For the people of Aceh, telling the story of their daily lives during the conflict means talking about human rights violations. Over the course of its thirty-year long history, armed conflict in Aceh was characterized by appalling violations of the human rights of the civilian population at the hands of the Indonesian military (TNI), especially during the Military Operations Zone (DOM) era (1989-1998). Although statistics are still disputed, some indication of the scale and nature of human rights abuses is clear from data collected by the Aceh Reintegration Board (BRA). In June 2007 the BRA noted that some 33,000 people had been killed over three decades of conflict. Data gathered in 17 districts of Aceh by a joint International Organization for Migration (IOM) and Harvard Medical School survey showed that 35 per cent of informants had reported having to flee burning buildings, 24 per cent had experienced forced labour and 40 per cent had experienced the expropriation or destruction of property. Other serious human rights abuses, such as rape, were widely attested during the conflict but remain significantly under-reported in official statistics.

The extent to which the Free Aceh Movement (GAM) was also responsible for abuses is debated, but it is known that they executed suspected collaborators, pressured non-Acehnese migrants to leave the province, and extracted money from the general population.

**Securing a space for human rights**

Aceh initially remained isolated from the successful promotion of human rights elsewhere in the country from the late 1990s. In 1998, pro-democracy activists in Jakarta forced President Suharto out of power, and in Aceh the demand to bring those responsible for human rights violations to justice was voiced out loud by civil society. But while the collapse of Suharto’s New Order brought significant new political freedoms and human rights reform at the national level, such positive change was barely felt in Aceh as the conflict re-ignited.

Instead, human rights abuses worsened as the conflict raged on, culminating in a repressive period of martial law in 2003-04.

Although national law No. 26/2000 on Human Rights Courts established four human rights courts in Indonesia, including one in Medan in the neighbouring province of North Sumatra, no cases of violations in Aceh were heard in it. Only a handful of soldiers have faced justice, such as the 24 convicted by a joint civil-military court in May 2000 for a mass killing of civilians in Beutong Ateuh in 1999; no senior military officer has been prosecuted by the Human Rights Courts for any violation.
Human rights in the peace process

The situation in Aceh finally changed with the tsunami of December 2004, which focused the minds of the warring parties and the international community on reaching a workable peace agreement. Yet despite being a key Acehnese grievance during the conflict years, human rights abuses were not very conspicuous on the agenda of the Helsinki peace negotiations between GAM and the government. Both parties had varying levels of anxiety about committing themselves to robust justice measures, whilst the mediator preferred to allow the parties to set their own agenda. Those voices in favour of more extensive justice mechanisms, such as civil society human rights activists, had little opportunity to influence the process.

Nevertheless, when the negotiations resulted in the Memorandum of Understanding (MoU) in August 2005 and were accompanied by an end to violence on the ground, it opened another pathway of hope for survivors. Unlike previous peace accords, levels of violence dropped to very low levels as soon as implementation began, stimulating high expectations of redress for past violations. In the MoU, the principal means for redressing human rights violations were embodied in two articles: article 2.2, ‘A Human Rights Court will be established for Aceh’; and article 2.3, ‘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.’

Despite the striking lack of detail in these articles, Acehnese human rights activists welcomed them. The apparent progressiveness of the MoU was cemented in its commitment that the Government of Indonesia would adhere to the UN International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (ICCPR and ICESCR; article 2.1). Just as the government’s ratification of the ICCPR and ICESCR provides the basis for altering national laws in accordance with them, the MoU provided similar grounds for revising local laws in accordance with the Covenants (article 1.4.2).

Among other positive steps were:
- the call for conventional identity cards to be issued to all Aceh residents (article 1.2.5), ending the discriminatory KTP merah putih (ID cards) used under martial law, which each resident of Aceh was obliged to carry and triggered discrimination against Acehnese outside Aceh;
- the provision to try any military personnel committing civilian crimes before civil courts in Aceh (article 1.4.5);
special human rights training for police personnel conducted in Aceh or overseas (article 4.12).

Under the chapter on ‘amnesty and reintegration into society’ there were several provisions related to justice. Articles on amnesty provided that ‘political prisoners and detainees held due to the conflict’ would be released unconditionally. The reintegration section promised that, ‘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.’

The Human Rights Court
The peace has held but the euphoria surrounding the MoU gradually diminished. It became clear that people's dreams for justice were not about to come true and that they would need to pursue their dreams a bit longer before enjoying their rights. When the Law on Governing Aceh (LoGA) came into effect on 1 August 2006, its many compromises on human rights issues cast a thick cloud over the peace accord.

The establishment of a human rights court and the truth and reconciliation mechanism were laid down in the LoGA with clear time limits (12 months), ostensibly recognizing the difficulties Papua experienced establishing the human rights court availed by the 2001 law on special autonomy. Yet these deadlines have since passed. It appears that what were once primary human rights agendas have become perceived as bad ideas and there is unwillingness to make them happen.

The human rights court issue also suffers from multiple interpretations. Although GAM negotiator Nur Djul announced early on that the Human Rights Court (HRC) would have retroactive powers, according to the LoGA (Article 228), the HRC can only try cases of abuses occurring after enactment of the LoGA, rendering it meaningless for resolving past human rights crimes. Looking back to the period before the signing of the MoU, various people involved in the process indicated that negotiations on human rights would be conducted with a spirit of 'looking to the future,' and indeed the negotiations almost collapsed over the principle of retroactive prosecution. Central government’s standpoint has not yet changed – or at least dares not change due to weak political power. Retroactive prosecution for human rights crimes is still technically possible, however, through Law No. 26/2000 on Human Rights Courts dating from the year 2000. This law allows for serious human rights violations prior to 2000 to be tried in ‘ad hoc human rights courts’ established by the president with the agreement of parliament. In theory Indonesia’s National Commission on Human Rights (Komnas HAM) takes its findings to the parliament, which then decides whether there was a gross human rights violation and if so, can establish an ad hoc court.

For crimes after 2000 regular human rights courts may be used, such as the one established at Medan in North Sumatra province. However, as noted, although this court technically has jurisdiction over Aceh, and therefore fulfills the MoU stipulation that a human rights court be established for Aceh (no other court fitting this description has been created since the passing of the LoGA), no cases relating to Aceh have been heard there. The core obstruction to both the retroactive and more current prosecution of human rights violations is the same: the government and parliament in Jakarta do not give the necessary support for the judicial system to work. The law needs to be amended to eliminate parliament’s political role in judicial practice, and to provide Komnas HAM with sharp enough teeth for it to offer a feasible domestic remedy to injustices. At a military ceremony attended by retired generals of TNI and POLRI in Jakarta on 28 April 2008, senior figures expressed their explicit rejection of investigations being conducted by Komnas HAM. This illustrated the narrowing political support for such investigations. The Minister of Defense Juwono Sudarsono has publicly discouraged retired generals from complying if summoned by Komnas HAM, while President Yudhoyono himself keeps silent. The Minister of Law and Human Rights, Andi Mattalatta, accompanying Yudhoyono in receiving President Marti Ahtisaari in Jakarta on 7 May 2008 to discuss progress on the peace process, explained to the press that because government had given amnesty to GAM, it would not be proper to enforce the law against the TNI. The space for fair and just remedies for Aceh seems to be shrinking.

Truth and reconciliation
A further key component to transitional justice is the establishment of a Truth and Reconciliation Commission (TRC). TRCs can play an important role in countering cultures of revisionism, impunity and the postponement of justice, providing a supplementary channel to judicial processes enacted by ad hoc or permanent human rights courts. As a transitional remedy, it should not postpone the rights of survivors so long that they can no longer be seen as transitional. It is also supposed to be based on voluntary participation and as such is less coercive than other justice mechanisms.
Both the MoU and the LoGA assumed the establishment of an Acehnese TRC as part of the national TRC structure. However, in late 2006 the Constitutional Court in Jakarta over-ruled national legislation establishing the national TRC, citing concerns about provisions for amnesty and legal impunity for perpetrators of gross abuses. This pushed the formation of a national TRC further into the future and placed the whole Aceh process in legal limbo. The current debate is whether Aceh should wait for a national TRC or whether one can be established based on provincial regulations (qanun) together with the LoGA. There are questions here over whether qanun could provide enough legal force to handle cases where those responsible number among the political and military elite, and also the consequences of such an approach for the provincial budget.

Whether the TRC is eventually established at the national or Acehnese level, it should guarantee meaningful involvement for the survivors of human rights abuses. These people reside mostly in rural areas and it is very important to engage them in the TRC discourse and facilitate their understanding in order to equip them to approach and receive justice. They are the primary stakeholders in the process. No other stakeholders have as much of a legitimate right to shape the truth and reconciliation process. Truth and reconciliation cannot be imported or copied from other experiences; it is crucial to build ownership of such a process by providing as much relevant knowledge and information to victims as needed to guarantee their maximum access to the process. Considering the number of affected people is spread across such a large area, these efforts will demand much time and plentiful resources. However, as noted in Lina Frödin’s contribution to this volume, reparations for the broad category of ‘victims of the conflict’ have been paid out without recourse to a truth-telling mechanism.

Human rights for all

In summary, it is becoming clear that the provisions of the MoU related to dealing with past human rights violations were too vague to be effective in the face of concerted political and institutional obstacles within Indonesia, combined with the international community’s indifference or lack of leverage over Indonesia, and the limited scope for civil society to influence legislative change. But if the MoU, the LoGA and existing laws do not provide reliable remedies for past human rights abuses, then the ultimate challenging question is what the best course of action is on rights issues.

There are grounds for optimism in considering the other dimensions of human rights. Compared to civil and political rights, economic, social, and cultural rights are still overlooked in Aceh because the prolonged violence has led human rights to be associated primarily with bloodshed and physical violence. However, economic, social and cultural rights have become increasingly important for Aceh, for example in addressing the right to adequate housing for tsunami and conflict survivors. This has become a priority in defining a new realm for the integrated fulfillment of human rights in Aceh, together with education and health services.

The culture and structure of human rights in Aceh needs to be revolutionized. People should know their rights, so they can mentally transform themselves from victims who ask for aid from the government to survivors who claim their rights. Aceh government officials must understand them well too, so they can go beyond delivering aid and fully bear the duty to respect, fulfill and to protect human rights in Aceh. By transforming these mentalities and educating the people, the post-conflict and post-tsunami generation should be able to develop their full potential.

Aceh must look backwards and forwards at the same time. The problem of past human rights abuses needs to be resolved so that a new foundation can be built, where people will be free from the fear of similar violations in the future. At the same time it is important to look forward to build a new era of prosperity and dignity, in which everyone is allowed to live a decent and humane life.