

Crisis Management Initiative

**ACEH PEACE PROCESS
FOLLOW-UP PROJECT**

Final Report



Crisis Management Initiative¹

ACEH PEACE PROCESS FOLLOW-UP PROJECT

Final Report

This document has been produced with final assistance
from the European Union. The contents of this document
are the sole responsibility of CMI.

Supported
by the EU



Copyright: © 2012 CMI
Language editing by Stephen Thompson
Graphic design by Ossi Gustafsson, Hiekka Graphics. Printed by Yliopistopaino

1. Crisis Management Initiative (CMI) is a Finnish independent non-profit organisation that works to resolve conflict and to build sustainable peace. CMI was founded in 2000 by its chairman, President Martti Ahtisaari. The headquarters of the organisation are in Helsinki, Finland.

TABLE OF CONTENTS



| | |
|----------------------------------------------------------------------------------|----|
| Foreword | 5 |
| Executive summary | 6 |
| 1. Preface | 7 |
| 1.1 Introduction | 7 |
| 1.2 Acknowledgements | 7 |
| 2. The Aceh Peace Process Follow-Up Project | 9 |
| 2.1 Background | 9 |
| 2.2 History of the Aceh Peace Process Follow-Up Project | 10 |
| 2.3 The original project concept and necessary adjustments | 10 |
| 2.4 Activities and achievements | 12 |
| 3. Assessment of the MoU implementation | 14 |
| 3.1 Scope of the assessment | 14 |
| 3.2 State of the MoU implementation | 15 |
| 3.2.1 MoU provisions that are covered by the LoGA | 15 |
| 3.2.1.1 Background of the LoGA | 15 |
| 3.2.1.2 Deviations of LoGA regulations from MoU provisions | 17 |
| 3.2.1.3 Unimplemented LoGA provisions that are based on the MoU | 19 |
| a) Seaports and Airports | 19 |
| b) Independent Auditors | 20 |
| c) Human Rights Court | 20 |
| d) Commission for Truth and Reconciliation | 20 |
| 3.2.1.4 Implementing Regulations of the LoGA | 21 |
| a) The Government Regulation on the National Government's Authorities in Aceh | 22 |
| b) Regulations on the Authorities in Land Administration | 23 |
| c) Government Regulation on the Joint Management of Oil and Gas Resources | 23 |
| 3.2.2 MoU Provisions that are not covered by the LoGA | 24 |
| 3.2.2.1 Reintegration into society | 24 |
| 3.2.2.2 Security Arrangements | 26 |
| 4. The dialogue process for resolving open MoU issues | 27 |
| 4.1 The Aceh Desk and the Communication and Coordination Forum (FKK) | 27 |
| 4.2 The process of Focus Group Discussions | 28 |
| 5. Some factors of influence for sustaining peace in Aceh | 31 |
| 5.1 Participation of the civil society in the peace process | 31 |
| 5.2 The situation of women in Aceh and their participation in the peace process | 32 |
| 5.3 Economic development, backbone of the peace process | 33 |
| 5.4 The security situation in Aceh | 34 |
| 6. Conclusions and Recommendations | 36 |
| As to the Aceh Peace Process Follow-Up Project initiated by CMI | 36 |
| As to the dialogue process between the parties and the implementation of the MoU | 36 |
| On the role of civil society | 37 |
| On the role of women | 37 |
| On economic development | 38 |

FOREWORD



Peace in Aceh has been a success story. The Memorandum of Understanding (MoU) signed in Helsinki in 2005 was the result of the negotiating parties' willingness to set aside their differences in order to make peace. But peace agreements cannot solve all problems. They can create democratic institutional and political frameworks that enable the parties to continue working together with the issues agreed upon.

Aceh has come a long way. The province has benefitted from the regular budgetary support by the central government and in addition from the assistance of the EU and many other donors that have supported the peace process and the building up of the province. It should not be forgotten, however, that the peace process needs to be rooted in the society itself. It is the right and responsibility of the people themselves to make the best out of the hard-won peace.

A long way still remains in making sure that the benefits of the peace and development can be ensured for future generations. All parties, including the international community, still have a role to play in supporting the development of the province.

CMI's Aceh Peace Process Follow-up Project was initiated in 2010 in order to support a process for implementing the outstanding issues of the Helsinki peace agreement. This report represents a summary of the findings and views gathered by the CMI team regarding the questions that still need to be resolved by and between the parties and other stakeholders. The report also provides recommendations on the way forward for the society at large and for the role of the international community.

I wish to thank the European Union for its sustained support during CMI's long engagement with Aceh. The EU has made an exemplary contribution towards supporting the Aceh peace process.

I commend the signatories of the MoU as well as all other local stakeholders to the peace process in Aceh for their diligent and constructive collaboration for resolving the outstanding issues in an agreed framework. It is vital this work continues to the benefit of the people in Aceh.

Martti Ahtisaari

Chairman and Founder, Crisis Management Initiative

EXECUTIVE SUMMARY



This report details the aim, history, activities and outcomes of the Aceh Peace Process Follow-Up Project, and provides a set of recommendations for the parties involved in the peace process on how the process can successfully be continued.

Crisis Management Initiative (CMI) concluded in 2009 that an invigorated, systematic and constructive dialogue process was needed to achieve a satisfactory implementation of the Memorandum of Understanding (MoU), which had been signed in 2005 in Helsinki by the Government of Indonesia and the Free Aceh Movement (GAM). Consequently, CMI initiated the Aceh Peace Process Follow-Up Project, which was made possible through the support of the European Union.

In the course of the project, President Ahtisaari, chairman of CMI and the mediator of the Helsinki peace agreement, provided an advising role that helped to keep the follow-up process on track. To achieve the goal of establishing an effective dialogue mechanism between the signatories of the MoU, CMI advised the parties on a structured approach and provided expertise on thematic areas related to unimplemented MoU issues. In addition, CMI maintained a regular dialogue with the provincial government and parliament of Aceh, and held consultations with representatives of civil society organisations.

The project has been able to witness the development of a process entitled “Focus Group Discussions” designed to address the implementation of the MoU commitments, initiated by the Coordinating Ministry for Political, Legal and Security Affairs and its Aceh Desk. Until now, four of these meetings have been held, attended by CMI’s country coordinator as an observer. The FGD meetings have assumed the format of an institutionalised process owned by the signatories of the MoU.

The report details the provisions of the MoU that remain yet to be dealt with by the parties. These include deviations of the Law on the Governing of Aceh (LoGA) from the MoU and the unimplemented MoU provisions. It is suggested that an evaluation of the six years of implementation of the Law of Governing Aceh could provide an important input for a possible process leading to an amendment of the law and allowing the concerns and grievances to be taken up in a systematic fashion. It is the aim that most of these aspects, if not all, will be successively dealt with in the FGD by 2014.

The report also considers some important influencing factors for sustaining peace in Aceh. These include the need for a strong civil society, with whom the local government should regularly have consultations; strengthening of the economy; continued support for women empowerment in political life; and the continued development of a healthy, reformed security sector.

In conclusion, President Ahtisaari and CMI remain encouraged by the achievements so far and commend the parties’ willingness to engage in a constructive manner towards resolving the open issues. With the project, CMI is concluding its role in supporting the peace process, while encouraging all parties to continue constructive collaboration on the promising path to sustained peace in Aceh

1. PREFACE



1.1 Introduction

CMI and its Chairman, President Martti Ahtisaari, facilitated the peace talks between the Government of Indonesia and the Free Aceh Movement (GAM) in 2005, with the aim of ending the almost 30-year-long armed conflict in Aceh. The peace agreement, known as the Memorandum of Understanding or MoU, provided for the promulgation of a new law on the governing of Aceh and for the political participation of all Acehnese. The MoU foresaw that Aceh would have far-reaching decision-making rights over the provincial economy, provided standards for the rule of law and human rights, granted amnesty for former GAM combatants and their reintegration into the society, and included provisions for security arrangements. The Law on the Governing of Aceh (LoGA) that was enacted in August 2006 was to consolidate the contents of the peace agreement into a legal framework.

The years following the signing of the peace agreement have shown that several stipulations of the MoU have not been fulfilled or remain as contested issues between the stakeholders of the peace process. The Aceh Peace Process Follow-Up Project originated from the idea that a more focused and systematic approach was needed, in order to optimise the implementation of the peace agreement by gaining fact-based information regarding the state of its implementation and the specific issues involved. The goal of the project has been to facilitate the establishment of a dialogue process between the stakeholders, which would allow to address and resolve the outstanding issues in a way that would ease the transition from the specific MoU related questions to a broader process of peace building and development in Aceh.

During the course of two years, the Aceh Peace Process Follow-Up Project team has worked with stakeholders in Aceh and Jakarta in order to clarify the status of the unimplemented MoU provisions, as well as the views of the parties and stakeholders regarding their implementation. The project has also aimed to contribute to increasing the stakeholders’ knowledge and awareness of the MoU and the specific issues involved through expert research and discussions. While it has not been possible or helpful to scrutinise every single aspect of the unimplemented provisions of the MoU, the project team has aimed at defining the main issues and questions at stake, in close cooperation with the signatories of the peace agreement.

1.2 Acknowledgements

This report has been produced as a part of Crisis Management Initiative’s Aceh Peace Process Follow-Up Project, which has been supported by the European Union’s Instrument for Stability between 2010 and 2012. The chapters of this report represent the results of the discussions and research the CMI project team has benefitted from during the project implementation.

CMI would like to take the opportunity to thank the European Union, in particular the head and the staff of the Delegation in Jakarta and the Europe House in Banda Aceh, for their valuable support and input during the course of the project.

This work would not have been possible without the support of the Coordinating Ministry for Political, Legal and Security Affairs of Indonesia, representing the First Signatory of the MoU. In particular, CMI would like to express its gratitude to the head and the staff of the Aceh Desk for their good cooperation.

CMI is also grateful to the Second Signatory of the MoU for their continued close and trustful cooperation. Their strong commitment to resolving issues of importance for Aceh was of great significance in the establishment of a constructive dialogue process between the MoU signatories.

The CMI team is also indebted to the provincial government and parliament of Aceh for their invaluable cooperation, and to representatives of the Acehnese civil society for their willingness to contribute to CMI's work with important insights.

CMI's work benefitted greatly from the input of our researchers, to whom we owe thanks for providing much valued analysis of some complex topics related to the peace process in Aceh.

Special thanks go to the Finnish Embassy in Jakarta for their effective and able assistance and support.

While we are indebted to many individuals and organisations for their support, the content of this document is the sole responsibility of Crisis Management Initiative.

2. THE ACEH PEACE PROCESS FOLLOW-UP PROJECT



2.1 Background

Initiatives for negotiations between the Government of Indonesia and the Free Aceh Movement (GAM) facilitated by President Martti Ahtisaari had been taken during the fall of 2004. The devastating tsunami of 26 December 2004, which took the lives of almost 230,000 people, more than 130,000 of them in Indonesia's northernmost province of Aceh, helped to advance a peace accord between the parties. The peace agreement ended a long-lasting armed conflict in Aceh, which had taken the lives of more than 10,000 people and had brought severe destruction to the province and great suffering to the people of Aceh. Crisis Management Initiative (CMI) and its Chairman, President Ahtisaari, were officially requested to facilitate talks between the Government of Indonesia and GAM with a view to ending the armed conflict. A first round of talks and the first face-to-face meeting between the parties since May 2003, took place from 27 to 29 January 2005 in Helsinki. The second round of talks took place from 21 to 23 February, the third round from 12 to 16 April and the fourth from 26 to 31 May 2005. Between the fourth and the fifth round, CMI prepared a draft Memorandum of Understanding (MoU), which formed the basis of discussion during the fifth round. The fifth round of negotiations was held from 12 to 17 July and the MoU was eventually signed in Helsinki on 15 August 2005. The negotiation process was facilitated by financial support from the European Commission's Rapid Reaction Mechanism and the Dutch Government, and financial and in-kind support from the Finnish Government. Other governments and foundations, such as the government of Switzerland and the Swedish Olof Palme Centre, also provided support to the parties and civil society representatives participating in the process.

From the beginning of the talks, CMI strived to engage the EU actively in the process. Already at the outset, it was clear that the commitment of the European Union to the peace negotiations was not only a financial commitment but also a political one. Immediately following the signing of the MoU by the parties, the Initial Monitoring Presence (IMP) was deployed in Aceh. Its aim was to underline the EU's commitment and to establish an initial presence in Aceh prior to the envisaged Aceh Monitoring Mission (AMM). The AMM was jointly deployed by the European Union and ASEAN contributing states on the 15th of September 2005 to monitor the implementation of the various aspects of the MoU. The support of the AMM was instrumental in maintaining the peace in the early months following the peace agreement. The mission completed its mandate on 15 December 2006. Following the exit of the AMM, the European Commission invested considerable funding into the Aceh Peace Process Support Package (APPS), encompassing support for the organisation of local elections in Aceh; support for improving citizens' access to justice and supporting the evolution of a more responsive justice system in Aceh; promoting and contributing to the implementation of the principles and concepts of community policing among police officers and integrating international human rights standards into police policies and daily practices; supporting local governance; and support for the reintegration of former combatants and assistance to victims of the conflict and affected communities.

In early 2007, the Swiss NGO Interpeace, in partnership with the Indonesian Peace Institute (IPI), began an ambitious peace building programme, which was terminated, for various reasons, 18 months later.

2.2 History of the Aceh Peace Process Follow-Up Project

Following a fact-finding visit by a CMI team to Indonesia in August 2009, President Martti Ahtisaari concluded that an invigorated, more ambitious follow-up to the Aceh peace process was needed. As a result, President Ahtisaari and CMI visited Indonesia in December 2009 to plan the follow-up process. The aim of the planning mission was twofold: to establish with the parties and key stakeholders the modalities of a process to optimise the implementation of the MoU, and to gain a better understanding of the main issues at stake. This visit was funded by the Ministry of Foreign Affairs of Switzerland, and enjoyed substantial in-kind support from the Embassy of Finland in Jakarta. In addition, the European Union together with the Swedish Presidency through the Europe House facilitated the organisation of a civil society meeting in Aceh.

A total of 13 meetings were held with the two signatory parties, as well as with the Aceh provincial government, the provincial parliament, student leaders and civil society representatives. In addition, telephone conversations were arranged between President Ahtisaari and the President of the Republic of Indonesia, Dr. Susilo Bambang Yudhoyono, and former vice president Jusuf Kalla. Two meetings with the international donor community were held in Jakarta, one prior to traveling to Aceh and one debriefing after the visit to Aceh. The meetings with the signatory parties and other stakeholders of the peace process provided valuable input for designing the envisaged follow-up initiative.

The fact-finding missions in 2009 had established that a number of important provisions of the Helsinki MoU remained unfulfilled or had not been fulfilled in accordance with the intent of the MoU. Furthermore, it became evident that a systematic and effective dialogue process between the signatories of the MoU was needed, also involving other important stakeholders of the peace process, in order to achieve common understanding on the open MoU issues and on how to resolve them. Based on the results of the fact finding missions and taking into account the explicit request of all parties involved for the continued engagement of President Ahtisaari and CMI to follow up the peace process, CMI proposed to the European Commission an 18-month engagement, which would allow CMI to assume a supporting role in advancing the dialogue between the signatory parties and other stakeholders of the Aceh peace process. The intention of the initiative was to support the creation of an enabling environment in which all parties could work together towards a satisfactory implementation of the MoU for achieving sustainable peace in Aceh. CMI and President Ahtisaari's role was not to be a mediating one, but rather a facilitating one to ensure at all stages full ownership by stakeholders of the peace agreement, who were expected and encouraged to take an active role in this process.

2.3 The original project concept and necessary adjustments

The aim of the Aceh Peace Process Follow-Up Project was to explore ways and methods that would allow for a satisfactory implementation of the peace agreement. The previous lack of such a consistent follow-up by a dedicated organisation or the parties themselves resulted in a lack of focus and attention for developing a unified vision on how to achieve comprehensive and sustainable peace in Aceh. This prevented the parties also from mobilising sufficient energy and political will towards this end. As a result, a number of measures agreed in the MoU, which had not yet been implemented, had become issues of contention and resulted in dissatisfaction among the parties, particularly the Second Signatory and Partai Aceh. At the same time, the marginal role and influence of civil society in the peace process has been a cause

for discontent in Aceh. In order to consolidate sustainable peace and move forward towards economic development in Aceh, the project was designed to assist in building common understanding on the outstanding issues among the signatories of the MoU and other stakeholders. In addition to the two MoU signatories, the provincial government of Aceh was also brought into this framework as a legitimate stakeholder in questions pertaining to the implementation of the MoU. Whilst focusing on the principal political stakeholders, the project team and President Ahtisaari did regularly consult with and seek the input of civil society and other important actors, such as the provincial parliament of Aceh, DPRA.

The role of President Ahtisaari as the mediator of the Helsinki peace agreement deserves a special mention. The initial project design foresaw that President Ahtisaari would facilitate a series of round table meetings in Indonesia involving the main stakeholders of the Aceh peace process. These locally organised meetings were to have an agenda with clearly defined objectives. Each meeting was to be preceded by discussions with the stakeholders, as well as by sharing an updated list of outstanding issues to be worked on by the parties. If specific advice was required by the parties, CMI was to provide the respective expertise. Yet this approach was reconsidered during the course of the project implementation, as the Coordinating Ministry for Political, Legal and Security Affairs itself took the initiative to establish such a structured dialogue process involving the two signatories of the MoU. This development called no longer for an active facilitation role for President Ahtisaari. From the beginning of the activities it had been his ultimate goal to help establish and support a process for resolving the outstanding MoU issues that was fully owned by the stakeholders of the peace process.

According to the original project design, CMI was to provide a number of services for President Ahtisaari to facilitate his role, such as process management and facilitation expertise, overall project management, as well as advice on thematic issues and sharing of information among relevant parties. Even though the project approach was adjusted in terms of President Ahtisaari's role, CMI continued these activities in support of the emerging dialogue process between the signatories of the MoU.

Through a pool of experts, CMI was to provide specific expertise to increase the state of knowledge and information of relevant stakeholders, enabling them to participate effectively in the dialogue process. Such expertise was to be provided in particular by commissioning Indonesian experts to conduct studies in the thematic areas of power-sharing between levels of government, fiscal issues, reintegration, transitional justice, and gender sensitivity of the peace process. The respective studies have been conducted and the results have become valuable input for the CMI team in performing its advisory tasks for the signatory parties, but also for improving the knowledge and understanding of stakeholders regarding some essential issues related to the peace process.

The Aceh Peace Process Follow-Up Project was to be a separate part of a comprehensive EU initiative contributing to secure and consolidated peace in Aceh. The package of projects that were designed to follow up on the earlier EU supported Aceh Peace Process Support Package (APPS) had, according to the EU, the following objectives:

- to reduce and pre-empt conflict in Aceh by supporting the implementation of the MOU
- to strengthen regional legislative bodies and government in pursuing key areas of governance, which are essential for economic growth
- to consolidate community policing through widening/deepening sustainability actions
- to increase the efficiency of police performance through the provision of targeted techni-

cal assistance for the development of policies and procedures for professional policing with a special focus on Aceh specific needs, and

- to restore confidence in a peace dividend to communities with concentrations of former combatant through community based livelihoods support.

These projects were separate from the CMI Project and therefore not addressed in this report in more detail.

2.4 Activities and achievements

The focus of the project's activities has been on supporting confidence building measures and engagement of the parties in a constructive dialogue for the implementation of unresolved MoU issues. President Ahtisaari and the CMI team visited Jakarta and Banda Aceh in November 2010, in order to ascertain the commitment of the stakeholders to actively participate in such a dialogue process. The CMI activities in Indonesia have since then been led by Country Coordinator Jaakko Oksanen, who undertook regular monthly visits to Jakarta and Aceh, engaging in an intensive dialogue with the signatories of the MoU and other stakeholders of the peace process. In addition, the CMI team held several meetings with both signatories and supported the preparation of meetings between the parties by providing advice on thematic issues. The CMI team prepared background papers for which it recruited experts to conduct studies on specific subjects of relevance for the peace process, organised meetings with various stakeholders, including civil society, and maintained intensive communication with all involved parties.

During most of 2011, the project activities were affected by the controversies around the elections for governor, mayors and district heads in Aceh, which were originally scheduled for November 2011 and were postponed until April 2012. The disputes regarding the right of independent candidates to participate in the elections have, for a considerable period of time, distracted the parties from following a structured process to achieve mutual understanding on how to resolve the unimplemented MoU issues. This has, in turn, influenced the implementation of the project activities and led CMI to request an extension of the implementation period of the project until the beginning of June 2012.

The ultimate objective of President Ahtisaari and CMI to see the establishment of a constructive dialogue process between the MoU signatories took root when the Ministry of Political, Legal and Security Affairs and its Aceh Desk, being the chief representative of the Government of Indonesia as First Signatory of the MoU, launched a process of "Focus Group Discussions" (FGD), designed to address the implementation of MoU commitments. The first FGD meeting was held on the 25 May 2011 during the time of a CMI visit to Jakarta. Since then, the Ministry has arranged three additional discussions (14 September and 8 December 2011 and 1 February 2012) with the CMI Country Coordinator invited as an observer. The next FGD meeting is planned to be held after the elections in Aceh in May 2012. The focus of CMI's activities related to the FGD has been on advising the parties on the structured approach for the process, encouraging the parties to remain actively involved in the process and advising both parties on substance matters related to the open MoU issues.

The initiative of the Ministry to set up and arrange this regular process of FGD meetings, and to engage with the second signatory party in the preparation of every individual meeting, has been a sign of the strong commitment of the Government of Indonesia to address issues related to the MoU implementation in a constructive manner. The FGD meetings have assumed

the format of an institutionalised process owned by the signatories of the peace agreement. The determination of the Aceh Desk of the Coordinating Ministry to establish and regularly conduct the process, and the commitment of the Second Signatory to actively engage in the process has allowed the shift of CMI's activities from the originally envisaged coordination and facilitation of roundtables by President Ahtisaari to supporting the preparation and implementation of the Focus Group Discussions.

In an effort to achieve tangible progress in achieving a common understanding on the unresolved MoU issues, CMI has supported the Second Signatory in articulating their priority issues in preparation of the Focus Group discussions. Thus, it has been possible to enable a meaningful discourse between the parties and to advance the follow-up of the commitments laid down in the MoU.

Throughout the implementation of the project, CMI has commissioned a number of research studies in order to ensure adequate understanding of some important issues of relevance to the peace process and employed a research coordinator to organise the research work and liaise with the experts in Aceh. The reports have been commissioned first and foremost to provide a deeper insight for President Ahtisaari and the CMI team into the abovementioned issues. As the research results were supposed to also benefit other parties as far as possible, some of the reports have been made available on the CMI-Aceh website (www.acehpeaceprocess.net):

1. Some preliminary notes on the Aceh special autonomy fund and the shared oil and gas earning fund (full report as well as English and Bahasa Indonesia summaries)
2. Women's participation in decision making processes in post-conflict Aceh (full report)
3. Reintegration: BRA's roles in the past and its future visions (full report as well as English and Bahasa Indonesia summaries)
4. Consultation Process on LoGA-mandated Government and Presidential Regulations (full report and English and Bahasa Indonesia summaries)

3. ASSESSMENT OF THE MOU IMPLEMENTATION



3.1 Scope of the assessment

This assessment of the MoU implementation concentrates on those provisions where one of the two signatory parties or both of them have raised concerns regarding their state of implementation. Provisions that have been adequately addressed by the responsible parties are briefly mentioned here but not dealt with in detail.

Although the MoU does not include a formal *preamble*, the introduction to the MoU can be seen as representing one, because it defines the purpose of the MoU as detailing “the agreement and the principles that will guide the transformation process”. Moreover, it elaborates on some essential agreements between the parties, the Government of Indonesia (GoI) and the Free Aceh Movement (GAM). It states among others that the GoI and GAM “confirm their commitment to a peaceful, comprehensive and sustainable solution to the conflict in Aceh with dignity for all”. The latter part of the sentence has been of particular importance to both parties during the Helsinki consultations as well as during the ensuing peace process.

The key element of the “preamble” is the sentence: “The parties commit themselves to creating conditions within which the government of the Acehnese people can be manifested through a fair and democratic process *within the unitary state and constitution of the Republic of Indonesia*”. This commitment to the unitary state and the constitution has been fundamental to all aspects of the transformation process, and in particular to the elaboration of the Law on the Governing of Aceh.

Chapter 1 of the MoU covers the *Governing of Aceh* and is subdivided into sections dealing with principles of the Law on the Governing of Aceh (LoGA), political participation, economic matters and the rule of law. The majority of stipulations contained in chapter 1 constitute elements of a legal framework for the governing of Aceh and were thus to be accommodated in the Law on the Governing of Aceh and its implementing regulations. The assessment of progress in implementing the MoU does, therefore, to a large extent focus on the LoGA and its implementation.

Chapter 2 of the MoU covers the subject of *human rights*, stipulating that GoI will adhere to the United Nations International Covenants on Civil and Political and on Economic, Social and Cultural Rights. It further mandates the establishment of a Human Rights Court and of a Commission for Truth and Reconciliation for Aceh. The latter have been accommodated in the LoGA and their establishment is therefore part of the MoU implementation assessment.

The first section of **chapter 3** deals with *amnesty* for persons who have participated in GAM activities and the release of *political prisoners* and detainees held due to the conflict. The respective commitments of the GoI have been fulfilled and will not be dealt with any further in assessing the implementation of the MoU. The second section deals with the reintegration into society of those persons who have participated in GAM activities, including economic facilitation. Several of the respective commitments need still to be fulfilled, and will therefore be dealt with in assessing the MoU implementation.

Chapter 4 covers *security arrangements*. Both, the GoI and GAM have fulfilled most of the commitments laid down in this chapter, like ending acts of violence, demobilisation of GAM’s military troops, decommissioning of GAM armaments, and GoI’s withdrawal of non-organic

military and non-organic police forces from Aceh. However, the Second Signatory is still concerned about the fulfilment of several commitments regarding the mandate and strength of military and police forces in Aceh. These issues will therefore be dealt with in assessing the MoU implementation.

Chapter 5 regulates the establishment, tasks and functions of the *Aceh Monitoring Mission* (AMM). As the AMM has fulfilled its duties and its mandate was discontinued at the end of 2006, the chapter will not be a subject of the MoU implementation assessment.

Chapter 6 of the MoU deals with *dispute settlement*, assigning the authority for resolving disputes in the first place to the Head of the AMM, and in cases where disputes cannot be resolved to the Chairman of the Board of Directors of Crisis Management Initiative. This dispute settlement mechanism has come to an end with the discontinuation of the AMM’s mandate and is therefore not a subject of the MoU implementation assessment.

3.2 State of the MoU implementation

The following assessment of the MoU implementation will be subdivided into (a) provisions of the MoU, which constitute elements of a legal framework for the governing of Aceh and are therefore covered by the Law on the Governing of Aceh (LoGA), and (b) provisions whose implementation do not require legislation. The assessment is based on bilateral and joint discussions with stakeholders involved in the Aceh peace process, and on the analysis of written statements provided to the CMI team by the signatory parties.

3.2.1 MoU provisions that are covered by the LoGA

3.2.1.1 Background of the LoGA

The MoU stipulates in article 1.1.1: “A new Law on the Governing of Aceh (LoGA) will be promulgated and will enter into force as soon as possible and not later than 31 March 2006.” The law was enacted with some delay on 1 August 2006 as Law No. 11/2006. The final draft of the law had been prepared by a drafting team under the leadership of the Ministry of Home Affairs based on a draft that was submitted by the provincial government of Aceh. Input to the provincial government’s draft was provided by four local universities, civil society organisations and the provincial parliament of Aceh.

The MoU emphasises that “a new law” will be promulgated because it had been preceded by two laws, both of which aimed to regulate special autonomy for Aceh. The first one was Law No. 44/1999 on the “Implementation of the Specialty of the Special Province of Aceh”, which was enacted on 4 October 1999, with “specialty” meaning

- to lead a religious life (the right to introduce Syari’at Islam)
- to implement traditional norms and culture (adat)
- to implement education, including elements of Syari’at Islam
- to give the religious (Islamic) leaders a role in policy making (creation of a board of religious leaders).

Law No. 44/1999 has not been invalidated by the LoGA, because it is seen as defining the special characteristics of Aceh, which have been taken up and elaborated on in Law No. 11/2006.

On 9 August 2001, Law No. 18/2001 on “Special Autonomy for The Special Province of Aceh as Province of Nanggroe Aceh Darussalam (NAD)” was enacted, its most important provisions being:

- The assignment of government functions as far as not specifically regulated in the law follows existing regulations, which were at that time Law 22/1999 on Regional Government and the Government Regulation 25/2000 on the Distribution of Functions between the Central Government and the Provinces.
- The revenue sharing arrangements were different from general arrangements as provided for in Law 25/1999: Aceh was to receive 20% of personal income tax revenues (others = 0); for a duration of 8 years, Aceh was to receive 55% of oil revenues (in addition to the 15% granted to the other regions), and Aceh was to receive 40% of natural gas revenues (in addition to the 30% granted to other regions); these shares were to be reduced after 8 years to an additional 35% and 20% for oil and natural gas, respectively.
- The establishment of Wali Nanggroe as an (non-political) institution to unify the people of Aceh and provide guidance on traditional norms and culture.
- The elections of Governor/Bupati/Walikota were to be organised by KIP (Independent Election Commission) consisting of the KPU (General Elections Commission) and representatives of the people.
- The appointment of the police chief needs the agreement of the Governor.
- Establishment of Syar’iyah Court (Mahkamah Syar’iyah) to practice Islamic law for followers of Islam in the framework of the national law.
- All stipulations regarding special authorities of NAD were to be followed up by *Qanun* (regional bylaw of Aceh), without any reference to existing laws and regulations.
- As Law 18/2001 did not, in fact, assign any government functions to Aceh that were different to those of other provinces – except for the ones mentioned above – the law was explicitly invalidated by the LoGA (§ 272), which regulates Aceh’s special authorities in detail.

3.2.1.2 Deviations of LoGA regulations from MoU provisions

Although the LoGA was promulgated as mandated by the MoU, this assessment of the MoU implementation focuses largely on the law, because the Second Signatory has raised concerns regarding the differences between various regulations of the LoGA and the respective provisions of the MOU. The following are key issues raised by the Second Signatory.

| Provisions of the MoU | Deviating LoGA Regulations |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Principles of the LoGA</p> <p>1.1.2 The new Law on the Governing of Aceh will be based on the following principles:</p> <p>a) Aceh will exercise authority within all sectors of public affairs, which will be administered in conjunction with its civil and judicial administration, except in the fields of foreign affairs, external defence, national security, monetary and fiscal matters, justice and freedom of religion, the policies of which belong to the Government of the Republic of Indonesia in conformity with the Constitution.</p> <p>b) International agreements entered into by the Government of Indonesia, which relate to matters of special interest to Aceh, will be entered into in consultation with and with the consent of the legislature of Aceh.</p> <p>c) Decisions with regard to Aceh by the legislature of the Republic of Indonesia will be taken in consultation with and with the consent of the legislature of Aceh.</p> <p>d) Administrative measures undertaken by the Government of Indonesia with regard to Aceh will be implemented in consultation with and with the consent of the head of the Aceh administration.</p> | <p>To the six sectors of public affairs, which the MoU reserves explicitly to the central government, the LoGA in article 7,2 adds government affairs of “national character” (urusan pemerintahan yang bersifat nasional). The Second MoU Signatory is concerned that this opens the opportunity for the central government to assume a wide range of authorities that would unduly limit the authority of Aceh as intended by the MoU and therefore asks for an adjustment of the respective LoGA stipulation.</p> <p>The LoGA in article 8 (1), (2) and (3) uses the term “...in consultation with and with the consideration of...” instead of “...in consideration with and with the consent of...” as stipulated in the MoU. The Second MoU Signatory is concerned that this alteration of the MoU principle may lead to unilateral decisions of the national parliament or the national government, and is of the opinion that the respective implementing regulation (Presidential Regulation No. 75/2008) does not provide for an adequate consensus-finding mechanism. The Second MoU Signatory therefore asks for an adjustment of the respective LoGA stipulations.</p> |
| <p>Economy</p> <p>1.3.1 Aceh has the right to raise funds with external loans. Aceh has the right to set interest rates beyond that set by the Central Bank of the Republic of Indonesia.</p> | <p>The LoGA (article 186,1) requires the agreement of the Minister of Finance and the considerations of the Minister of Home Affairs to raise funds with external loans. The Second Signatory is concerned that the rights of Aceh in obtaining funds from external loans are unduly limited by the LoGA stipulations.</p> |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1.3.2 Aceh has the right to set and raise taxes to fund official internal activities. Aceh has the right to conduct trade and business internally and internationally and to seek foreign direct investment and tourism to Aceh.</p> <p>1.3.3 Aceh will have jurisdiction over living natural resources in the territorial sea surrounding Aceh.</p> <p>1.3.4 Aceh is entitled to retain seventy (70) per cent of the revenues from all current and future hydrocarbon deposits and other natural resources in the territory of Aceh as well as in the territorial sea surrounding Aceh.</p> | <p>The Second Signatory is concerned that Aceh is not free in setting and raising taxes, but has to follow existing national laws and regulations (LoGA, article 180,2). Similarly, Aceh's freedom in seeking foreign direct investment is limited by the LoGA provision that requires Aceh to follow national norms, standards and procedures (LoGA, article 165,2).</p> <p>Regulations of the LoGA regarding Aceh's jurisdiction over living natural resources in its territorial sea are seen as being too restrictive, by requiring Aceh to follow national norms, standards and procedures, particularly when it comes to issuing respective licenses (LoGA article 165,3).</p> <p>Aceh does not retain its revenue share of 70%, but all revenues are transferred to the central government, which reallocates funds to Aceh. The Second MoU Signatory is concerned about a possible lack of transparency and requests an adjustment of the LoGA article 181,2 that mandates revenue sharing to follow existing national regulations.</p> |
| <p>Rule of Law</p> <p>1.4.5 All civilian crimes committed by military personnel in Aceh will be tried in civil courts in Aceh.</p> | <p>According to LoGA article 203, criminal offences committed by members of the TNI in Aceh will be trialed in accordance with existing laws and regulations, which in this case are the law No. 31/1997 on the Military Judicature and the law No. 34/2004 on the Indonesian Armed Forces (TNI). Concerns have been raised by the Second MoU Signatory that these laws, not being sufficiently clear regarding the treatment of civilian crimes committed by military personnel, might still allow such crimes to be trialed in military courts. Therefore, an adjustment of the respective LoGA regulations is being asked for. (An alternative would be the adoption of clear provisions in this regard in case the laws on the TNI and on the Military Judicature should be revised.)</p> |
| <p>Security Arrangements</p> <p>4.11 Military forces will be responsible for upholding the external defence of Aceh. In normal peacetime circumstances, only organic military forces will be present in Aceh.</p> | <p>In defining the responsibilities and tasks of the TNI in Aceh, the LoGA refers in article 202 to the national law on the TNI (Law No. 34/2000). The Second MoU Signatory is concerned that this might implicitly expand the tasks of TNI in Aceh beyond the stipulation of the MoU to also cover matters of internal security. The Second MoU Signatory therefore sees the need to either revise the LoGA to adjust the mandate of the TNI in Aceh to the requirements of the MoU, or to accommodate the special situation of Aceh in a revised law on the TNI.</p> |

Another issue of concern to the Second Signatory is the fact that the MoU is not explicitly mentioned in the preamble of the LoGA, thus showing that it is not acknowledged as a legally binding reference for the LoGA. The Second Signatory sees this as a reason why LoGA regulations can deviate substantially from the MoU and is therefore of the opinion that the MoU should be explicitly mentioned in the “considerations” (*menimbang*) part of the preamble. This is supported by the following arguments:

- The MoU is explicitly mentioned in the general elucidations of the LoGA, which are an integral part of the law. For reasons of consistency, the MoU should therefore also be mentioned in the preamble.
- The decision of the Constitutional Court on the issue of independent candidates (*Putusan MK No. 108 PHPUD.D-IX/2011*) refers repeatedly to the MoU, thus acknowledging it as a source of law.
- The MoU is explicitly mentioned in the preamble of the regulation on the house rules of the Aceh provincial parliament, which has been approved by the Ministry of Home Affairs and thus been acknowledged as a source of law.

A possible adjustment of the LoGA to the provisions of the MoU could only be addressed by an amendment of the LoGA. A legislative process, both for the promulgation of a new law and for the revision of an existing one, can be initiated either by the national government or the national parliament, neither of which has so far indicated the intention to review the LoGA. However, the provincial government and/or parliament have the right to elaborate an own draft revision of the LoGA and submit it to the national government for further deliberation. Representatives of the Second Signatory have indicated that they intend to follow this process. Thus, the concerns of the Second Signatory and other stakeholders in Aceh based on an evaluation of six years of LoGA implementation can become an essential input for a possible process of amending the law.

3.2.1.3 Unimplemented LoGA provisions that are based on the MoU

a) Seaports and Airports

According to article 1.3.5 of the MoU, Aceh conducts the development and administration of all seaports and airports within the territory of Aceh.

The LoGA regulates in articles 19 and 254 that all seaports and airports, except for those that had been managed by state enterprises before the enactment of the LoGA, must be handed over to the Kabupaten/Kota by the beginning of the Financial Year 2008. However, no such transfers have taken place so far.

For those seaports and airports that have been managed by state enterprises before the enactment of the LoGA, articles 173,1 foresees a joint management by the respective state enterprises and the provincial and/or Kabupaten/Kota governments. Even though such cooperative arrangements were to be in place at the latest by the beginning of the Financial Year 2008 (LoGA article 254,2), no such arrangement exist so far.

The Second Signatory expects seaports and airports to be handed over to the responsible authorities in Aceh according to the provisions of the LoGA, which in this case is seen as following the intent of the MoU (except for the clause on the joint operation of certain seaports and airports). Representatives of the First Signatory have explained that particularly the smaller

seaports and airports that have so far been managed by the central government depend on substantial subsidies by the central government. According to the First Signatory, Kabupaten and Kota have therefore refused to take over the respective seaports and airport. Being a legally binding provision of the LoGA, the matter needs to be addressed in consultations between the Government of Aceh and the national government.

b) Independent Auditors

According to article 1.3.8 of the MoU, GoI commits to the transparency of the collection and allocation of revenues between the Central Government and Aceh by agreeing to outside auditors to verify this activity and to communicate the results to the head of the Aceh administration.

The LoGA regulates in article 194 that the national government will implement the principle of transparency in collecting and allocating revenues that originate from Aceh. It further stipulates that in implementing such transparency, the Government of Aceh can use independent auditors, which will be nominated by the national Board of Auditors, to undertake their examinations according to existing laws and regulations. In its elucidations, the law defines independent auditors as auditors not belonging to the Board of Auditors, but working for and in the name of the Board.

As no independent auditors have been nominated and employed yet, the Second MoU Signatory is concerned that the requirements of transparency as mandated by the MoU and by the LoGA may not be fulfilled. The Second MoU Signatory asks therefore to employ independent auditors to verify the collection and allocation of revenues that are being generated in Aceh. The provision of the LoGA, in following the intent of the MoU, stipulates that independent auditors “can be used by the Government of Aceh”. It is therefore up to the Government of Aceh to initiate the nomination and employment of such auditors.

c) Human Rights Court

According to article 2.2 of the MoU, a Human Rights Court will be established for Aceh. The LoGA stipulates in articles 228 and 259, that a Human Rights Court (HRC) will be established in Aceh at the latest one year after the enactment of the LoGA (1 August 2006). By the time of writing this report, such a Human Rights Court had not been established yet in Aceh. The Second MoU Signatory does therefore expect the court to be established according to the provisions of the law.

The LoGA does not foresee a specific implementing regulation on the Human Rights Court. However, the jurisdiction over human rights violations in Aceh is according to Law No. 26/2000 still with the Human Rights Court in Medan. Reportedly, the opinion prevails among the concerned authorities (the Ministry of Justice and the Supreme Court) that this law needs to be revised, taking Aceh out of the Medan court’s jurisdiction, before a separate law on the establishment of a HRC in Aceh can be enacted. Even though there seems to be agreement among the concerned authorities on the establishment of the court, no information could be obtained on concrete steps in this direction by the time of writing this report.

d) Commission for Truth and Reconciliation

According to article 2.3 of the MoU, a Commission for Truth and Reconciliation will be established for Aceh by the Indonesian Commission of Truth and Reconciliation, with the task of formulating and determining reconciliation measures.

The LoGA stipulates in article 229 that a Commission for Truth and Reconciliation in Aceh is established by the LoGA, which forms an integral part of the National Truth and Reconciliation Commission (TRC), and works on the basis of the Law 27/2004 on the National Truth and Reconciliation Commission.

Even though article 260 of the LoGA foresees that the Commission in Aceh has to become effective one year after the enactment of the LoGA (1 August 2006), the Commission has so far not been established. The Second MoU Signatory expects therefore the Commission to be established in Aceh in compliance with the LoGA.

However, the legal framework for establishing a TRC in Aceh lacks an essential element, because the Law on the National Truth and Reconciliation Commission, which the LoGA refers to, was revoked by the Constitutional Court in 2006. Even though the promulgation of a new Law on the national TRC had been on the legislative agenda for 2011 and a respective draft law had reportedly been prepared already, the process has obviously been postponed. Discussions on the draft law are reportedly ongoing within the central government. No information on the actual state of affairs could be obtained by the time of writing this report.

The LoGA (article 230) foresees that details regarding structure, working procedures, personnel and finance of the TRC are to be regulated by *Qanun* (regional bylaw of Aceh). As the LoGA provides the legal basis for the establishment of the TRC and the *Qanun* for its technical details, various parties in Aceh – among them several CSOs and members of the DPRA – promote the establishment of the TRC in Aceh without waiting for a new law on the national TRC. A TRC established in this way would, however, lack the authority that it is supposed to have if its mandate is based on the national law as required by the LoGA. The parties in favour of this approach argue that a TRC established by *Qanun* could at least engage in recording cases of human rights violations, so that important information does not get lost in the course of time. The DPRA has therefore put the promulgation of a *Qanun* on the TRC on its legislative agenda for 2012.

3.2.1.4 Implementing Regulations of the LoGA

The LoGA mandates the issuing of a considerable number of implementing regulations that are key to performing governance in Aceh in accordance with the intent of the law. Several of those regulations have to be issued by the national government, and a great number of others have to be put in place in the form of regional by-laws (*Qanuns*), either by the provincial government of Aceh or district and municipality governments. At this stage, nearly six years after the promulgation of the LoGA, many of the implementing regulations have still not been issued, among them some essential regulations by the national government. While part of the *Qanuns* depend on the national government implementing regulations, a great number of them could in the meantime have been issued independently at the provincial and district/municipality levels. As there is a multitude of *Qanuns* to be issued, it would exceed the scope of this assessment of the MoU implementation to deal with them.

Different to the *Qanuns*, the present state of the national government’s implementing regulations of the LoGA must be dealt with, as they can be regarded as an integral part of the obligations of the Government of Indonesia as expressed by its commitment to promulgate the LoGA itself. The majority of those implementing regulations have been issued in the meantime:

- Government Regulation on Local Political Parties in Aceh (issued as Government Regulation 20/2007)
- Government Regulation on the Appointment and Dismissal of the Regional Secretary of Aceh (issued as GR 58/2009)
- Government Regulation on the Delegation of Government Authorities to the Management Body of the Sabang Special Zone (issued as GR 83/2010, although being reviewed presently to be amended)
- Presidential Regulation on Mechanisms for Consultations and Considerations on Draft International Agreements, Draft Laws and Administrative Policies Directly Related to Aceh (issued as Presidential Regulation 75/2008)
- Presidential Regulation on the Cooperation of the Government of Aceh with Foreign Institutions and Agencies (issued as Presidential Regulation 11/2010)

At the time of writing this report, there were still some essential regulations under discussion between the national government and the Government of Aceh. According to LoGA article 8.3, before issuing these regulations (called administrative policies), the national government has to consult the Governor of Aceh and receive his considerations. The mechanisms of conducting these consultations and receiving the considerations of the Governor are regulated in the Presidential Regulation 75/2008. The fact that this regulation does not foresee the national government obtaining the consent of the Governor as mandated by the MoU (article 1.1.2), has been a reason for concern of the Second Signatory (see section 4.2.1.2 of this report). However, the lengthy consultation processes on the above mentioned draft regulations since the mechanisms for consultations were set up in late 2008, show that consultations were conducted by both sides following the spirit of the MoU: trying to achieve consensus as a rule. It must be noted, though, that due to the thorough consultation processes there are still some essential implementing regulations of the LoGA that have not been enacted yet. The state of their preparation and problems encountered are briefly described as follows.

a) The Government Regulation on the National Government's Authorities in Aceh

According to the LoGA (Article 7.1), the Government of Aceh and the district/town governments regulate and execute government functions in all public sectors, except for those functions that are the responsibility of the national government: government functions of national character, foreign policy, defence, security, justice, monetary and fiscal affairs as well as certain functions in the field of religion. The latter are to be regulated in a "Government Regulation on the National Government's Authorities in Aceh" that basically follows the pattern of the Government Regulation 38/2007, which determines the functions of the national government for the whole country. Adjustments to the special autonomy situation of Aceh were made through a lengthy consultation process between the national government agencies responsible for the individual sectors and the Government of Aceh, called for by article 8 of the LoGA. While this process has been largely concluded, there still remain some open issues, which are related to the assignment of authorities in managing land administration (see below), in forest management, and in managing oil and gas resources (see below).

b) Regulations on the Authorities in Land Administration

According to Article 253 of the LoGA, the (so far nationally owned) offices for land administration at provincial and district level were to be handed over to the respective local governments at the latest by the beginning of 2008. The technical details of the handover were to be laid down in a Presidential Regulation. A draft of this regulation has reportedly been prepared by the National Land Agency already in 2008 but has so far not been officially discussed with the Government of Aceh. The draft regulation includes detailed regulations on the assignment of functions to the provincial and district levels. Those functions that remain with the national government should also be stipulated in the Government Regulation on the National Government's Authorities in Aceh. Both regulations complement each other and should therefore be consistent in how they deal with the assignment of land administration functions across the three levels of government – national, provincial and district governments – based on the legal framework of the LoGA.

The Government of Aceh and the National Land Agency have different interpretations of the LoGA regulations regarding land administration. The LoGA (article 213.3) determines explicitly that the Government of Aceh and the district/municipality governments have the authority to issue buildings rights titles (*hak guna bangunan*) and cultivation rights titles (*hak guna usaha*) to domestic and foreign investors. The building rights title gives the right to construct and own buildings on a piece of land that someone else owns, whereas the land cultivation title gives the right to use state-owned land for the purpose of agriculture. As the LoGA does not explicitly mention the transfer of the authority for issuing land ownership rights, the National Land Agency wants to limit Aceh's authority in land administration to the two functions mentioned in the law. However, the Government of Aceh is of the opinion that handing over the regional offices for land administration to the local governments as mandated by the LoGA should include the transfer of all authorities in land administration to the provincial and district governments of Aceh, including the authority to issue land ownership rights.

The dispute on the assignment of authorities in land administration has not only held up the transfer of the land administration offices to the provincial and district/municipality governments as mandated by the LoGA, but also the finalisation of the draft "Government Regulation on the National Government's Authorities in Aceh". Reportedly, the issue will be dealt with by the Coordinating Ministry for Political, Legal and Security Affairs, which will try to find a solution that is acceptable to both parties. No information on progress achieved was available at the time of writing this report.

c) Government Regulation on the Joint Management of Oil and Gas Resources

The LoGA (article 160) stipulates that the national government and the Government of Aceh are jointly responsible for managing oil and gas resources in the land and sea territory under the jurisdiction of Aceh. This is an exception to the rest of the country, where management of oil and gas resources is the exclusive responsibility of the national government. The management responsibilities as defined by the LoGA are to be executed by a special agency (Joint Oil and Gas Management Agency, BPMA) to be jointly formed by both parties. The respective arrangements are to be laid down in a "Government Regulation on the Joint Management of Oil and Gas Resources in Aceh". Reportedly, the Government of Aceh and the national government have reached far-reaching consensus on the draft government regulation. However, an essential issue that is still under debate is Aceh's demand to extend the coverage of the joint

management and the sharing of revenues to the 200 miles zone, while according to prevailing regulations only the 12 miles zone is under the jurisdiction of Aceh. While the Ministry of Mining and Energy would for technical and efficiency reasons agree to have the joint management through BPMA cover the 200 miles zone, the Ministry of Finance objects to it because the existing laws and regulations do not provide a legal basis for such an arrangement. Reportedly, the issue has therefore been submitted to the cabinet, however no information on the state of affairs was available at the time of writing this report.

3.2.2 MoU Provisions that are not covered by the LoGA

3.2.2.1 Reintegration into society

According to article 3.2.3 of the MoU, “GoI and the authorities of Aceh will take measures to assist persons who have participated in GAM activities to facilitate their reintegration into society. These measures include economic facilitation to former combatants, pardoned political prisoners and affected civilians. A Reintegration Fund under the administration of the authorities of Aceh will be established”.

The Reintegration Fund mandated by the MoU was established as *Badan Reintegrasi Aceh (BRA)* or Aceh Reintegration Authority on 11 February 2006 by decree of the Governor of Aceh. BRA, partly through its district level offices, is responsible for implementing the various reintegration measures as mentioned in article 3.2.3, while funding of the activities is provided by the provincial agency for social affairs from the national and provincial budgets. The national government committed itself to provide altogether 2.1 trillion Rupiah for reintegration purposes, although this figure was never formally agreed upon between the parties. Out of this amount, 2.03 trillion Rupiah (96.7%) had been spent by 2011. From the provincial budget, 401 billion Rupiah had been provided by 2011, among others for *Diyat*, a cash compensation based on Islamic law for families of victims killed or lost during the conflict.

The MoU foresees various purposes for the utilisation of the reintegration funds. To address the different purposes, BRA has had three major programme areas: housing, economic empowerment and social security. The housing programme addresses the provisions of article 3.2.4 of the MoU: “GoI will allocate funds for the rehabilitation of public and private property destroyed or damaged as a consequence of the conflict to be administered by the authorities of Aceh”. The estimated number of houses to be rebuilt has considerably increased over the years as new claimants kept on filing requests with BRA. By 2011, BRA had rebuilt 29,378 severely damaged or totally destroyed houses and had spent 118.8 million US\$ for this purpose. While BRA regards its commitments as fulfilled, additional requests are coming in continuously, among others from ex-combatants who did not own a house during the time of conflict. BRA estimates that there might be up to 15,000 additional houses to be built. As BRA’s mandate ends in 2012, financing for additional house construction is expected to come from the national Ministry of Public Housing and from the Ministry for Social Affairs.

The reintegration entitlements of the different groups of beneficiaries are regulated in article 3.2.5 of the MoU: “GoI will allocate suitable farming land as well as funds to the authorities of Aceh for the purpose of facilitating the reintegration to society of the former combatants and the compensation for political prisoners and affected civilians. The authorities of Aceh will use the land and funds as follows:

- a. All former combatants will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.
- b. All pardoned political prisoners will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.
- c. All civilians who have suffered a demonstrable loss due to the conflict will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.”

Since 2006, BRA has addressed the requirements of the MoU article 3.2.5 through its “Economic Empowerment” programme, which did mainly consist of cash assistance. As for the commitment to provide suitable farming land to the former combatants, the signatories of the MoU hold different positions. In 2005, an agreement was reportedly made between members of the GAM leadership and the Governor of Aceh to pay Rp 25 million to each of the 3,000 former GAM combatants mentioned in the MoU (article 4.2), an amount that was supposed to include a monetary compensation replacing the allocation of land. Other recipients of reintegration assistance (non-TNA GAM members, GAM members who had surrendered before the MoU, and PETA members) had only received Rp 10 million. However, this agreement has obviously not been documented in writing, but has been discussed and reconfirmed in a COSA meeting on 4 November 2006. As no written agreement has been made, this arrangement is challenged by representatives of the Second Signatory. A solution to the problems might be sought through the Joint Claims Settlement Commission, which has to be formed according to article 3.2.6 of the MoU (see below).

Presently, a plan is under discussion to start a new programme for the provision of land to the different groups of beneficiaries as mentioned in the MoU. Under this programme, 2 ha of agricultural land will be provided to each of the 50,000 prospective beneficiaries, which include ex-combatants, non-combatant GAM members, former political prisoners and victims of conflict. The beneficiaries will not be granted land ownership rights, but will receive land use right for 75 years. The beneficiaries will have to jointly manage the land in form of a cooperative or farmers union and will be encouraged to grow coffee, chocolate and other plantation crops. Land distribution will start in 2013 with an allocation of 3,000 ha and will be expanded to cover 125,000 ha by 2025. Funds for the programme have reportedly been earmarked in the provincial budget.

Various forms of social security programmes have been set up to address the needs of different groups of beneficiaries. One important programme, which was already started in 2002, is the so called *Diyat* programme, which is based on Islamic law and involves a 3 million Rupiah cash compensation for families of victims killed or lost during the conflict. Beneficiaries were registered by BRA and verified by Village Heads. More than 30,000 people have so far benefited from the programme, which is financed from both the national and provincial governments. According to BRA, 30 million US\$ have been spent on the programme so far and an additional 15 million US\$ will be needed to finalise the programme.

In the context of social assistance, the Government of Aceh has provided scholarships to more than 15,000 orphans. In addition, assistance has been provided to handicapped victims of the conflict as well as access to health care.

BRA's mandate will end in 2012. The formation of an Aceh Peace Strengthening Authority (Badan Penguatan Perdamaian Aceh, BPPA) as a successor to BRA is under discussion. BPPA would have a strictly coordinating role while the implementation of activities related to reintegration as mandated by the MoU would be the responsibility of the individual provincial government authorities (Dinas). Funding for the BPPA is expected to come from the provincial budget and should start in 2013.

The Second MoU Signatory has raised concerns that several of the provisions of MoU article 3.2.5 have not yet been fulfilled as intended by the MoU. In the absence of a credible verification mechanism, it is difficult to objectively assess to what degree justified claims of the various groups of beneficiaries have been met. According to article 3.2.6 of the MoU, the authorities of Aceh and GoI will establish a joint Claims Settlement Commission to deal with unmet claims. This commission had not been established by the time of writing this report (nearly seven years after the MoU was signed). According to information received from the Coordinating Ministry for Political, Legal and Security Affairs, a draft regulation for the establishment of the commission had been prepared by the Ministry and had been submitted to the Government of Aceh some time ago. However, so far there has been no response by the Government of Aceh. Therefore, the regulation has not been enacted yet, thus delaying the establishment of the commission. As a result of a joint meeting conducted on 1 February 2012 (see 5.2), the signatory parties have agreed that a new effort will be undertaken involving the DPRA to enhance the establishment of the Joint Claims Settlement Commission.

3.2.2.2 Security Arrangements

The MoU stipulates in article 4.7: "The number of organic military forces to remain in Aceh after the relocation is 14,700. The number of organic police forces to remain in Aceh after the relocation is 9,100", and in article 4.8: "There will be no major movements of the military forces after the signing of this MoU. All movements more than a platoon size will require prior notification to the Head of the Monitoring Mission".

The Second Signatory had expressed concerns that since the mandate of AMM was terminated, there has been no mechanism to verify the number of military and police forces, nor the movements of military forces in Aceh. These concerns have so far been addressed by an agreement between the two signatory parties during the Focus Group Discussion meeting on 1 February 2012, as personnel increases and TNI manoeuvres will be coordinated through the Regional Leaders Communication Forum, which is chaired by the Governor and includes the Chairman of the DPRA, the Wali Nanggroe, the Military Commander, the Chief of Police and the Chief Prosecutor.

4. THE DIALOGUE PROCESS FOR RESOLVING OPEN MOU ISSUES



4.1 The Aceh Desk and the Communication and Coordination Forum (FKK)

The ultimate goal of the Aceh Peace Process Follow-Up initiative conducted by CMI was to help establish and sustain a dialogue process between the signatory parties and other relevant stakeholders for resolving the open MoU issues. This goal can be considered as having been achieved, as can be concluded from the state of development at the time of writing this report. From the outset of this project it was considered an ideal approach to link the dialogue process as far as possible to existing institutions in order to safeguard its sustainability until such time when both signatory parties agree that the MoU commitments have been fulfilled. An institution of particular relevance for conducting the dialogue between the parties is the Aceh Desk of the Coordinating Ministry for Political, Legal and Security Affairs (*Menko Polhukam*).

The formation of the Aceh Desk is based on Presidential Instruction No. 15/2005 on the "Implementation of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement". This Presidential Instruction assigns responsibilities to ministers, to heads of state institutions and to the Governor of Aceh to prepare and/or issue policies in the context of implementing the MoU. To the Coordinating Minister for Political, Legal and Security Affairs, the Presidential Instruction assigns the responsibility for (1) coordinating and synchronising the planning and preparation of all policies in the context of implementing the MoU, (2) settling disputes regarding the implementation of the MoU, which cannot be resolved among senior representatives of the signatory parties and the Head of the Aceh Monitoring Mission (AMM), and (3) supervising, controlling and evaluating the implementation of the MoU. In order to assist the Coordinating Minister in performing these tasks, the Aceh Desk was established by ministerial decree. As the dispute settlement mechanism provided for in the MoU no longer exists after the mandate of the AMM has ended, the second task assigned to the Coordinating Minister had to be modified. The respective duty of the Aceh Desk was modified accordingly and reads now: "Together with the relevant parties resolve possible disagreements regarding the implementation of the MoU, and forward issues that cannot be resolved to the relevant ministries or technical state institutions for receiving their consideration or opinion on the respective problem" (Decree No. 18 of the Coordinating Minister for Political, Legal and Security Affairs of 23 February 2012). The Aceh Desk consists of several implementing units and involves altogether 49 persons, mainly from the Coordinating Ministry but also from the Ministry of Justice and Human Rights, the Ministry of Home Affairs, the Ministry of Foreign Affairs and the Government of Aceh.

One of the implementing units of the Aceh Desk is the Communication and Coordination Forum (*Forum Komunikasi dan Koordinasi Desk Aceh, FKK*), which has the task of implementing parts of the duties of the Aceh Desk. According to the above mentioned ministerial decree, it is an official forum of the national government in Aceh and serves as a platform and implementer for the communication and coordination between the national government and the Free Aceh Movement, the Government of Aceh and the people of Aceh in the context of enhancing the implementation of the MoU and the LoGA.

The FKK has the following duties:

- to implement the communication between the National Government, the Government of Aceh, former members (*elements*) of GAM and the people of Aceh;
- to coordinate the implementation of national government policies/authorities in Aceh;
- to plan the tasks and functions of the FKK; and
- to submit regular reports, evaluations, proposals and considerations to the Coordinating Minister for Political, Legal and Security Affairs.

Permanent members of the FKK are officials from the Coordinating Minister for Political, Legal and Security Affairs, the Ministry of Home Affairs, the State Intelligence Service, the Military Intelligence Service and the Aceh Police, as well as the Regional Secretary of Aceh and the Chairman of Partai Aceh. The permanent members participate in or implement activities of the Aceh Desk in general and of the FKK in particular.

Non-permanent members of the FKK are members of the Aceh Leadership Forum (now renamed the Aceh Leadership Communication Forum), consisting of the Governor, the Chief of Police, the Military Commander, the Chief Prosecutor, and the regional head of the state intelligence service, as well as the chairman of the Aceh Islamic Leaders Council (*Majelis Permusyawaratan Ulama*), the chairman of the Aceh Traditional Leaders Council (*Majelis Adat Aceh*) and the head of BRA. The non-permanent members join the activities of the Aceh Desk, especially the FKK, through participatory programmes and activities according to needs.

4.2 The process of Focus Group Discussions

Following a lengthy discourse on the appropriate format of a forum for conducting a dialogue on the unresolved MoU issues, the signatory parties have eventually agreed to engage in a process of Focus Group Discussions (FGD). The parties have in principle agreed that:

- FGD meetings will discuss and resolve open MoU issues.
- FGD meetings will be held regularly every three months at the invitation of the Head of the Aceh Desk (a deputy minister of Menko Polhukam), who will also chair the meetings.
- Participants of the FGD meetings will be limited in number and will primarily originate from the Aceh Desk and from the Second Signatory; other participants (e.g. sectoral ministries and other state authorities) will be invited as needed.
- The agenda of every FGD meeting will be discussed and agreed upon between representatives of the Second Signatory and the head of the FKK in a meeting in Banda Aceh.
- The results and agreements achieved in the FGD meetings will be documented and signed by representatives of both parties.
- The implementation of commitments that require concrete action by one of the parties will be evaluated during the following FGD meeting.
- If individual commitments have not been fulfilled or if there is disagreement between the parties on the fulfilment of commitments, the parties may consider referring the issue to a higher decision making level, which is normally the Coordinating Minister for Political, Legal and Security Affairs (the Second Signatory reserves the right to submit unresolved issues to the President of the Republic of Indonesia in exceptional cases).

The CMI team has provided advisory input in shaping the format of the FGD process and has been invited to follow the process as observers. The CMI Country Coordinator has participated in several FGD meetings and the team has had discussions with both parties on the results of the meetings and the necessary follow-up.

One important agreement that has been achieved through the process so far is the formation of a joint team to review the implementation of the MoU and the LoGA. The team has been set up by the Permanent Secretary of Menko Polhukam and includes five representatives of the First Signatory originating from Menko Polhukam, the Ministry of Justice and Human Rights and the Ministry of Home Affairs, as well as five representatives of the Second Signatory, including one former member of the national parliament, who was involved in drafting the LoGA. The team will primarily focus on gathering information on the perception of the people of Aceh regarding the implementation of the MoU and the LoGA, and will have to submit its report to the Permanent Secretary of Menko Polhukam by the end of November 2012.

Agreement has also been achieved on an issue of considerable concern to the First Signatory, the continued existence of the Aceh Transitional Committee (*Komite Peralihan Aceh, KPA*) as an unofficial movement with semi-military structures. KPA had originally been formed by GAM (without acknowledgement of the Government) as an informal platform to facilitate the transition of former GAM combatants into civilian life. The government has consistently asked the Second Signatory to turn KPA into a strictly non-military organisation and have it officially registered as an NGO, whose leadership and members can be held accountable for their actions. At the FGD meeting on 1 February 2012, both parties agreed that KPA will be registered as an NGO and will discontinue displaying military insignia or symbols as mandated by the MoU. The fact that, despite this agreement, supporters of Partai Aceh appeared in military-style uniforms and displayed military-style insignia during the election campaign in March and April 2012 has raised serious concerns with representatives of the First Signatory and calls for a consistent follow-up by the Second Signatory. Likewise, accusations that former combatants had performed violent actions during the campaign need to be clarified and followed-up by the Second Signatory, if proven correct.

An issue of great importance to both signatories is the existence of GAM. The First Signatory is of the opinion that GAM as an (informal) organisation should have ceased to exist after the formation of its political representative, Partai Aceh, and has expressed serious concerns regarding the continued use of GAM emblems and public celebrations of GAM anniversaries. However, the Second Signatory claims that GAM, as a signatory of the MoU, has the right to exist until the provisions of the MoU have been fulfilled in a satisfactory manner. So far, the parties have not come to a clear agreement on this essential issue, and finding a solution that satisfies both signatories will be a challenge for the upcoming FGD meetings.

Several other agreements that have been achieved during the first FGD meeting are related to a possible process of revising the LoGA (see 4.2.1.2), military exercises (see 4.2.2.2), and weapons control in Aceh.

At the time of writing this report, the CMI team had gained the impression that the FGD process was well on its way to becoming an institutionalised platform for the dialogue between the parties. The CMI team has encouraged both parties to continue this promising process and has provided some recommendations on how to make the FGD meetings still more effective.

The parties have set themselves the ambitious goal of trying to resolve the open MoU issues through the FGD process by 2014. While it is likely that not every individual issue may

be resolved by then, it should be possible to achieve a state where both parties can agree to consider the MoU commitments as being fulfilled in principle. By now, the process of the MoU implementation has to a considerable extent passed into the process of the LoGA implementation and it will increasingly continue to do so. Thus, ensuring the implementation of the original MoU commitments has largely become a matter to be dealt with by the Government of Aceh and the DPRA on one side, and the national government and the national parliament on the other. This holds particularly true for a possible revision of the LoGA, where the Second Signatory will have the possibility to channel its views and claims into the legislative process through its political representation in the DPRA.

Many other issues that remain unresolved so far and are of concern to the Second Signatory can be addressed more effectively once a constructive working relationship is established between the legislative and the executive branches of the government, a condition for good and successful governance that has been largely absent in Aceh during recent years. Even though the DPRA is not to be formally involved in consultation processes on implementing regulations of the LoGA between the Governor of Aceh and the national government, a close interaction between the Government of Aceh and the DPRA on these essential elements of Aceh's legal framework could help to mitigate the concerns of relevant stakeholders in Aceh, including Civil Society Organisations and the Second Signatory.

Considerable responsibility for fulfilling the promises of the Aceh peace process rests with the national government. This holds particularly true for the consistent application of the LoGA and its implementing regulations. Stakeholders in Aceh, including the Second Signatory, have raised concerns that national legislation has in several cases been passed without reference to the provisions of the LoGA, thus ignoring the privileges that Aceh enjoys due to its special autonomy status. In order to avoid potential conflicts and reinforce trust-building between all stakeholders of the peace process, consultations between the national government or parliament and the Government of Aceh or the DPRA on draft laws and government policies related to Aceh must consistently be conducted as mandated by the LoGA.

In summary, the FGD process can be seen as a valuable complementary and transitional instrument for resolving a number of the so far unresolved MoU issues. However, the main challenges in fulfilling the hopes and expectations of the people of Aceh towards the results of the peace process rest with the Government of Aceh, the DPRA and its constituent parties, including Partai Aceh, as well as the national government.

5. SOME FACTORS OF INFLUENCE FOR SUSTAINING PEACE IN ACEH



5.1 Participation of the civil society in the peace process

A sustainable peace process requires also a vibrant civil society that has the possibility to voice issues and concerns and whose voices are taken into consideration within the political system. A dialogue between the government and civil society is enrichment for a political system as it provides an opportunity for the advancement of a democratic society. President Ahtisaari and CMI have regularly consulted with civil society groups and have hosted two civil society roundtables during this process, discussing a range of issues such as human rights, gender issues, economic development, and the role of civil society in the peace process. Consistently civil society organisations have claimed that they should have been much more involved as an actor in the peace process. Their understanding is that civil society organisations can make an important contribution to bring about a peaceful society, supporting non-violent dialogue and reconciliation between former adversaries. Often, as is also the case in Aceh, these grass-root initiatives are not in the headlines, however their activities need to be supported and encouraged.

Civil society organisations in Aceh have a strong focus on human rights issues and, in this context, the setting up of a justice system to which grievances can be addressed. The still outstanding establishment of a Truth and Reconciliation Commission (TRC) and a Human Rights Court (HRC) for Aceh have been, and will continue to be of concern for civil society in Aceh. A civil society coalition of organisations from Aceh and Jakarta called "Aceh Coalition for Truth" has prepared a concept paper and drafted a model for the TRC in 2007, which has been submitted to the government. Considerable work has also been conducted by different organisations to document human rights abuses. A challenge for the establishment of the HRC and the TRC for Aceh remains the process of the central government in addressing the topic. Even though focus and priority is being put on addressing the past human rights violations, and even though discussions to this effect have been arranged on the ministerial level, the advancement of the legal framework is stuck on questions such as the scope of jurisdiction in the case of the HRC and questions of *tempus delicti* and the role of the TRC process with reference to reparations. A joint effort by human rights organisations on a national scope would be important to push the resolution of the TRC issue forward with the central government.

At the same time, civil society organisations are concerned about the economic development in Aceh, which should be promoted more actively and consistently to provide sufficient employment opportunities and welfare for the people. They do particularly deplore the insufficient impact of Aceh's substantial revenues (mainly due to special autonomy funds) on economic development and employment. In this context it is also seen as a problem that many victims of the conflict have not yet received the assistance for economic empowerment they are entitled to according to MoU provisions. Civil society organisations are prepared to play an advocacy role in this regard.

Following the decrease in international attention to Aceh, the role of civil society organisations might well undergo change. Many of them had been involved in post-tsunami reconstruction and rehabilitation work, funded by international donors. The retreat of donors from Aceh and the subsequent reduction of funding for local NGOs could lead them to focus more on their

advocacy role in governance, human rights, social welfare and environmental affairs. Authorities in Aceh, both at provincial and district/municipality levels, are encouraged to entertain a regular dialogue process with organised civil society, for example through the setting up of a civil society expert council which would allow a regular exchange of information and the addressing of issues that are of importance to the people of Aceh. Thus civil society organisations can play an active role in sustaining societal peace and government authorities have an opportunity to take into account key issues of concern to the civil society.

5.2 The situation of women in Aceh and their participation in the peace process

The role of women in Aceh, both as peacemakers but also as combatants during the conflict, has been underestimated. Women have been largely sidelined from the relevant bodies and initiatives that substantially deal with the peace process. Women, including former combatants, struggle to find their way as participants and actors in political life in post-conflict Aceh. The role of women in the peace process and their consequent participation in political life is an issue that should receive further attention from the national and local governments.

National and local regulations do provide a normative basis to enable women's participation in decision-making and politics in Aceh. The Law on the Governing of Aceh emphasises the obligation of governments at national, provincial and district/municipality levels to promote and protect women's rights and make efforts for the empowerment of women. The Presidential decree No. 9/2000 on Gender Mainstreaming in National Development has been passed with a view to mainstreaming gender in the work of the different sectors of government and to eliminate discrimination against women. Women's participation is also supported by local by-laws in Aceh like the *Qanun* regarding "Women's Empowerment and Protection" and the *Qanun* on the "Establishment of the Women's Empowerment and Child Protection Authority". In addition, in 2008 the New Aceh Charter of Women's Rights was declared and signed by the governor, the chairman of DPRA, as well as leaders of religious and societal organisations, expecting that it would provide support for the equal rights of women in Aceh.

Despite the existence of these legal and other normative frameworks, several social and cultural norms hinder their effective implementation and the realisation of gender equality in Aceh. The term "gender" is often seen as a Western concept provoking discontent especially in religious circles that maintain a strong position within the Acehnese society and have an influence in determining women's role and status. Patriarchal interpretation of Islamic Syariah limits women's rights to land and property and provides strict morality and dress codes. Women's role in the society is often seen conservatively as being first and foremost that of a caretaker of home and family.

A CMI-commissioned study for this project on "Women's participation in decision-making processes in post-conflict Aceh" suggests that the role of women in political participation refers also to "the contestation surrounding the public discourse and how Acehnese social and cultural values from the grassroots to the formal governance level are being implemented and contested". Much effort needs to be undertaken to change society perceptions of the role of women in political life. With the exception of a few prominent individuals, there appears to be a perception amongst men (and some women) that women are free to participate in political life but should not take leading positions as decision-makers. The argument is often put forward that even if the mechanisms to allow for women's involvement are in place, it is the women them-

selves who stay passive and rarely take the opportunity to strive for leadership positions due to lack of confidence, capacities or initiative. It is often reiterated that women need more capacity and training in order to develop the necessary skills to run for a political position.

In Aceh, several governmental and NGO programmes have in recent years been implemented with a view to increasing women's participation in decision-making in the public sphere. Some positive results have been achieved, for example with regard to involving women in official development planning procedures or in processes of drafting *Qanuns*. In general, however, activities towards empowerment of women have been less effective than hoped for because lack of coordination led to gaps and overlaps, and some promising initiatives were discontinued before achieving impact.

A reason for the low participation of women in politics can be found also in the internal party structures that seldom favour women candidates and do not put them forward with high ordinal numbers in elections. This situation is reflected in the current membership of the DPRA: only 4 out of its 69 members are women.

Modernisation of the Acehnese society is also about taking into account an evolution of the *adat* (traditional norms) values integral to its society. More focus should be put on working with women on the grass roots level with the help of existing women's groups and networks to empower women and increase their awareness of opportunities for social and political participation. Paying more attention to cultural hindrances and sensitivities with a view to developing and enriching the traditional *adat* values is important as these values often shape the general public perceptions and are many times seen to be in conflict with women's leadership roles. Further encouragement by all political and society stakeholders, including clerics and leading parties, to include women in supplementary democratic mechanisms, as well as gender sensitivity in the implementation of economic development programmes, would be important steps to allow women to enrich political life in Aceh. Supporting women's participation in electoral politics is important in order to guarantee the political, social and financial backing for women who wish to be candidates for political positions.

5.3 Economic development, backbone of the peace process

Economic development in Aceh had been severely hampered by more than 30 years of armed conflict and suffered in addition from the impact of the deadly earthquake and tsunami in December 2004. The peace agreement concluded between the Government of Indonesia and GAM in August 2005 ended the long-lasting hostilities and allowed for a massive influx of capital and technical assistance provided by the international community for reconstruction and rehabilitation after the devastating natural disaster. Substantive grants and the provision of large amounts of expertise, together with strong management efforts of the Indonesian government through the Agency for the Rehabilitation and Reconstruction of Aceh and Nias (BRR) have helped to effectively cope with the consequences of the disaster and have triggered some progress in economic and social development in the province. The large investments – particularly in transport and communication, in improving education and health services and in skills development – have contributed to increasing productivity in Aceh. However, creating sustainable employment remains a major challenge. While reconstruction has generated short-term employment opportunities, especially in construction and services, there is a lack of significant investment in such sectors that could absorb large numbers of workers, like agriculture or labour-intensive industries. Among the reasons for the obvious reluctance of potential

investors are security concerns in view of continued acts of violence, a considerable degree of uncertainty in view of the largely incomplete special autonomy framework, and deficiencies of the supporting infrastructure, particularly the unreliable electricity supply. Strong efforts are needed by the Government of Aceh, in close cooperation with the national government, to resolve these issues and create a more conducive investment climate.

Seven years after the conclusion of the Helsinki peace agreement, Aceh is still lagging behind many of the other provinces in terms of economic and social development indicators. With 20% of its population below the poverty line, Aceh has the sixth highest poverty rate among Indonesia's 33 provinces and ranks number 17 in terms of its Human Development Index (HDI). At the same time, the HDI varies between the individual districts and municipalities in Aceh (2009: from 77.0 in Banda Aceh to 67.6 in Kabupaten Gayo Lues), showing considerable disparities across the province. In order to enhance provincial development and cope with regional disparities, Aceh was granted the benefits of special autonomy funds through the provisions of the LoGA. In addition to its regular entitlements under the national fiscal balance system and its special share in oil and gas revenues, Aceh has the right to receive a special allocation amounting to 2% of the national general grant allocation budget (*Dana Alokasi Umum, DAU*) for a period of 5 years and to 1% for an additional period of 15 years. It is estimated that this special allocation, which started in 2008 and will end in 2027, will contribute altogether more than 10 billion US\$ to the provincial budget. Special autonomy funds have become by far the largest contributor to the provincial budget (62% in 2010) and to the aggregated budget of the province, districts and municipalities (25% in 2010). With the help of these substantial funds, it should be possible to accelerate economic development in the province, create favourable investment conditions and job opportunities, and lift the people of Aceh above the poverty line. Providing all Acehnese a fair share in the peace dividend is an essential precondition for sustainable peace in the province.

A recent study on the management and use of the special autonomy funds recommends several improvements that will make this essential source of Aceh's development funding more efficient and effective. A comprehensive sustainable economic development strategy is needed to guide the utilisation of the funds. In view of the clear time limits for the special allocations, priority must be given to investments that generate long-term sustainable benefits, particularly in basic infrastructure, education and health services. A review of the existing allocation mechanisms should give the district and municipality level a stronger role in managing their share of the special autonomy funds in order to strengthen their accountability and increase the benefits for the local population.

5.4 The security situation in Aceh

Incidences of severe violence in Aceh preceding the elections of 9 April 2012 have received considerable public attention and raised concerns by some that the security situation could endanger the peace in Aceh. Yet, despite those incidences, citizens in general seem to consider the security situation as good, particularly in comparison to the security situation before the conclusion of the peace agreement.

The division of the responsibilities between the security authorities, i.e. military and the police, is developing in the right direction. Reportedly, the armed forces participation in maintaining internal security has been substantially reduced. Existing laws and regulations allow the armed forces to intervene in exceptional cases of internal security threats. However, with

view to the history of the armed conflict in Aceh and the sensitivities among large parts of the population, such interventions should as much as possible be avoided. If at all needed, the involvement of the armed forces in internal security matters should only be at the request of the police and under the police leadership, rather than a parallel intervention. This will help to instil the trust of the public in the security sector in Aceh.

The rebuilding of trust of the citizens in the security sector, and the securing of a peaceful sentiment in the society requires also that criminal acts, like the shootings and other acts of severe violence that occurred before the April 2012 elections, be investigated and the perpetrators prosecuted and punished according to the law. Due to the high conflict sensitivity among the people in Aceh, such incidences arouse fear and are often linked to the former conflict in the area.

The role, tasks and presence of the Indonesian national forces continue to be a subject of discussion and debate and under public scrutiny by the people of Aceh. Citizens desire to receive information from the armed forces about plans to establish military bases and where and when there will be major exercises. The Regional Leaders Communication Forum, which is chaired by the Governor and includes the Chairman of the DPRA, the Wali Nanggroe, the Military Commander, the Chief of Police and the Chief Prosecutor, is an appropriate mechanism for sharing such information and thus providing the necessary transparency, also at the district level.

There are still concerns among the parties of the peace agreement and the people in Aceh in general regarding the continued existence of illegal weapons in the province. The police are committed to continuing the collection of such weapons. This work requires extensive support of the citizens, and the police have therefore encouraged citizens to surrender illegal weapons voluntarily, without fear of punishment. Also the offensive use of legal weapons, which has occurred in the province, causes concern. Therefore, Civil Society Organisations and concerned citizens expect the responsible authorities to ensure that in principle only the police and the military carry guns.

Following the series of shootings and other acts of violence prior to the April 2012 elections, citizens had been encouraged to participate in night watch activities, a practice that was already undertaken during the time of the conflict. This home security surveillance is seen by many people as a post-conflict legacy and an unnecessary burden in the current security situation, and was therefore abandoned. Public consultations on citizen's participation in security matters in Aceh are important as they contribute to social harmony and increase the confidence of citizens in public authorities.

6. CONCLUSIONS AND RECOMMENDATIONS



As to the Aceh Peace Process Follow-Up Project initiated by CMI

- ▶ The initial concern of this project was to ensure and support the implementation of the MoU, to avoid any relapse of the peace process at the critical time when most peace agreements do, which is typically within the first five years of signing an agreement. The implementation of this project allowed the stakeholders of the peace process to refocus on outstanding issues of the MoU in a gradually more systematic fashion. During his visits to Jakarta and Aceh, President Ahtisaari has reminded the parties of their commitment and has continuously encouraged them to take full responsibility for a process for resolving open MoU issues. The signatories of the MoU have, in fact, assumed responsibility and devoted considerable resources to working seriously on these issues. CMI's role as dialogue supporter and a resource of advice has been welcomed by all parties who have regularly and constructively used this resource, when needed. President Ahtisaari and CMI encourage all parties to continue on this promising path to sustained peace in Aceh.

As to the dialogue process between the parties and the implementation of the MoU

- ▶ The dialogue process that has been driven by the parties has been evolving into a forum that allows them to address issues in a systematic manner and is therefore to be considered a solid achievement. As such, it seems to be an appropriate transitional platform for conducting the dialogue between parties on the unresolved MoU issues. It is recommended that this process will continue and, as an option, could also accommodate the contributions of other stakeholders of the Aceh peace process.
- ▶ The parties have set themselves the ambitious goal of trying to resolve the open MoU issues through the FGD process by 2014. Even though not all matters might be resolved by then, it should be possible to achieve a state where both parties can agree to consider the MoU commitments as being fulfilled in principle. Continuation of the diligent work done so far in this regard by the parties is necessary.
- ▶ In this context, the setting up of a team to review the implementation of the MoU and the LoGA is promising. The team will have to submit its report to the Permanent Secretary of Menko Polhukam by the end of November 2012.
- ▶ All parties involved in the dialogue process need to recognise that the process of MoU implementation is transitioning into a process of LoGA implementation. The fulfilment of the original MoU commitments will thus also become a matter to be dealt with by the Government of Aceh or the DPRA, and the national government or the national parliament.

- ▶ Considerable responsibility for fulfilling the promises of the Aceh peace process rests with the national government, which needs to consistently refer to the provisions of the LoGA when preparing national legislation. An appreciation and recognition of the privileges that Aceh enjoys due to its special autonomy status can help to avoid potential conflicts and reinforce trust-building between all stakeholders of the peace process.
- ▶ In case a legislative process for reviewing the LoGA should be initiated, the provincial government and/or parliament should be free to elaborate their own draft revision of the law for submission to the national government for further deliberations.

On the role of civil society

- ▶ The role of civil society and its work in Aceh is to be further encouraged and supported, as the work and functioning of civil society is an important ingredient to sustaining societal harmony and long-term peace in Aceh. The donor community should continue efforts to strengthen the capacity of these organisations, in particular those who work on the grass-roots level. A regular dialogue mechanism in the form of an expert council could provide a platform for consultations between civil society organisations and authorities at all levels of government in Aceh. Furthermore, civil society organisation could be supported in improving consultation processes with national government and within civil society networks.

On the role of women

- ▶ Strengthening the capacity of women for inclusion in political life in Aceh needs more focused and continuous efforts both by local institutions and leaders, as well as by the international community. Activities of women at grassroots level should receive more attention and support in order to raise the awareness of their potential role and empower them to actively participate in political and social life. A constructive forward-looking dialogue on women empowerment and women leadership should be encouraged within religious institutions. International donors should support local initiatives that have a long-term goal for women empowerment. Coordination between initiatives for women empowerment should be improved in order to avoid overlaps and competition between the different organisations.

On Security Matters

- ▶ The role of the armed forces is still under public scrutiny by the people of Aceh. With view to the history of the armed conflict and the sensitivities among large parts of the population, a clear division of roles and functions between the armed forces and the police is necessary. Interventions of the armed forces in internal security matters, if needed in exceptional cases, should only be at the request of the police and under police leadership.
- ▶ The Regional Leaders Communication Forum could be an appropriate mechanism for sharing information on plans to establish or relocate military bases and on major military exercises.

- ▶ Concerns among the people in Aceh regarding the continued existence of illegal weapons and the offensive use of legal weapons in the province must be addressed by clear regulatory and strict enforcement action of the concerned authorities.
- ▶ Public consultations on citizen's participation in security matters in Aceh are important as they contribute to social harmony, and increase the confidence of citizens in the security sector and public authorities in general.

On economic development

- ▶ The Government of Aceh must undertake strong efforts to attract significant investment in labour-intensive industries and for the ecologically sustainable use of natural resources. To this end, the Government of Aceh in close cooperation with the national government needs to improve the investment climate by consistently addressing security issues, developing the supporting infrastructure and creating and enforcing a consistent legal framework for Aceh's special autonomy.
- ▶ A comprehensive sustainable economic development strategy should become the basis for utilising the massive amount of Aceh's special autonomy funds, where priority must be on investments that generate long-term sustainable benefits. A review of the existing allocation mechanisms should give the district and municipality levels a stronger role in managing their share of the special autonomy funds in order to strengthen their accountability and increase the benefits for the local population. Donors could assist with improving allocation mechanisms and capacity-building for financial management.
- ▶ In general, the donor community should continue to focus on capacity development for the executive and legislative branches of government at provincial as well as district and municipality levels. This should include strengthening the analytical capacity of government and academic institutions on economic and environmental issues. Local parliaments at all levels have expressed the need for capacity strengthening in policy analysis and legal drafting.

On the role of international donors

- ▶ The international donor community, which had a remarkable presence in Aceh and which has provided substantial amounts of technical and capital assistance following the tsunami and the signing of the MoU, has for understandable reasons reduced its presence and activities in Aceh. However, considerable work remains to be done in promoting economically and ecologically sustainable development and in further strengthening governmental and non-governmental institutions at all levels. This includes capacity development for the executive and legislative branches of government, support for civil society organisations to assume a more effective advocacy role, and initiatives for the empowerment of women to play a more active role in the society and in political life of the province. The international donor community should stay engaged in these fields with clearly targeted technical assistance. The considerable investments of the international donor community in Aceh can best be secured by continuing to provide a sensible amount of support for activities that will help to further the development of the province and thus provide a strong foundation for sustainable peace.

CMI

Martti Ahtisaari Centre

Eteläranta 12, FI-00130 Helsinki, Finland, tel +358 9 424 2810, cmi.helsinki@cmi.fi

205 Rue Belliard, Box 3, BE-1040 Brussels, Belgium, tel +32 2 239 2115, cmi.brussels@cmi.fi

www.cmi.fi