

**0801924 [2008] RRTA 228 (10 June 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0801924

**DIAC REFERENCE(S):** CLF2004/73454 CLF2005/044560 CLF2008/61681

**COUNTRY OF REFERENCE:** Indonesia

**TRIBUNAL MEMBER:** Catherine Carney

**DATE DECISION SIGNED:** 10 June 2008

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the following directions:

- (i) That the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) That the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being the dependant of the first named applicant

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Indonesia, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The applicant was granted a Subclass 785 (Temporary Protection) visa on the basis that the applicant was assessed to be a person to whom Australia has protection obligations under the Refugees Convention. The applicants applied for further Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.
3. The delegate refused the further visa application on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

## Definition of ‘refugee’

10. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
15. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
16. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, and nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of

the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

17. Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

#### **Convention 'cessation' – Article 1C**

20. The definition of a refugee in Article 1A of the Convention needs to be read in the context of the succeeding sections of Article 1, including section C, which sets out the circumstances in which the Convention ceases to apply to a person who has previously been recognised as a refugee under Article 1A.
21. Paragraphs (5) and (6) of Article 1C provide for cessation of refugee status due to changed circumstances in the refugee's country. Article 1C(5) applies to nationals who, because the circumstances in connection with which they were recognised as refugees have ceased to exist, can no longer continue to refuse to avail themselves of the protection of their country of nationality. Article 1C(6) applies to stateless refugees who, because the circumstances in connection with which they were recognised as refugees have ceased to exist, are able to return to the country of their former habitual residence.
22. Thus, Articles 1A(2) and 1C(5) and (6) turn upon the same basic notion: protection is afforded to persons in relevant need, that is, persons who have a well-founded fear of being persecuted, for Convention reasons, in the country or countries in respect of which they have a right or ability to access: *NBGM v MIMA* (2006) 231 ALR 380 at [44] citing *NBGM v MIMIA* (2004) 84 ALD 40 per Emmett J.

23. If a non-citizen, before entering Australia, suffered persecution or had a well-founded fear of it in their country, unless there have been real and ameliorative changes that are unlikely to be reversed in the reasonably foreseeable future, then the person will probably continue to be one to whom Australia has protection obligations: *MIMIA v QAAH of 2004* (2006) 231 ALR 340 at [39]; see also *Chan* at 391, 399 and 406.

## **CLAIMS AND EVIDENCE**

24. The Tribunal has before it the Department's files relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources
25. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Indonesian and English languages.
26. The applicant was represented in relation to the review by their legal representative. The representative attended the Tribunal hearing.

### **A summary of the evidence given at the hearing is as follows:-**

27. The Tribunal went through the preliminaries and introductions. The Tribunal asked the applicant if she understood the interpreter or had any concerns with the interpreting. The applicant said that she did not. The Tribunal asked the applicant to tell the Tribunal why she was in fear. The applicant said that she was in fear of being raped by the Indonesian military government. The applicant stated that she is afraid of living in Aceh as she may be raped. The Tribunal asked the applicant why she would be targeted for rape. The applicant replied that the military persecuted everyone in Aceh as they did not like people who wanted Aceh to stand alone. The applicant stated that her parents were GAM supporters and that after the Peace Accord Aceh was not 100% safe. The applicant stated that while you may no longer hear gunshots there was kidnapping.
28. The Tribunal noted from country information that a former GAM member is now the Governor and that recent reports of violence seem to be in relation to corruption and distribution of funds and aid rather than political opinions. The applicant claimed that GAM is split and she is against the ruling GAM and is therefore a target of the militia and military.
29. The applicant claimed that if someone comes back from overseas they will think she was involved in overseas politics and involved in certain work overseas which is against the MOU and peace accord. The applicant said she was supportive of a continuing fight for an independent Aceh. The applicant said she did not agree with the MOU and peace accord. The applicant said there were two reasons why she could not return. Those who do not like the MP GAM and secondly problems with the Indonesian military. The applicant said she is still traumatised as she saw a friend shot and another person she knows well being tortured.

30. The applicant said that if she returns to Aceh from overseas the Acehnese people will know that she has returned from overseas and that she has been working overseas and this will cause problems for her. The applicant says that groups opposed to her point of view are working with the Indonesian military. The Indonesian military is helping arm and form militias who would persecute her. The applicant's evidence is that she speaks to her parents and they have told her not to return as it is just too dangerous, not just in Aceh but throughout Indonesia.
31. The Tribunal then discussed country information which had previously been supplied to the applicant and country information that she had supplied to the Tribunal. The Tribunal acknowledged that there has been a break down of law and order and criminal elements involved in Aceh but asked how that was directly relevant to her and her fear of persecution. The applicant stated that the criminal elements were associated with the Militia and they were used to get to her and her family.
32. The Tribunal discussed with the applicant her activities in Australia. The applicant said she went to meetings and events. The Tribunal asked if she maintained contacts with members who had her political views in Australia. The applicant's response was that any communication was done over the phone and through some visits NGO's had with the families. The applicant stated that she was not a high profile member of GAM.
33. The Tribunal asked the applicant to consider why, given her evidence that she is not and never has claimed to be a high profile opponent of the current situation, she could not return to Indonesia and live in another area. Indonesia is a large and diverse country and she is married to an Indonesian man. The applicant said she would find it difficult to live somewhere else. The applicant's representative gave oral submissions that re-location would not be practical as the applicant and her husband would be isolated and they could come to the attention of the military. The agent asked for extra time to put in written submissions on the issue of re-location. The Tribunal agreed to allow a week for further written submissions.

**The following documents have also been provided to the Tribunal**

34. The Department files which contain the Application for Protection Visa, Identity documents, Statutory Declarations of the Applicant, Decision of the Delegate.
35. The applicant provided further country information, Statutory Declarations and submissions to the Tribunal.

**Independent Country Information**

The available information indicates that violence has been increasing over recent months in Aceh. A *South China Morning Post* article, dated 29 April 2008, states: "The World Bank's Aceh Conflict Monitoring Programme said that last December local-level violence rose to its highest level since January 2005." Most recently, the media has reported that six former GAM members were killed in March 2008. The incident occurred over a local dispute and was not an isolated event. This suggests that the

reintegration of former GAM combatants and members into their local communities is posing some problems, vindicating concerns expressed earlier by ICG and others. The unresolved issues include: reintegration funding distribution; lack of jobs and resources. Despite aid money, which is described as “pouring into Aceh”, this is affecting the delicate social cohesion established after three decades of war. Secessionist movements have also resurfaced. A World Bank conflict update states: “The incident occurred against a backdrop of heightened political tensions, with the reappearance of old moves to partition Aceh by creating two new provinces”. It appears that this is mainly affecting the central provinces. Although some commentators have expressed concerns that the communal tensions will result in a return to conflict, the latest conflict update from the World Bank describes the situation in Aceh as “remain[ing] on the whole safe and stable” (‘Security Situation in Aceh: Power Struggle Erupts in Violence’ 2008, Aceh-Eye website, source: *South China Morning Post*, 29 April [http://www.aceh-eye.org/a-eye\\_news\\_files/a-eye\\_news\\_english/news\\_item.asp?NewsID=8845](http://www.aceh-eye.org/a-eye_news_files/a-eye_news_english/news_item.asp?NewsID=8845) – Accessed 30 April 2008.

International Crisis Group’s (ICG) Crisis Watch Indonesian database recorded the following incidents in relation to Aceh over the past year (set out in reverse chronological order):

- **March 2008.** At least 5 killed in attack by unidentified mob on Aceh Transition Committee (KPA) office in Atu Lintang, Aceh;
- **January 2008.** Failure by Jakarta to release \$45m in reintegration funds by end 2007 threw Aceh Reintegration Agency into further disarray;
- **October 2007.** Crackdown on illegal weapons in Aceh after several high-profile armed robberies and murders by GAM members;
- **September 2007** 26 injured in clashes 1 September at swearing-in of new district chief in Southeast Aceh;
- **August 2007.** Aceh Governor Irwandi announced plans 15 August for truth and reconciliation committee, but cited as legal basis law struck down by constitutional court December 2006. 2 homemade bombs exploded 1 August near Southeast Aceh parliament; no casualties;
- **July 2007.** Former members of Aceh’s separatist rebel movement GAM established local political party under GAM negotiator Tengku Nazaruddin;
- **June 2007** District election campaign in Bireuen district, Aceh marked by low-level violence; GAM candidate won with over 60% of vote;
- **May 2007** Rise in violent incidents in Aceh continued, including armed robberies and grenade attacks (International Crisis Group 2008, *Crisis Watch Search Results: Indonesia*, ICG website, 1 April [http://www.crisisgroup.org/home/index.cfm?action=cw\\_search&l=1&t=1&cw\\_country=49&cw\\_date](http://www.crisisgroup.org/home/index.cfm?action=cw_search&l=1&t=1&cw_country=49&cw_date) – Accessed 6 May 2008.

The World Bank’s Conflict and Development Program in Indonesia releases a periodic Aceh Conflict Monitoring Update (see:

<http://www.conflictanddevelopment.org/page.php?id=4402> for past updates from August 2005). The latest update covers the period from 1 January 2008 to 29 February 2008. According to this, the situation in Aceh remains safe and stable on the whole; however, there have been rising levels of violence since December 2007. The relevant extract follows:

The situation in Aceh remains on the whole safe and stable. However, the rising levels of violence recorded since December of last year, including a number of incidents involving or targeting KPA, show that enduring peace is not yet assured. On March 1st, five were brutally murdered in an attack on the Atu Lintang KPA office, in Aceh Tengah.<sup>2</sup> This is the largest loss of life in a single conflict incident recorded since the Helsinki MoU. The massacre sparked widespread concern that it could lead to escalation and a worsening of communal tensions in the ethnically heterogeneous central highlands. Authorities, security forces and KPA have all helped to contain potential spillovers, and the peace process appears to have proved strong enough to survive its most serious blow so far. The incident occurred against a backdrop of heightened political tensions, with the reappearance of old moves to partition Aceh by creating two new provinces, ALA and ABAS. The issue shows how, while key provisions of the MoU and the Law on Governing Aceh (LoGA) are not fully agreed upon or implemented, room remains for opportunistic elites to seek advantage and for tensions to rise. Overall levels of violence remained high in January, and reached a new peak in February, with 30 violent cases. They resulted in four deaths over the two months, not including the five deaths in Atu Lintang, while 47 were injured. In February, conflicts over access to resources and corruption allegations also hit a peak since October 2006, underlining the growing frustration of communities with persistent economic pressures. Disputes between rivals competing for markets, customers, or employment were especially likely to lead to violence. Finally, Partai GAM's abandonment of the name and symbols of the former separatist movement, and the creation of the Commission on Sustaining Peace in Aceh (CoSPA), show encouraging attempts at better collaboration between GAM and Jakarta, although they also underline the persistence of mutual suspicions and divisions within GAM's elite (Clark, S. Palmer, B. & Morrel, A. 2008, 'Aceh Conflict Monitoring Update: 1<sup>st</sup> January – 29<sup>th</sup> February 2008', World Bank Indonesia Conflict and Development Program website, 4 April <http://www.conflictanddevelopment.org/data/doc/en/regCaseStudy/aceh/mon/Aceh%20Conflict%20Monitoring%20Update%20-%20January%20February%202008.pdf> – Accessed 30 April 2008).

Edward Aspinall, in the latest edition of *Inside Indonesia*, discusses Aceh's transformation since the August 2005 Helsinki peace accord. Aspinall notes that despite the advent of democracy, the legacy of the war will remain for many years, and "Aceh is a traumatised society". On Aceh's "contemporary challenges", Aspinall states:

Like other post-conflict societies, Aceh confronts the problem of how to accommodate (or 'reintegrate' as the peace-building lexicon would put it) the former GAM combatants. During the war years, GAM fighters became experts at raising funds not only from voluntary contributions but also in the black economy and by extortion. Gangsterism is now rife in Aceh, and the perpetrators are often former GAM fighters. Many of the low-level violent incidents that plague Aceh today are related to competition for economic resources among former fighters. Higher up the food chain, some key former commanders are transforming themselves into a parasitical business elite, enriching themselves by gaining favoured access to government contracts and licences.

Conflict with the central government has also not disappeared; it has simply taken non-violent form. In 2006, the Indonesian parliament passed the Law for the Governing of Aceh (LoGA). GAM supporters thought this should provide for almost unfettered Acehnese 'self-government'. Yet in reality Indonesia in some respects remains highly centralised. From



control over hydrocarbon revenues to seemingly petty (but in fact crucial) areas like the right to hire and fire public servants, there are ongoing disputes between the governments in Aceh and Jakarta. Even when it came to registering a new local political party for former GAM members, the central government insisted it could not use the word Free (Merdeka) in its name.

Many other issues could trigger fresh conflict. In the centre, south and west of the province, some are campaigning for the formation of new provinces that would split from Aceh. They claim this will redress decades of neglect of these areas. Acehnese nationalists reject this stand – mostly without recognising the irony – saying that Aceh has always been an indivisible unity and should not be broken up. They also point to the fact that at least some of the leaders of these new province movements aligned with anti-GAM militias during the conflict years, and they mutter darkly about hidden plans to spark new violence (Aspinall, E. 2008, 'Basket case to showcase', *Inside Indonesia*, issue 92, April-June <http://insideindonesia.org/content/view/1071/47/> – Accessed 1 May 2008.

The following selection of media articles report on the March 2008 killing of a number of former GAM members, and analyse this incident in the context of recent events and the overall situation of Aceh since the 2005 peace deal.

A *South China Morning Post* article, dated 29 April 2008, states:

In early March, a 100-strong mob torched an office of the Aceh Transitional Commission, the body created to succeed GAM.

The attack, which took place in the remote Atu Lintang area, left six people dead and was the deadliest since the 2005 peace deal brought an end to decades of fighting between separatists and government troops.

The incident was the latest in a series that highlighted the volatile security situation in the province, where former rebels had gained political power and were competing for the spoils of the peace.

Aceh has been flooded with post-tsunami reconstruction money. The province's coffers have also benefited from Indonesia's decentralisation programme and Aceh's status as a province with special autonomy. District and sub-district administrators have a big say over how money is spent.

Governor Irwandi Yusuf said the attack was "probably rooted in the power struggle that followed the plans to form two breakaway provinces in Aceh".

Ibrahim Syamsuddin, a spokesman for the former separatists, said the incident was related to a dispute between them and a local union over control of revenues from a local bus station. Besides the politically motivated violence, a marked increase in robberies and extortions has also made life difficult for the population and for those trying to implement the post-tsunami reconstruction projects.

Local analysts attributed the robberies and extortions mostly – but not exclusively – to low-ranking former GAM combatants who were unable to partake in the financial windfall through political channels.

The World Bank's Aceh Conflict Monitoring Programme said that last December local-level violence rose to its highest level since January 2005.

The programme, which is yet to release figures for this year, said more than half of the incidents in December involved serious, potentially lethal forms of violence, including three murders and one murder attempt.

One casualty was Teungku Badruddin, a former GAM commander, killed in Sawang, Aceh Utara, on December 27. Also prominent were shootings and terror attacks, including the explosion of a grenade in front of the mayor of Bireuen's residence. The programme called the incidents "reminiscent of the conflict" and "a reminder that some groups remain resolved to use violence as a means to pursue their goals or voice their grievances". The violence started to rise seriously in the first quarter of last year. No one has been arrested for the attacks, and no witnesses have come forward ('Security Situation in Aceh: Power Struggle Erupts in Violence' 2008, Aceh-Eye website, source: *South China Morning Post*, 29 April [http://www.aceh-eye.org/a-eye\\_news\\_files/a-eye\\_news\\_english/news\\_item.asp?NewsID=8845](http://www.aceh-eye.org/a-eye_news_files/a-eye_news_english/news_item.asp?NewsID=8845) – Accessed 30 April 2008.

A March 2008 article by *The Straits Times* states:

AFTER more than two years of peace, a particularly violent incident in a remote highland area of Aceh has focused attention on the prospect of fresh conflict in the troubled province. But instead of fighting Jakarta's military, recent events suggest the possibility that Aceh's rival ethnic groups may soon be facing off against each other.

Ethnic tensions can certainly be expected to mount in the coming months as the nation's Jakarta-based political parties take advantage of local divisions in order to garner support in the run-up to next year's elections.

On March 1, six members of the organisation that led the independence struggle from 1976 until the Helsinki peace agreement with Jakarta in August 2005 were brutally murdered by a mob in the remote Atu Lintang area of the central highlands. Reports say that at about 1.30am local time, hundreds of people attacked the offices of the Aceh Transitional Commission (KPA) – previously known as the Gerakan Aceh Merdeka (GAM). Overwhelming police officers at the scene, the mob hacked the victims to death and torched the building.

Mr Ibrahim Syamsuddin, a spokesman for the former separatists, quickly demanded that the police 'uncover the truth' behind the incident. 'If they do not,' he declared, 'a new conflict will erupt in Aceh.'

He acknowledged that the incident had a very specific cause – a dispute between the KPA and a local union over control of lucrative revenues from a local bus station – but he also hinted at a wider problem. Many of the attackers, he said, were former members of pro-Jakarta militias blamed for much of the violence against separatists and their civilian sympathisers during the conflict with Jakarta.

Most of the inhabitants of Aceh's central highlands belong to ethnic minority groups that have long felt alienated from the Acehnese majority. Culturally and linguistically distinct from coastal Acehnese, these Gayo and Alas ethnic communities have traditionally had more in common with the inhabitants of Sumatran provinces further south.

During the decades of conflict, highlanders were known for their loyalty to the central government. In 2002, when President Susilo Bambang Yudhoyono was the minister of security, he toured the area and thousands of residents turned out to greet him. Significantly, they also renewed a longstanding request to split from Aceh and form a separate province. Consisting of five of Aceh's regencies, it was to be called Leuser Antara after the Leuser National Park, a large area straddling the provinces of Aceh and North Sumatra. Highland

leaders continued to press their claim after the 2004 tsunami, which left highland areas untouched but resulted in 160,000 deaths in coastal areas.

In January this year, the House of Representatives (DPR) in Jakarta unanimously recommended the creation of eight new provinces, including Aceh Leuser Antara and Aceh Barat Selatan. Like the former, the latter (in south-west Aceh) includes several minority ethnic communities. The legislative endorsement, however, was not legally binding on the Aceh administration.

Proponents of the partition argue that the move is necessary to improve the welfare of the inhabitants of the regencies concerned. But while the relevant areas are admittedly underdeveloped, the Jakarta-based parties have a more important reason for supporting the creation of the new provinces.

Now that former rebels have been allowed to participate fully in the political process, nationalist groups such as the Indonesian Democratic Party of Struggle (PDI-P) stand to lose considerable support in Aceh during next year's elections. Campaigning in favour of the division of the province gives such parties a platform that should guarantee them votes in at least some areas.

'They (the political parties in Jakarta) are simply taking advantage of the issue,' argued political analyst Fajran Zain of the Aceh Institute.

Aceh Governor Irwandi Yusuf, a former GAM separatist leader elected in 2006, is strongly opposed to the dismemberment of his province. He argues – with some justification – that splitting up Aceh goes against both the spirit and the letter of the 2005 Helsinki Accord.

While the governor may have neither the means nor the desire to use force to discourage local leaders from pressing their demand, he is not solely in control of the situation.

The KPA is split into various factions. With unemployment and poverty remaining high throughout the province, many former separatists and militia members may be inclined to take out their frustrations on each other.

Some groups have already turned to gang warfare. Reports say that the main road connecting the provincial capital of Banda Aceh with Medan (capital of North Sumatra) has seen an increase in armed robbery and extortion.

Frustration with the slow implementation of the Helsinki Accord has also angered many former GAM fighters. The Aceh Reintegration Agency, tasked with handing out money and land to help ex-combatants and conflict victims begin a new life, has yet to complete its task. Local officials blame insufficient financial support from Jakarta.

Meanwhile, attempts to heal the wounds of the past by establishing a truth and reconciliation commission have been delayed by a constitutional court ruling that annulled the 2006 truth and reconciliation law.

'Politically motivated violence is certainly possible,' noted Dr Achmad Humam Hamid, a sociologist at Syiah Kuala University in the provincial capital Banda Aceh. He hastened to add, however, that he does not believe it would become widespread.

Mr Fajran argued that much would depend on how the governor handled the situation.

'Mr Irwandi should talk to the highland leaders personally instead of making statements through the media,' he said.

Speaking to The Straits Times last week, Dr Humam took heart from the fact that there did not appear to be any specific link between the recent violence in Atu Lintang and local demands for the establishment of a new province.

A *Christian Science Monitor* article, dated 13 March 2008, reports on the recent killing of five former GAM members. The article suggests that this may have happened in the context of a recent secessionist movement to form new provinces in the central region and in the south. Pertinent extracts follow:

...No evidence has yet tied the March 1 killing of five former rebels of the Free Aceh Movement (GAM) to the breakaway efforts. But in Aceh's central highlands, many residents deeply distrust former members of GAM, which negotiated a peace deal after the tsunami and won the provincial governorship in 2006 elections.

The breakaway efforts poses a serious challenge to Gov. Irwandi Yusuf, himself a former GAM rebel who once agitated for Aceh's independence from Indonesia and whose movement broadened autonomy for Aceh in the peace deal. It would test his government's authority and disperse Aceh's rich resources of timber, minerals, oil, gas, and arable volcanic soils.

Analysts say the movements, which date back to 2002, are fueled by the self-interest of local politicians who could increase their budgets as each province qualifies for central government funds. "It's about resources," says Sidney Jones, of the International Crisis Group in Jakarta. "People who want new provinces stand to get that money."

...Against this backdrop, a dispute over control of the Takengon bus terminal between former GAM rebels and the transport workers union – many of them former members of pro-Jakarta militias – boiled into the violence that killed five former GAM members.

A spokesman for the former rebels, Ibrahim Syamsuddin, characterized the incident as bait to undermine the government. "People are fishing for new conflict," he said. Leaders of the movements condemned the violence. But Monday, when Governor Irwandi went to install two district leaders in southwestern Aceh, he met pro-secession banners (Brooks, O. 2008, 'Breakaway bids test Aceh's post-tsunami peace deal', ReliefWeb website, source: *Christian Science Monitor*, 13 March <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MUMA-7CP5DX?OpenDocument&rc=3&cc=idn> – Accessed 30 April 2008.

A *Canberra Times* article, dated 10 November 2007, states that "[o]f all the trends that have emerged in Aceh over the past year, perhaps the most worrying is the increasing level of conflict." The article continues:

The World Bank publishes a monthly report, the Monitoring Conflict Update, which measures the number of administrative disputes and violent incidents that occur in the province. In the six months surrounding the signing of the Memorandum of Understanding in August 2005, the average number of conflicts per month was below 20. The number of conflicts peaked in March this year at just fewer than 140 and has so far this year averaged at around 100 incidents per month. World Bank consultant on conflict Adrian Morel said that the reversion.

...to low-level violence and squabbling is common in any post-conflict area. But there can be no denying that the increase in conflict in Aceh has been particularly acute this year, and for Morel this has been fuelled in no small part by the "changing political landscape". He said that 2007 has been a year of "struggle between powerful people within GAM or from outside GAM over positions in the administration, over access to contracts, over access to political resources."

...keeping control over the various GAM factions is a task that is becoming more difficult with every passing week. Three GAM-affiliated parties have already registered for the 2009 Indonesian national election with a fourth party, Sira, expected to formally register by the end of the month. For Morel, the key test for the new government was a recent month-long amnesty on illegal weapons. The amnesty, which expired two weeks ago, was designed to disarm the last of the resistance fighters, but has widely been seen as a measure of Irwandi Yusuf's willingness to crack down on renegade GAM factions. All eyes especially in Jakarta will be on the volume of violent incidents over the next couple of months to see whether the amnesty was effective. "[Indonesian] Police, security forces and military are looking at GAM as holding responsibility in the collection of illegal weapons," Morel said. "There is an association between criminality and the fact that GAM may or may not have surrendered all their weapons during the decommissioning phase. "Most likely they haven't" ('Aceh's uneasy peace' 2007, *Canberra Times*, 10 November.

### **What is the situation in relation to past supporters of GAM and their return to the area?**

Information indicates that many past supporters of GAM have returned to their villages; however face issues such as mass unemployment, lawlessness and distrust by other residents. Many Acehnese still reside in Malaysia, and while it is said that many of them want to return to Aceh, there exists a deep distrust regarding the peace process. Pertinent reports follow which provide details of the reintegration of former GAM members and supporters; Acehnese living in Malaysia; and the challenges of rising crime and lawlessness.

A March 2008 article by the *Christian Science Monitor* states that "in Aceh's central highlands, many residents deeply distrust former members of GAM" (Brooks, O. 2008, 'Breakaway bids test Aceh's post-tsunami peace deal', ReliefWeb website, source: *Christian Science Monitor*, 13 March <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MUMA-7CP5DX?OpenDocument&rc=3&cc=idn> – Accessed 30 April 2008.

The most recent ICG report on Aceh, published in October 2007, provides information on the programs implemented and some of the issues facing the reintegration process. Pertinent extracts follow from sections III & IV:

#### **A. Extortion and Violence**

Reports of increased extortion began to surface soon after the elections, particularly in North Aceh. In January 2007, KPA [GAM's armed wing, now called the Aceh Transition Committee (Komite Peralihan Aceh)] members at a meeting of village heads demanded a cut of Rp.13 million (\$1,300) per village from a donor project to build a memorial for dead combatants.<sup>11</sup> In February workers from a donor organisation were robbed at gunpoint in Seuneudon subdistrict while returning from withdrawing project funds from the bank; the perpetrators were believed to be KPA. Contractors and sub-contractors not linked to GAM along the east coast and in South and West Aceh districts report receiving local KPA demands for 10 to 20 per cent of their respective projects.

The only violent incident involving GAM and the TNI since the elections also started out as extortion and discredited both parties. On 21 March four soldiers from infantry battalion 113 were publicly beaten in Alue Dua village, Nisam, North Aceh. Most local press reports stated villagers had seen four men arrive the night before at a school being built by an international NGO. Word spread that they were intelligence agents, with guns under their shirts. The next day, villagers seized the four, beat them badly and expelled them from the village. Three days later, two truckloads of Indonesian army soldiers arrived and beat up fourteen villagers.

Slowly, details emerged that put the story in a somewhat different light. The four men were active duty soldiers moonlighting for a security firm hired to guard the school after attempts at extortion by the local KPA. KPA members organised the beatings, summoning local journalists to witness the “spontaneous” reaction to the supposed intelligence agents. The military accused the KPA; the local KPA denied it, saying only their intervention saved the four from a worse fate.<sup>14</sup> The Aceh military commander, Gen. Supiadin, announced there would be no TNI retaliation but on 22 March, military police arrived in the village with the commander of North Aceh district seeking witnesses. No one dared to volunteer, so the military police tried unsuccessfully to force a local journalist from the Banda Aceh-based *Harian Rakyat Aceh* to testify. On 24 March, soldiers entered the village and beat up fourteen men suspected of involvement, to the fury of local residents. An Acehnese remarked: “The TNI could have won this 1-0, but instead they let GAM have the goal”.

#### ... IV. Reintegration

Ex-combatants are clearly not the only source of extortion, violent crime and resource extraction but they are an important one. It was in part out of fear of these very problems that the Indonesian government, GAM leaders and donors struggled to put together a number of “reintegration” programs aimed at providing alternative livelihoods to demobilised fighters, although it was always too simplistic to assume that employment or other benefits would prevent post-conflict violence.

Some have provided concrete, tangible benefits. Overall, however, the main government effort has been plagued by unclear goals, poor implementation and lack of transparency in a way that seems to have led as much to polarisation as reconciliation. A wholesale revamping in August 2007 may address some of the management problems but risks reinforcing the idea of reintegration as entitlement in a way that may foster local tensions (International Crisis Group 2007, *Aceh: Post-Conflict Complications*, Asia Report N°139, 4 October).

A 2006 report titled ‘2006 Village Survey in Aceh: An Assessment of Village Infrastructure and Social Conditions’ by The Kecamatan Development Program, in association with the Ministry of Home Affairs and The World Bank in Jakarta, states that “[t]ensions may persist between those who fled and others in the villages, leading to significant social obstacles to return”. The report continues:

When asked to rate the level of trust between “those who just returned from the mountains” and others in the community, the majority chose to remain neutral, with 61 percent responding that trust was neither low nor high, and about 25 percent saying it was high or very high. In contrast, about 50 percent of respondents chose neither low nor high when asked to rate the general level of solidarity in the village, with around 40 percent saying it was high or very high. Trust levels appear to be higher when respondents are asked general questions about trust in the village, with 49 percent agreeing or strongly agreeing with the statement that most of villagers can be trusted. Even more agree or strongly agree with statements that villagers usually help each other and are willing to help others (58 percent and 76 percent, respectively). This combination of findings suggests that although trust levels are generally good, the residue from the conflict has not disappeared and peace-building work with GAM returnees must continue. Interestingly, there appears to be no correlation between the responses to questions concerning trust and solidarity, and the intensity of conflict.

The report continues (p.77):

Most respondents are neutral regarding the social trust between villagers and GAM returnees, and solidarity levels between villagers. The majority of respondents say that the level of social trust between villagers and GAM returnees was neither low nor high (61 percent).

Around 7 percent responded “don’t know” and 6 percent gave no response (Figure 5.22). The same tendency also prevailed for questions on social solidarity between villagers (Figure 5.23). Around 50 percent of respondents chose neither low nor high, while 3 percent responded “don’t know” and 5 percent gave no response. This may indicate that respondents are still unsure about the future of the peace process. This might also suggest that issues related to GAM are still perceived as sensitive and thus the respondents, most of whom are local figures who can be easily recognized, choose to remain neutral to avoid potential problems (The Kecamatan Development Program 2006, *2006 Village Survey in Aceh: An Assessment of Village Infrastructure and Social Conditions*, pp.9-10 & 77 [http://siteresources.worldbank.org/INTINDONESIA/Resources/226271-1168333550999/AcehVillageSurvey06\\_final.pdf](http://siteresources.worldbank.org/INTINDONESIA/Resources/226271-1168333550999/AcehVillageSurvey06_final.pdf)).

A November 2007 article published by the *Far Eastern Economic Review* discusses the influx of aid money in to Aceh and the return of expatriates to the province, mostly from greater Indonesia and Malaysia Pertinent extracts follow:

Aid money can build infrastructure, but it also creates its own headaches. The huge influx of donor cash has led to localized inflation and a culture of handouts. Educated, English-speaking Acehnese are in high demand at NGOs, and so enjoy generous salaries. Less-skilled workers can also take lucrative posts driving sport-utility vehicles for the NGOs. But these jobs will not last forever. Investors will be watching to see whether the animal spirits of the local economy begin to stir.

The conflict, as it’s called in Aceh, killed an estimated 15,000 people, and systematic terror by government and rebel troops after 1999 left large swathes of the province traumatized. The situation sent business people scurrying for Jakarta and Malaysia; in rural areas, workers and small tenant holders fled their land. Some of the best Arabica coffee country in the world, in Aceh’s central highlands, went to seed, along with oil palm, rubber and cocoa plantations throughout the province. Oil and natural gas installations serving fields in the eastern part of the province were often under siege. People who stayed tended a subsistence economy; any substantial business moved 500 kilometers east, to the North Sumatra provincial capital of Medan. One indicator of problems is that Acehnese are not taking up construction jobs, forcing firms to hire migrants from North Sumatra and Java. The unemployment rate in the province has held steady at 12% during the boom as the workforce expanded by 5%.

...Talented Acehnese who fled the province are also returning to win reconstruction contracts and provide consulting work. Achmad Fadhiel worked as a consultant with the International Finance Corporation after the tsunami. He’s stayed on to be the CFO of government-owned fertilizer firm Iskander Muda. “I had mixed feelings,” says 42-year-old Mr. Fadhiel, who worked as a corporate banker in Jakarta for 18 years. “It was the same airport terminal building in Banda Aceh as when I left [in 1973, at the age of eight]. But it’s about social responsibility. After many years in the banking industry I can give people some advice about financing. I’m having a lot of informal chats.”

Everybody seems to be watching the movements of the talented and wealthy among the Acehnese diaspora-pegged at around one million people spread from Malaysia and greater Indonesia all the way to an enclave in Harrisburg, Pennsylvania. The re-entry of expatriates will send a strong signal to international investors about the health of Aceh. And, equally important, it will spur local businesspeople to take the leap into industries like agricultural and seafood processing and packing, a logical first step in adding value to the Aceh economy. “The question is will the spirit of entrepreneurship come back?” says Paul McMahan, a consultant with the Indonesian reconstruction agency who is organizing an Aceh venture fund for small and medium businesses (Brooks, O. 2007, ‘Indonesia: The Rebirth of Aceh’, *Far Eastern Economic Review*, 2 November).

In the October-December 2007 issue of *Inside Indonesia*, Dr Edward Aspinall of the Australian National University (ANU) comments on the increase in armed robbery and corruption in Aceh; though adds that in the wider Indonesian context gangsterism is “much worse in [neighbouring] Medan”:

### **Relocation**

Information indicates that Medan has witnessed a rise in violence and extortion over the past two years. As noted above by Edward Aspinall in an article for *Inside Indonesia*, “bad as the situation was in Aceh, it was much worse in Medan”; referring to the rise of gangsterism (or *premanisme*) (Aspinall, E. 2007, ‘Guerillas in Power’, Aceh-eye website, source: *Inside Indonesia*, October-December [http://www.aceh-eye.org/data\\_files/english\\_format/analisis/analysis\\_insideind/analysis\\_insideind\\_2007/analysis\\_insideind\\_2007\\_10\\_12\\_02.asp](http://www.aceh-eye.org/data_files/english_format/analisis/analysis_insideind/analysis_insideind_2007/analysis_insideind_2007_10_12_02.asp) – Accessed 6 May 2008.

- A February 2008 fast-track response provides information on the alleged crack-down against “illegals” in Jakarta. Administrators in Jakarta are reportedly increasing identity checks at “all 28 entry points including public transportation stations on land and sea” (RRT Research & Information 2008, *Fast-track Response IDN33019*, 21 February).

### **FINDINGS AND REASONS**

36. Although the first named applicant was previously recognised by Australia as a refugee, the question for the Tribunal is whether it is satisfied that she has a presently existing well-founded fear of being persecuted, for Convention reasons, in Indonesia and is thereby entitled to continuing protection.
37. The applicant claims she is at risk of persecution because of :
  - Her political opinion of supporting complete independence for Aceh and her opposition to the Peace Agreement and the current government in Aceh,
  - Her political opinion as an opponent of Indonesian military presence,
  - The imputed political opinion of supporting the renewed Acehese separatist movement; this opinion will be imputed to her by GAM members in City 1 who are aware of the presence of the opposition independence group in Australia, and
  - Membership of these particular social groups,
    - An Acehese family with few financial resources, and
    - Acehese women who are known to have been overseas for some years
38. The applicant at the hearing gave evidence that she is frightened of being targeted and raped by the Indonesian military She stated she and her family did not support the current GAM government. Her evidence was that the



Indonesian military had already targeted her family and neighbours and they would work together with a local militia to persecute and harm her. The applicant's evidence was that she would also be at risk from local criminal elements who were working with the Indonesian military and the former members of GAM. The applicant's evidence is that she would be in a situation that is similar to the one in East Timor where the Indonesian military resourced local militia to kill and terrorise local populations that did not agree with the Indonesian military's views. She claims she would be a target as she had lived overseas and everyone will know this and think she had resources or has been assisting dissident groups in Australia.

39. The Tribunal accepts the applicants' evidence and finds that she is a witness of credit. The Tribunal is satisfied that she first fled Indonesia and came to Australia as she was in fear of being persecuted. Her evidence was consistent with the previous evidence she had given to the Department and held on the Department file. Her evidence is also consistent with the latest Independent Country Information.
40. The applicant comes from a particular region. The Tribunal accepts the most recent Independent Country Information resourced by the Tribunal and also provided by the applicant's representative that this is an area where violence is currently directed at former GAM supporters. The applicant claims she will be targeted because of her previous involvement and the fact that she has spent some years residing in Australia.
41. The Tribunal accepts Independent Country Information and the evidence provided by the applicant and her family that the Indonesian military have previously worked with militia to destabilise and punish populations that have been seen to work against their goals. The Tribunal accepts that if the applicant were to return to Aceh the local inhabitants would know she has returned from overseas and this could put her at risk.
42. The Tribunal accepts that the applicant has witnessed traumatic events including the killing of a young male (well known to her) and that authorities sought her out and due to the deteriorating situation in Aceh she would be at risk if she were to return. The applicant gave evidence of these fears which was consistent with evidence she had earlier given to the Department.
43. The Tribunal has also considered re-location. The Tribunal has considered whether the applicant could return to Indonesia and live in Jakarta. The applicant's evidence is that because she speaks with an accent and is a young woman returning from overseas she would immediately come to the attention of the authorities as someone who was a dissident. The Tribunal has considered Independent Country Information that many Acehnese are returning from overseas and are in fact needed and securing jobs with NGO's. The Tribunal has also considered the Independent Country Information that criminal elements are likely to target persons who have returned from overseas.
44. The applicant's evidence is that she no longer possesses an identity card. She would have to apply for one as soon as she re-entered Indonesia. The Tribunal

accepts the applicant's evidence that this could bring her to the attention of the authorities in Indonesia and may result in her being monitored by security forces.

45. The Tribunal has considered that she is young and resilient and has successfully made a life for herself in Australia. This shows that she is capable of re-locating. The Tribunal has also taken into account that she is a young traumatised female who would be without her family. Her evidence is that she has no financial resources and her accent would mark her as an outsider. The applicant's evidence is that she will be marked as a trouble causer and outsider. After weighing up all the practicalities of re-location in Indonesia and taking into account the most recent Independent Country Information on the continued and escalating violence in Aceh and how that impacts on other areas the Tribunal has come to the conclusion that it would not be reasonable to expect a young traumatised young woman to re-locate within a conservative society such as Indonesia.
46. Due to the above the Tribunal finds that there is a real chance that the applicant may be placed under surveillance if she were to return to Indonesia now or in the reasonably foreseeable future.
47. The Tribunal finds that the persecution the applicant fears involves 'serious harm' within the meaning of s 91R(2) of the Act and that the applicant's political opinion real or imputed or membership of a particular social group is an essential and significant reason for the persecution which she fears. The Tribunal accepts that the applicant fled to Australia to escape harm. The Tribunal accepts that if she returns to Indonesia and her province she will come to the notice of the local authorities. The applicant's evidence was consistent with the earlier evidence she had given in relation to witnessing the torturing and killing of members of her community. The Tribunal has considered the most recent Independent Country Information and accepts that there is a risk that the applicant will be at risk of rape, violence and being detained and persecuted by the local authorities and the Indonesian military. The Tribunal also finds that the persecution which the applicant fears involves systematic and discriminatory conduct in that it is deliberate or intentional and involves selective harassment for a convention reason (political opinion or membership of a particular social group).
48. The applicant fears persecution from the present government of Aceh and the Indonesian Military. The applicant's political view is that she is against the peace process and a supporter of full independence of Aceh. The Tribunal accepts Independent Country information that the situation in Aceh has deteriorated and applicant's political views are against the prevailing political view of the State. The State is committed to unity in Indonesia. The Tribunal finds that due to the applicant's political views and history of being overseas and perceived to be part of a dissident group that she would not be afforded adequate and effective State protection.
49. The Tribunal finds that there is a real chance of persecution as set out in *Minister for Immigration and Ethnic Affairs V Guo Wei Rong* (1997) 191 CLR 559. After weighing up all the evidence both oral and written the Tribunal is

satisfied that the applicant's fear is well founded and there is a substantial basis for it.

50. The Tribunal finds that the applicant is outside her country of nationality. For the reasons stated above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reasons of her political opinion real or imputed or membership of a particular social group if she returns to her country of nationality. The Tribunal finds that the applicant is unwilling, owing to her fear of persecution, to avail herself of the protection of the government of Indonesia. Nothing in the evidence before the Tribunal suggests that the applicant has a legally enforceable right to enter and reside in any country other than Indonesia. The Tribunal finds that the applicant is not excluded from Australia's protection by s 36(3) of the Act.
51. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. The applicant satisfies the criterion set out in s 36(2) of the Act for the grant of the protection visa.

## **CONCLUSION**

52. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided she satisfies the remaining criteria.
53. No specific claims were made by or on behalf of the other applicant. The Tribunal is satisfied that that applicant is a dependent of the first named applicant for the purposes of s.36(2)(b)(i). The fate of the other applicant's application therefore depends upon the outcome of the first named applicant's application. The other applicant will be entitled to a protection visa provided she satisfies the criterion set out in s.36(2)(b)(ii) and the remaining criteria for the visa.

## **DECISION**

54. The Tribunal remits the matter for reconsideration with the following directions:
  - (i) That the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
  - (ii) That the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being the dependant of the first named applicant.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.  
Sealing Officer's I.D. PRDRSC