

The Rebels, the State and the People

Inclusivity in the Aceh Peace Process

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Abstract

This report analyses the negotiation and codification process of a new political settlement in Aceh, based on the 2005 Memorandum of Understanding with the Indonesian Government and the Law on Governing Aceh passed the following year. It addresses various aspects related to inclusivity in the Aceh political settlement, and is guided by the following questions: How did the Aceh peace process deal with the issues of participation and representation? What were the key substantive demands of the Aceh people and how were they negotiated by the Free Aceh Movement (*Gerakan Aceh Merdeka* – GAM) on their behalf? What impact did the peace agreement have on constructing an inclusive Aceh and rectifying the imbalanced centre-periphery relationship between Jakarta and Aceh? The report begins by explaining the background of the conflict leading up the peace talks, the issues pertaining to the subject-matter of inclusivity discussed during the Helsinki negotiations and the degrees of horizontal and vertical participation during the peace process. It then examines the two-staged codification process of the new political settlement before making concluding observations pertaining to the ongoing materialisation process and the linkages between political transformation in the centre (Jakarta) and the periphery (Aceh).

About the Publication

This paper is one of two case study reports on Aceh (Indonesia) produced in the course of the collaborative research project ‘Avoiding Conflict Relapse through Inclusive Political Settlements and State-building after Intra-State War’, running from February 2013 to June 2015. This project aimed to examine the conditions for inclusive political settlements following protracted armed conflicts, with a specific focus on former armed power contenders turned state actors. It also aimed to inform national and international practitioners and policy-makers on effective practices for enhancing participation, representation, and responsiveness in post-war state-building and governance. It was carried out in cooperation with the partner institutions CINEP/PPP (Colombia, Project Coordinators), Berghof Foundation (Germany, Project Research Coordinators), FLACSO (El Salvador), In Transformation Initiative (South Africa), Sudd Institute (South Sudan), Aceh Policy Institute (Aceh/Indonesia), and Friends for Peace (Nepal). The views expressed in this paper are those of the authors and do not necessarily reflect the views and opinions of the Berghof Foundation, CINEP/PPP, or their project partners. To find more publications for this project please visit www.berghof-foundation.com. For further information, please contact the project research coordinator, Dr. Véronique Dudouet, at v.dudouet@berghof-foundation.org.

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List of Acronyms

ASEAN	Association of Southeast Asian Nations
CSO	Civil Society Organisation
CMI	Crisis Management Initiative
CoHA	Cessation of Hostilities Agreement
DOM	<i>Daerah Operasi Militer</i> / Military Operation Region
EU	European Union
GAM	<i>Gerakan Aceh Merdeka</i> / Free Aceh Movement
HDC	Henry Dunant Centre (now Centre for Humanitarian Dialogue)
MoU	Memorandum of Understanding
TRC	Truth and Reconciliation Commission
UUPA	<i>Undang-Undang Pemerintahan Aceh</i> / Aceh Governing Law

1 Introduction

The Aceh peace process, codified in a peace agreement and new national law (in 2005 and 2006 respectively), has led to a new power arrangement between the central government of Indonesia and the local government of Aceh. There are still several key issues pending, but a number of provisions are being – or have already been – implemented. Nevertheless, the peace agreement’s long-term impact in solving the 30 years of conflict between Aceh and Jakarta still remains to be seen.

The political settlement negotiated in the Helsinki talks entailed Aceh’s right to manage its own affairs in social, political and economic matters. The focus was less on the power-sharing arrangement with former rebels, but rather on the possibility of all segments of the Acehnese people to rebuild their future and transform their society. Thus, the peace agreement was expected not only to ‘transform the rebel’, but also to transform society. This paper focuses on various aspects related to inclusivity in the Acehnese political settlement, and is guided by the following questions: How did the Aceh peace process deal with the issues of participation and representation? What were the key substantive demands of the Acehnese people and how were they negotiated by the Free Aceh Movement (*Gerakan Aceh Merdeka* – GAM) on their behalf? What impact did the peace agreement have on constructing an inclusive Aceh and rectifying the imbalanced centre-periphery relationship between Jakarta and Aceh?

Our study is based on a review of relevant literature and interviews with actors who participated in the peace process, especially on the side of GAM, the former power contenders who later became local power-holders. The paper begins by explaining the background of the conflict leading up the peace talks, and the issues discussed during the Helsinki roundtable negotiations. It then examines the two-staged codification process of the new political settlement before making concluding observations.¹

2 The Revolt of the Periphery

The Aceh conflict was the result of failed state-building. Indonesia is one of the most heterogeneous countries in the world, with various ethnic groups and thousands of islands dispersed in the region. The root of rebellion in Indonesia, including in Aceh, can be attributed to the government’s failure to create a common notion of the nation-state. The Acehnese, like a few other ethnic and peripheral groups, had felt excluded from Indonesia’s common nation-building project ever since the creation of the country in 1950. Their exclusion and marginalisation became entrenched during the New Order regime² that sought to centralise power strictly in the hands of the government in Jakarta. Combined with the dominant role of the military in politics and economics, Indonesia became a centralised, militaristic and exploitative state in the eyes of the peripheral provinces such as Aceh. Economically, Aceh was a rich province in terms of natural resources, but its level of poverty was nevertheless one of the highest in the country. As Tim Kell argues, this was one of the root causes for the rebellion (Kell 2010). Prior to opting for armed rebellion in 1976, Hasan di Tiro, the historic leader and founder of the Free Aceh Movement, argued in favour of a democratic and federal Indonesia as a solution for accommodating the various aspirations and differences of non-Javanese ethnic groups.³ The state’s failure to accommodate these aspirations would lead to feelings of resentment, he warned (di Tiro 1958).

¹ The process of materialisation and political transformation of the power contenders into the new rulers in Aceh is treated more thoroughly in the second case study report written for the same project (Daud 2015).

² The violent end of Sukarno’s “Old Order” in 1965/66 marked the beginning of a new era of intense state control by a small elite headed by the second Indonesian president Suharto and backed by the military. It came to be known as the “New Order”.

³ Java is the most populated island of the Republic of Indonesia, and the capital Jakarta is located here, making it the political and economic center of the country. Aceh is located on the island of Sumatra.

Indeed, the exclusivity of the Indonesian nation-state left the Acehese people feeling they had been betrayed and treated unjustly ever since the creation of the Indonesian republic. The armed conflict in Aceh began in 1953, four years after Indonesia's independence from the Dutch, when Teungku Daud Beureueh, the first leader of the Acehese nationalist movement, rebelled after the dissolution of Aceh's province and its incorporation into the North Sumatra province. This conflict ended when the central government agreed to reinstate Aceh as a province and granted it a 'special autonomous status' (Sjamsuddin 1985). However, the government's failure to fully implement Aceh's autonomous status, along with the New Order brutality, led to the rise of the di Tiro movement (Sulaiman 2000). Unlike the first revolt, the second rebellion demanded Aceh be fully independent from Indonesia. While the former movement had consisted of local rebel leaders, the latter was led by the Free Aceh Movement (GAM) that operated both inside and outside of Aceh.

During the Cold War, the Suharto regime was supported by the West, who built a strong alliance with the New Order to counter-balance communism in Asia. Internally, Aceh, Papua and East Timor were declared 'special zones' and placed under military control, turning Aceh into a military operation region (Daerah Operasi Militer, DOM).

3 Democratisation and the First Negotiation Attempt

In May 1998, in the wake of the Asian financial crisis and following several months of intense pro-democracy protests in Jakarta by political forces opposed to the New Order regime, Suharto was forced to step down. He was replaced by his vice-president Jusuf Habibie, who initiated far-reaching democratic reforms and ended Aceh's DOM-status. Responding to massive public demand, he sped up the democratisation process and began implementing a new constitution as well as political reforms, which included the decentralisation of the state. In addition, a military reform was launched to ensure civilian rule over the military and separate the police from military structures.

The reformation movement in Jakarta and the collapse of military dictatorship created new opportunities to build an inclusive Indonesian society, and in particular to redress the imbalanced relationship between the centre of power in Jakarta and the marginalised communities in the periphery, including Aceh. This in turn made dialogue between GAM and the central government possible. The first negotiation attempt started in 2000 and lasted for three years, achieving some success in the 'Joint Understanding on Humanitarian Pause for Aceh' and the subsequent 'Cessation of Hostilities Agreement' (CoHA).⁴ However, a shift in Jakarta's political landscape granted the hardliners a stronger position, making further negotiations more difficult as both sides had completely different opinions on the core issues of Aceh's future political status. Given the fundamental differences in perceptions and positions and the persistent lack of basic trust, virtually no progress was achieved in terms of security, such as the relocation of troops or the decommissioning of weapons. Armed clashes began re-emerging soon after the CoHA was signed in December 2002. When GAM refused to disarm before continuing the negotiations, the talks broke down in the spring of 2003. The government declared martial law and imprisoned many of the previous GAM negotiators, while GAM stepped up its military activities, having taken advantage of the 'Humanitarian Pause' to recruit and train more soldiers. With an expanded, consolidated and locally supported GAM, a stalemate emerged that lasted until September 2004, when a new government led by President Susilo Bambang Yudhoyono and his vice-president Jusuf Kalla was elected.

⁴ For further detail on these early peace talks, see Wandt and Zunzer (2008).

4 In the Name of the People: Participation and Representation during the Helsinki Talks

The media regularly reported that the main drivers of the 2005 peace talks between GAM and the Indonesian government had been the international community and the tsunami that tragically struck Aceh in December 2004 (Aglionby 2005). While these two factors undeniably provided an impetus and an incentive for conflict resolution, the peace process would not have been possible without the conflict parties' willingness to compromise on their political positions. This attitudinal shift within the central government and its readiness to negotiate, in turn, came as a result of popular pressure by local, national and international civil society organisations. Human rights organisations in particular became more critical of their government's actions in conflict zones such as Aceh and West Papua. Public support for a peace process became overwhelming after the tsunami. The Indonesian leadership effectively harnessed this momentum to push for an accord with GAM. The change of government also played a key role in making a peace process possible: The popularity of president Susilo Bambang Yudhoyono and his vice-president Jusuf Kalla (who strongly advocated for a peace accord with GAM) were crucial in building consensus on various demands made by GAM, as well as in keeping the military, which was strongly opposed to a peace settlement, under control. Thus, it was the combination of many different factors coming together that provided better conditions for a new political settlement in comparison to the previously failed peace process in 2000-2003.

4.1 Horizontal inclusivity: Composition of the negotiation teams

The GAM negotiation team was appointed by the movement leadership based in Sweden, and mostly comprised members of the exiled leadership. It was a self-appointed process, as the previous negotiation team members were in prison and the movement leadership in Aceh was in hiding. However, the situation changed after the possibility arose for field commanders such as Irwandi Yusuf, who had managed to escape prison after the tsunami and was later elected as the first governor of Aceh, to represent the GAM military structure. Later on, the involvement of civil society leaders who had been close to GAM, such as Shadia Marhaban, boosted the movement's credentials and improved their communication with the public in Aceh. The movement thus gained an image as being open to civil society and the participation of non-fighters. GAM also decided to invite a few international experts to serve as advisers and to assist in the negotiations. Whereas GAM negotiators had assumed a rather passive position in the earlier peace process, during the Helsinki talks they used the support of these advisers to put forward a number of options and proposals at the negotiation table. In each discussion round, the government team immediately responded by consulting with their own team in Jakarta. This back-and-forth process helped both parties maintain close contact with their respective constituents on the ground. GAM negotiators regularly informed their field commanders of the process, especially once Irwandi Yusuf joined their team. Communication with commanders on the ground, however, was more to maintain cohesiveness than to consult with them on various key issues discussed in the negotiation (Djuli and Abdulrahman 2008).

With regards to the Indonesian government's negotiation team, after the formal negotiations had started, the vice president tried to build a more inclusive team by including not only ministerial sectors, but also military generals. The disadvantage of this approach was that there was no cohesive voice within the team on how to respond to GAM's demands. The advantage was that all key state institutions were represented in the process. However, this inclusive strategy backfired several times when the military leadership allegedly replaced representatives they considered to be overly 'pro-peace process'. The absence of cohesiveness among the team resulted in the negotiation team repeatedly exchanging its members. Simultaneously, the presence of military representatives was worrying to many GAM delegates.

As GAM was in an asymmetrical power relationship with the government, outside pressure by the international community played a crucial role in equalising the bargaining power of both parties. Thus, for instance, aside from the mediating organisation Crisis Management Initiative (CMI) led by former Finnish president Martti Ahtisaari, the European Union (EU) and various foreign embassies were also effective in pressuring the Indonesian government to remain at the negotiation table.

4.2 Vertical inclusivity: Consultation and information channels with civil society and the Acehese public

Galvanising public support in Indonesia and Aceh was important both to GAM's exiled leadership in Sweden as well as the government in Jakarta. Based on this public support, GAM could claim to represent the people of Aceh in the negotiations, while the government in Jakarta could claim they were the representatives of the Indonesian public. This was an important breakthrough towards confidence-building for both sides of the conflict.

Even though the 2005 peace negotiations started as an exclusive engagement behind closed doors, in later stages and after a few initial rounds of talks, the Acehese and Indonesian public were kept informed in general terms about the talks. Not informing the public about details of the negotiations was a strategy to prevent provocation attempts by nationalist politicians on some of the politically sensitive issues, such as legalising local political parties and self-government for Aceh. Media reports thus covered the negotiations, but refrained from exposing the actual content of the talks.

The negotiation facilitator, former Finnish president Martti Ahtisaari, argued that the discreetness of the process showed how serious the conflict parties were about reaching an accord. There was one incident in a later stage of the talks when an unauthorised government delegate leaked information to the public about the self-government negotiations. However, after some protests by GAM and efforts by the mediation team to ensure that all parties respected the confidential nature of the talks, the situation was quickly brought under control.

The Indonesian government faced a much more delicate situation, given the strong divisions among Indonesian politicians either for or against peace talks in the Acehese peace process. Some hard-core nationalist groups rejected the government's position of negotiating with what they considered an illegitimate rebel group. As a result, the government initially kept its initiative to engage with GAM's exiled leadership strictly confidential. From the perspective of the core government team under the leadership of Vice-President Jusuf Kalla, secrecy and exclusivity in the first stages of the negotiation process were seen as necessary to prevent the process from being sabotaged by the military and by nationalists.

Civil society, led by student movements, was the most significant pressure group in Indonesia during the Suharto regime in the mid-1990s. In Aceh, student movements, youth groups and human rights organisations also mobilised significantly after 1996 to demand the end of the military operations and human rights abuses (Barter 2004). The narrative of CSO advocacy changed after Timor-Leste's referendum of independence in 1999, inspiring Aceh to demand the same right. It was first formulated as a point of pressure for other issues, mainly the end of human rights abuses, but later became a rallying call for a strong social movement that was formed after local GAM leaders (as opposed to the exiled leadership based in Sweden) began engaging with civil society. At first, this cooperation strengthened both the position of civil society as well as that of GAM, but later it marginalised the former and enhanced the latter. This was due to the peace talks facilitated at the time by the Henry Dunant Centre (HDC), which focused on reaching a ceasefire agreement between the belligerent groups and therefore engaged only with GAM's exile leadership in Sweden (Huber 2004).

In the 2005 peace process, the role of Acehese civil society changed and was strengthened as both the international community and GAM (which had been weakened by military operations and then additionally by the tsunami) realised the importance of ensuring an inclusive process (Interview with Shadia Marhaban, 2013). After

the tsunami, resolving the conflict and achieving security became a prime concern and priority for civil society (Burke and Afnan 2005). Even though the negotiations remained exclusive and secretive on details, civil society organisations (CSOs) were consulted during the negotiations – especially prior to the third and fourth rounds of talks – on general issues of the peace process, providing a point of access for the Acehnese public to contribute to the negotiations. The aim of these meetings (in Sweden and later in Kuala Lumpur and Malaysia, thanks to the support by the Swedish Olof Palme International Center) was for the GAM leadership to collect ideas from CSOs, and not simply to communicate the details of the negotiation points (Kingsbury 2006). However, these actors were told not to speak publicly about the key points of the talks. GAM’s open attitude towards engaging with civil society was also the product of pressure from different CSOs, especially after some of them questioned GAM’s right to negotiate on behalf of the Acehnese. However, GAM’s efforts to make civil society groups part of the discussion effectively addressed this criticism and improved these groups’ confidence in GAM’s representative abilities.

5 Negotiating a New Political Settlement for Aceh

As noted earlier, the failure of the previous peace talks in 2000 and 2002 had been caused by disagreements over several sensitive core political issues, in combination with internal political divisions within the Indonesian government. The 2005 negotiations faced the same challenge of reaching difficult compromises on contentious issues, but this time the parties managed identifying mutually agreeable solutions on matters crucial to ending the protracted war in Aceh. One of the factors of success was the opportunity for direct face-to-face interaction between the two negotiation teams, which helped build mutual trust and confidence. During the previous peace talks this had not been possible, and instead all discussions had been mediated through the intermediary HDC. One government representative later confirmed that the possibility to “see each other eye to eye directly” helped build inter-party trust (Awaluddin 2008). One should also mention the method “nothing is agreed until everything is agreed” introduced by the mediator, which was quite effective in terms of ensuring that all parties would continue the talks until they could reach a final comprehensive agreement, regardless of their disagreements on some issues.

5.1 Substantive negotiations during the Helsinki talks

The power dynamics during the peace talks were managed effectively by ensuring a ‘non-open-ended’ approach limiting the negotiations to a period of six months. The chief facilitator Ahtisaari believed that an open-ended discussion could be used by the conflict parties to further exacerbate the conflict situation. Aware that the Indonesian government would not agree to an independent Aceh, he focused his strategy on ensuring that GAM obtained their demands for a stronger devolution of power to Aceh while framing it in a way that was acceptable to the Indonesian government.

The state chief negotiator Hamid Awaluddin believed the government should bring forward a very clear and reasonable offer, and his team developed an action plan outlining economic, social and political decentralisation measures for Aceh which went further than the autonomy law existing at the time. Awaluddin later stated that the clarity of the government’s action plan and package enabled effective negotiations on sensitive political issues (Awaluddin 2008).

Nevertheless, as early as the first round of talks, huge disagreements emerged on the central framework underpinning the political settlement, namely the form of the power re-arrangement between the centre (Jakarta) and the periphery (Aceh). The Indonesian government believed the principle of autonomy should be used as a basis for discussions. However, while it was clear the state would never accept GAM’s demand for independence, GAM was adamant that it would never accept the term ‘autonomy’. The Acehnese people were historically very sceptical of any autonomy deal proposed by the government, whose credibility had been badly undermined by previous

autonomy offers that had remained unimplemented (McGibbon 2004). However, they were more receptive to some of the actual provisions in the existing autonomy law, such as economic and governance rights for Aceh. The disagreement was thus more about the term itself, as any details on the issue were yet to be discussed. Yet up until the third round of talks, each side's inflexibility on this matter impeded any progress in the negotiations. Eventually, the mediator and the GAM delegation introduced the new term 'self-government', which initially stirred a lot of debate in Jakarta, but eventually became accommodated and accepted by both conflicting parties.

Another delicate issue was GAM's demand for the right to establish local political parties, which represented a major expression of local identity in Aceh. Based on prior consultation with Acehnese civil society, GAM's chief negotiator Malik Mahmud opened the third round of negotiations by stating that the establishment of local political parties was a necessary precondition to ensure full democracy (Kingsbury 2006). Although the Indonesian state had already gone through significant democratisation reforms several years prior to the 2005 Aceh peace talks, the government considered the demand for local parties to go one step too far, as they were seen as a way for GAM and other Acehnese groups to promote the idea of separation. GAM's persistence on this unique issue therefore became crucial. The movement promoted this measure in order to support democratisation in the province, but also to open a channel for its members to take part in the political arena of post-war Aceh. In Indonesia, the public was divided on how to respond, but some progressive groups, mainly human rights and pro-democracy groups, supported the idea, hoping they could seize the opportunities offered by Aceh's peace process to push for deeper democratic reforms in Indonesia. In the end, the government conceded to GAM on the matter after realising the failure of the entire peace process was at stake.

Another theme that raised significant disagreement during the negotiations was the role of the Indonesian security sector (military and police) in Aceh. The stakes were high in this matter as the military continued to conduct offensive operations during the negotiations. GAM demanded that the army and any 'non-organic'⁵ police be removed from Aceh. The Indonesian government considered it sufficient that the army was under civilian control. In the end, the parties found a compromise and agreed the regular military would continue to be based in Aceh, but that non-organic troops would be withdrawn.

Finally, negotiations on the key economic provision of Aceh receiving 70% of all revenue generated in the province were comparatively easy to agree upon. Aceh had previously benefited significantly from its distinct status (*daerah istimewa*) when its 'special autonomy' had been unilaterally granted in order to pacify the rebellion.

5.2 Reform within the reform

The search for a new political settlement in Aceh was interdependent with the building of a more inclusive Indonesian society through structural reform in Jakarta. The political opening in Indonesia that began in 1998 made the Aceh peace process possible, while the political settlement with Aceh helped push for further democratisation across Indonesia. The Acehnese conflict and demands for independence encouraged Indonesian reformists to discuss the best way to rectify the unbalanced centre-periphery relations in other parts of the country (Wandi and Patria 2014). The decentralisation of Indonesia began in 1998 with the national autonomy law to redistribute political power from the centre to the provinces and provided a better bargaining position for the central government in their negotiations with GAM. Jakarta's concrete offers to GAM were mostly already set in the provisions of the autonomy law for all regions throughout the country.

Moreover, while negotiators discussed the need for military reform within Aceh, the reform of the Indonesian military providing greater civilian control over the armed forces had been underway since 1998. As a result, GAM and the Indonesian reformists were on the same page in their demands for security sector reforms. So overall, the

⁵ In Aceh's context, 'non-organic' troops consist of Indonesian troops that are centrally recruited, such as the Kopassus (*Komando Pasukan Khusus*) Special Forces, as well as troops recruited in one region and deployed to another. In line with this, locally recruited troops are considered 'organic'.

peace accord provisions on state reform did not come too much as a surprise to the Indonesian public and the moderate actors in the central government, as it was much like a reform within the reform.

6 The Peace Accord and Inclusiveness

The negotiations were codified in the peace accord called the ‘Helsinki Memorandum of Understanding’ (MoU), signed in August 2005. This MoU provided a comprehensive political settlement presenting a key political agenda which addressed such topics as new political relations between Aceh and Jakarta, political participation, human rights, the rule of law, economic issues as well as the reintegration of former GAM fighters. To ensure confidence and support, the other important provision was a strong mechanism for oversight, with monitors from the European Union and ASEAN deployed to Aceh.

The legislative arrangement achieved under the political framework of the MoU resulted in an advanced form of provincial self-government, including the devolution of various competencies to the provincial level. Aceh gained significant power in dealing with governance, economy and human rights, while Jakarta retained authority in the areas of defence, fiscal and monetary policy, foreign relations, justice and freedom of religion.

The accord stated that all Indonesian government decisions on international, national and administrative matters relating to Aceh would require the consent of Aceh’s legislature. The Acehnese were also granted the right to employ regional symbols, specific names and titles, and customary law in accordance with Aceh’s tradition. In terms of political participation and inclusivity, one key achievement was the right to form provincial parties for contesting elections on the district, provincial and national levels – overturning a long-standing proscription of local or regional parties in Indonesia. Independent candidates were also allowed to compete in direct elections for the head of Aceh’s administration.

With regard to the economy, Aceh was granted the right to raise funds with external loans, set interest rates, set and raise taxes, conduct internal and international trade and business, seek foreign direct investment and attract tourism. One of the economic highlights was Aceh’s entitlement to retain 70% of its revenue from all current and future hydrocarbon deposits and other natural resources in its territory and the surrounding seas. The seaports and airports became administered under Aceh’s authority, and Aceh received jurisdiction over living natural resources in its surrounding seas. Free trade was permitted with Indonesia as well as with foreign countries. Finally, the government committed itself to transparency in the collection and allocation of revenue between Aceh and Jakarta.

In terms of rule of law, the accord also provided for the establishment of an independent and impartial court system, including a court of appeals. The chief of police and state prosecutors became recruited and approved by the head of the Aceh administration. One other advancement regarding the rule of law was the provision that all civilian crimes committed by military personnel in Aceh were to be tried in Acehnese civil courts. A human rights court was also mandated to be established for Aceh, as well as a commission for truth and reconciliation, which was to receive the task of formulating and determining reconciliation measures. Finally, all those who had been detained for participating in GAM activities were released under an amnesty for all former political prisoners.

In order to facilitate the rehabilitation of ex-combatants, the Indonesian government also allocated a reintegration fund, administered by Aceh’s government, to provide farming land and employment or, in the case of an incapacity to work, adequate social security assistance. Funds were also allocated for the reconstruction of public and private property destroyed or damaged by the conflict. Furthermore, compensation for civilians who had suffered a demonstrable loss due to the conflict was also considered in the MoU, although the exact amounts and procedures were not laid out in detail in the agreement itself.

In return, GAM agreed to demobilise and disarm its combatants. The Indonesian government also committed itself to withdrawing its troops and non-organic police units from Aceh, with the exception of 14,700 soldiers

retained for external defence purposes and 9,100 policemen allocated for upholding internal law and order in Aceh.

Although the negotiation process itself was primarily inclusive in the horizontal, inter-elite sense, the provisions in the MoU for ex-combatants, former political prisoners, reparations and the intention to deal with the past in an open fashion through the human rights court and the truth and reconciliation commission created an inclusive peace accord for all Acehese people.

7 Codification of the New Settlement: From the MoU to the Law on Governing Aceh

The peace accord was a political document and did not have any legal status. The government of Indonesia was thus required to issue new regulations on local governance in Aceh through its national code of law (*Undang-Undang*). The so-called ‘Aceh Governing Law’ (UUPA) was introduced as the vehicle to implement most of the provisions in the MoU while ensuring that the legal foundation would be in accordance with the Indonesian constitution. The key challenge was thus twofold: To translate every MoU provision into national law and to ensure that the UUPA was adequately protected by the constitution.

Public expectations for the UUPA were high in Aceh, and various public discussions took place across the province. These discussions, organised by civil-society groups and the local government, aimed to seek input and feedback from various segments of society on what should be included in the UUPA. The notion of ‘self-government’ introduced in the MoU had to be accommodated into law and further regulated under the local legislation (*Qanun*). The process of codifying the MoU through the UUPA and *Qanun* involved a wide range of stakeholders with conflicting interests, and thus many compromises had to be made, such as the insertion of Sharia law into the draft UUPA. Bernhard May (2008) argues that the victims of this process were clarity and consistency.

In addition, a number of conflicting interpretations occurred between GAM and the Acehese public on the one hand and the government on the other. The former thought that the MoU stipulations had granted Aceh the right to exercise full authority within all sectors of public affairs, with the exception of six sectors (foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion) that were to remain regulated by the central government. While this interpretation was not necessarily realistic, the post-MoU discussion on the issue failed to be properly facilitated with an organised approach or the dissemination of information to ensure that the codification would not provoke further divisions and conflict.

Within Aceh, the process of transforming various provisions of the MoU into the draft UUPA was entrusted to a local university team who then discussed the draft with prominent leaders of Acehese society. The university had been chosen as it was considered a neutral space for the discussion to take place and had a great number of Acehese intellectuals based there. It was also tasked with consolidating all other consultation work on the UUPA carried out by various CSOs. After the draft was formulated, it was presented to thousands of representatives of Acehese society, most of whom were selected by their districts or by various societal sectors such as religious leaders, women’s groups and professional associations. Their role was to provide comments and recommendations on key points that needed to be included in the UUPA. The law was then consolidated and adopted by Aceh’s local government, sent to Jakarta, and later became part of national legislation.

During this process, deviations from the MoU’s original text occurred within both sides. In Aceh’s case, some of the changes were quite fundamental, including the attempt by conservative society members to push for Islamic provisions to be part of the UUPA, incorporated in the form of the freedom to legislate one’s own law and the right to implement Sharia or Islamic law. In Jakarta, the codification of the MoU in the UUPA provided the opportunity for the central government to re-write the MoU according to its own interpretations (Interview with Nur Djuli,

2013). The fact that the Acehnese did not have their own political parties represented at the central state level also impeded their advocacy for a full transferral from the MoU to the UUPA.

Indeed, there are points in the MoU which are not clearly stated in the UUPA, for instance the devolution of powers assigned to local governmental structures. As stated before, the MoU stipulates that all Indonesian government decisions on international, national and administrative matters relating to Aceh require the consent of Aceh's legislature. In the UUPA, this was translated into requiring not 'consent' but rather 'consultation and advice', thus watering down the strong-worded MoU. Also, the MoU stated the six powers mentioned above to be exclusively reserved for the central government, yet added the broadly formulated phrase 'government functions (*urusan*) of national character', leaving the matter to be further elucidated in government regulations (McCawley et al. 2012, 78).

The misinterpretation was further deepened when the UUPA introduced a provision granting the central government the right to synchronise any regulations on Aceh with the national legal framework. This unclear statement left room for a number of different interpretations and gave the central government the opportunity to block any local regulations in Aceh it perceived as 'unacceptable'. While the MoU's basic premise was that Aceh could exercise authority in various public affairs, the UUPA failed to fully codify this provision, primarily because the task of approving the final concept of the UUPA was exclusively in the hands of the central government.

Finally, justice, human rights and the problem of past abuses were also important benchmarks in the transition period for Aceh, but one decade after the MoU, it has yet to be worked out how related commitments will be implemented. The initial plan had been to institute a Truth and Reconciliation Commission (TRC) for Aceh with a national counterpart, as stipulated by the MoU. A national legal framework for a TRC was developed and approved by the House of Parliament in Jakarta. But in December 2006, the Indonesian Constitutional Court annulled the national law set out to establish the TRC. Recent developments include a governmental proposal to establish a special TRC for Aceh, but this is currently still being discussed.

8 Conclusion

In retrospect, how did the level of inclusivity in the Helsinki peace process impact the effectiveness of negotiating, codifying and materialising a new political settlement in Aceh? This paper has shown that both sides of the conflict (GAM and the government) as well as the mediator initially supported an exclusive approach in the early stages of the 2005 peace process because it allowed them to explore sensitive political issues while ensuring the process would not be hijacked by spoilers. However, a more inclusive approach was adopted in more advanced stages of the talks, especially by including military commanders from both sides, which helped ensure support from key constituencies. Beyond the main parties, GAM's strategy of consulting civil-society groups was crucial to internally democratise the rebel movement and to establish a broader ownership of the peace process. While some groups questioned GAM's right to speak with the central government on behalf of Aceh, the communication channels opened by the leadership during the negotiations helped their efforts to gain wider public support. In effect, there was almost no objection from Aceh's public to the peace negotiations.

The participatory nature of how the peace agreement was codified into a national law was very important to legitimising the outcome of the Helsinki process. However, it did not produce a solely positive result, as it also presented an opportunity for conservative groups to advocate a conservative agenda, such as adding Sharia law provisions to the UUPA. In addition, the ultimate responsibility granted to the central government to finalise the codification process by passing the 'Law on Governing Aceh' meant that the process eventually lost its inclusive nature, and created the risk of possible deviations from the original MoU. One key lesson learned during the codification process was the importance of educating the public to ensure the spirit of the peace accord would be fully reflected both in the law and in its implementation.

The sustainability of the political settlement will largely depend on the inclusive and comprehensive implementation of the peace agreement. The peace process has passed a crucial phase, but it has not passed the long-term challenge of transforming not only the former rebels and their supporters, but also the Acehnese people and society as a whole.

This paper has also shown the close relationship between the transformations of political settlements in the centre and in the periphery. Both sides benefited from the concomitant processes of democratisation in Jakarta and peacebuilding in Aceh. Aceh gained peace and stability, and Indonesia could strengthen its reform process. Building an inclusive Indonesia with Aceh as part of this nation-building project has become more possible after the 2005 peace process than any time before in history.

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