by preventing victims from becoming perpetrators
- Enhance the victims' social skills
- Increase the welfare of the victims and their families.
- Develop community support for victims
- Not blame victims
- Reject the use violence, either physical or verbal
- Protect victims' confidentiality
- Respect victims' choices including refusal to testify
- Not take advantage of victims' for private or collective gain
- Not create victim's dependency
- Not create new problems for the victim

#### Reparations Methodology

Both urgent and comprehensive reparations shall be implemented by determining criteria and priorities based on Commission's findings and resources:

- a. Individual: reparations are provided to individual victims. This approach requires the involvement of the victim's family.
- b. Group approach: reparations provided to a group of victims based on relevant criteria, for example, by region, sex, age and or type of violence experienced.
- c. Establishment of community-based support groups for victims.
- d. Development of a referral system (a mechanism for joint and sustained support) at community-level and by service providers.

#### **5.7. Final Report**

The Commission shall produce a Final Report based on its process and findings. The Final Report shall be submitted to the provincial parliament of Aceh and the Governor who shall be mandated to present it to the President of Indonesia and also to disseminate it as widely as possible.

The Report shall include Commission findings and recommendations for legal, political, administrative reform and any other actions required including in the security sector to prevent the recurrence of human rights violations and to respond to the victims' needs.

The Commission Report shall be a public report to be disseminated as widely as possible.

The President of Indonesia, the Governor, the National and Aceh parliaments shall be responsible for the implementation of the report's recommendations.

#### **5.8. Administration and Documentation**

Every document obtained or received by the Commission shall be listed and filed in duplicate as back-up data and it will be the responsibility of the secretary general who is in charge of

documentation to organize the files into a database.

The documents and file copies shall not be stored with the originals.

Documents issued must be legalized by the Commission. All documents are public documents except if otherwise stipulated by the Commission at the victim's request.

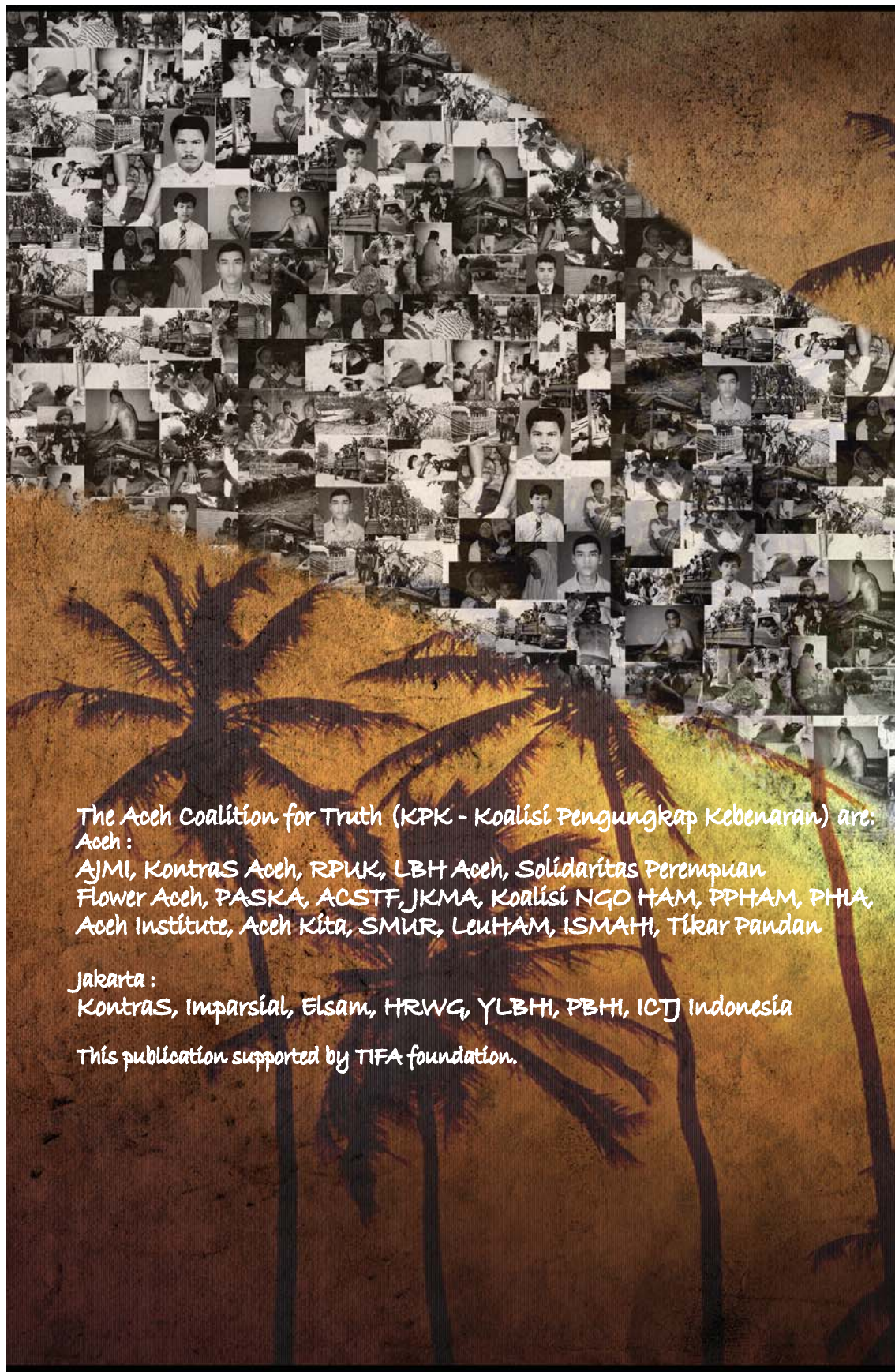
On completion of the Commission's mandate all documents shall be handed over to the national/regional archives, ensuring the following:

- Public access to material and information
- Protection confidential information, according to victims' request.
- Guarantees of security to victims who testified

## Conclusion

This Working Paper describes a model for the resolution of gross human rights violations in Aceh, taking into account the experiences of the victims over several years and the deep scars they have. We hope that this Working Paper will be taken into consideration by the government as a way to resolve the above problems and for other parties in their response to these issues.

Banda Aceh/Jakarta, 14th June 2007



The Aceh Coalition for Truth (KPK - Koalisi Pengungkap Kebenaran) are:  
Aceh :

Ajmi, Kontras Aceh, RPUK, LBH Aceh, Solidaritas Perempuan  
Flower Aceh, PASKA, ACSTF, JKMA, Koalisi NGO HAM, PPHAM, PHIA,  
Aceh Institute, Aceh Kita, SMUR, LeuHAM, ISMAHI, Tíkar Pandan

Jakarta :

Kontras, Imparsial, Elsam, HRWG, YLBHI, PBHI, ICTJ Indonesia

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