

0802683 [2008] RRTA 370 (8 October 2008)

DECISION RECORD

RRT CASE NUMBER: 0802683
DIAC REFERENCE(S): CLF2008/9375
COUNTRY OF REFERENCE: Indonesia
TRIBUNAL MEMBER: Robert Wilson
DATE DECISION SIGNED: 8 October 2008
PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa 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 delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations for the grant of a Protection visa.
4. The applicant applied to the Tribunal for review of the delegate's decision.
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 applicant has 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. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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.

10. 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.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, 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.
16. 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.

17. 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.
18. 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.

CLAIMS AND EVIDENCE

Application for a Protection visa

19. The applicant is a single Muslim Acehese woman born at Banda Aceh, Indonesia. She has received a number of years of education and can speak, read and write English. Her occupation before coming to Australia was that of a clerk. Her father lives in Indonesia.
20. The applicant stated that since the tsunami the fighting in Banda Aceh had been a little better. The government signed a treaty but they still kill people. They have tried to show the world how reasonable they are, but they are not. They no longer kill people by gunning them down. They remove them and kill them and then leave them in another village with no identification. The Indonesian government pretend that everything is better because of all the aid they have received as a result of the tsunami, but no one is safe. The GAM continues its fight for independence. It is very dangerous for women. They are very often raped by Indonesian soldiers, and then their life is over. The soldiers/government steal everything one has. If the applicant goes back to Banda Aceh people will be suspicious of her. People will know that she has been away. She will definitely be raped and killed. Neither the GAM nor the Indonesian government will trust her. The GAM may also kill her. Women cannot be left home alone and if one leaves their home unattended everything is stolen. The applicant has a medical condition. The Indonesian government and the GAM all put on an act. She does not want to die or be raped. She does not think the Banda Aceh authorities can and will protect her as it is they who carry out the rapes and murders by allowing their soldiers to do anything they want without any punishment. She has tried to contact her father, but she has not reached him.

Type written letter from the applicant's authorised recipient.

21. The authorised recipient stated that she originally organised for the applicant to come to Australia and stay with her. However, she now realises the applicant's deep depression and sadness about returning to Indonesia. She stated that the applicant's quality of life in Indonesia is nil because of political problems that her province faces because of the GAM's continuous attempts for independence.

The letter further refers to the applicant's excellent fame and character, and a request for a limited working visa.

Application for Review

22. The applicant did not provide any further claims.

Original scheduled hearing

23. The Tribunal wrote to the applicant's authorised recipient inviting the applicant to give oral evidence and present arguments at a hearing. The letter was returned to the Tribunal by the Post Office noting that the letter had been unclaimed.
24. The Tribunal rang the authorised recipient on her home and mobile phone numbers. The mobile phone did not answer. The home number diverted to a message bank where the Tribunal officer left his name and contact number.
25. The authorised recipient rang the Tribunal a couple of days later and stated that she had never received any notification and had recently moved. As requested, she sent a letter which detailed the issues and wherein she requested a hearing for the applicant.

First hearing before the Tribunal

26. The applicant and the sister of the authorised recipient attended the hearing.
27. The applicant stated that she completed the Application for a Protection visa (Parts 'B' and 'C') with the help of her authorised recipient, and an Indonesian interpreter. The information in the forms was read back to the applicant in Indonesian. Her claims are correct, and remain as her claims. She added she had experienced threats. There were quite a few people who came to her home who carried guns. She did not know who these people were. They were looking for her father. He was in the city at the time. Since that incident she has not felt safe at all. She feels fearful. She stated her father is in Indonesia now and her brothers are working and living in Country A. Another sibling, lives in the same area as the applicant. This sibling is married with children.
28. After the Indonesia tsunami the applicant met the authorised recipient's husband in Indonesia, in Aceh. The applicant was working as a clerk. One of the applicant's friends mentioned to the authorised recipient's husband that the applicant was always fearful whilst living in Aceh. That is why the authorised recipient and her husband assisted the applicant. The applicant stated that she was presently living with the applicant. No one else was living with them. The applicant does not have employment in Australia. The authorised recipient helps the applicant. The applicant came to Australia with her father. The authorised recipient helped. The applicant's father was worried that the applicant was here alone. She does not know if her father has had any negative experiences such as men turning up with their guns. He has never mentioned anything to the applicant.

29. The applicant was taught Indonesian at school. She also speaks the Aceh dialect, and very little English. She was a student in Aceh. She discontinued as one day after an incident. She was worried they might kidnap or rape her. It happened a month before she came to Australia.
30. The applicant stated that she did not think the incident had anything to do with her being Muslim as most people who live in Aceh are Muslim. The applicant stated that what she feared might happen to her would be criminal activity.
31. The Tribunal; asked if there was anything else that the applicant wished to tell the Tribunal. She stated there was not.
32. The Tribunal put information to the applicant which it may consider to be the reasons for affirming the Department's decision. The Tribunal explained the consequences of the information to the applicant. The applicant responded to some information orally.

Responses by the NEW authorised recipient and the applicant

STATUTORY DECLARATION

I, [name], born on [date], of [address], do solemnly and sincerely declare as follows:

1. In the following statement, I wish to correct certain wrong and incomplete information provided in my primary application.
2. My primary application was prepared on my behalf with the assistance of a friend who did not accurately convey the details of my claim. Moreover some of my personal information was not recorded in the application forms B and C. I became aware of the incorrect and missing information in my application forms and claim only last week when an accredited Indonesian interpreter from [group] read out and interpreted all the details to me. For this reason my new migration agent has advised me to re-fill the forms and provide additional information in relation to my fear of persecution as well as my personal details.
3. The friend who assisted me with my initial application was very aware and concerned about my fear of persecution in Aceh but she did not really understand my situation. For instance she confused the Province of Aceh and referred to it by the name of its capital, Banda Aceh. This may have been due to problems with language as the person we used to interpret for us was not an accredited interpreter and had limited English. My friend also did not have a good understanding of refugee law or of the situation in Aceh. She did have the best intentions at heart to help me out with my grave problems as she knew that my life and liberty would be at risk in the event I am forced to return to Indonesia.
4. I am an Indonesian citizen and have no rights to reside in any other country.
5. In my initial application, there was no mention of the fact that on [date] I married [name] (dob [date]) in [location]. His DIAC file number is [number] (Client ID; [number]). I have lived with him since our marriage. I deeply regret that I did not provide this information to the Department or to the Tribunal, which was due to my incorrect belief that I should conceal my marriage to a person who has no legal residential status in Australia.
6. [Applicant's husband] is also an opponent of the Helsinki Memorandum of Understanding [information about the applicant's husband]. Because of his political profile, he would not be

able to protect me. Please find attached a letter from [organisation], confirming his membership of this organisation.

7. In my initial application I did not give information about my family. I wish to provide this now.

8. My father [name], was born in the [place] or [area] of Aceh. He was a supporter of GAM [information about the applicant's father].

9. My mother was also from the same area. [information about the applicant's mother].

10. My brother, [name], was born in [date]. He fled to [Country A] because it wasn't safe for him to live in our village. In my interview, I was too confused and upset when the Member asked me whether my brother was studying in [Country A] or a permanent resident. I failed to explain that he fled to [Country A] because at that time the Indonesian Military (TNI) were going from house to house seeking GAM members and supporters. He had been a GAM supporter since the late 1990s [information]. He had observed how many young men in our village had been killed or disappeared and was frightened that this might happen to him. Although he has returned from time to time for brief visits to the family, he still believes it is not safe for him to live in our village so continues to work in [Country A] on a temporary visa.

11. My second brother, [name], was born on [date]. He fled to [Country A] for the same reason in [year]. He too continues to work in [Country A] because he believes that is the only way he can be sure he is safe. He fears being harmed at the hands of GAM supporters and TNI members. The situation of my brothers, both of whom having been living away from Indonesia for many years, is a forceful indication that our family has an adverse political profile. Neither of my brothers has been granted permanent residence in [Country A]. Neither of my brothers study in [Country A].

12. I also have [siblings], [name] and [name] one of whom live in Aceh with my dad. [name] is married.

13. I also need to explain the inconsistencies in the information about my work history which were raised by the Member during the hearing. Unfortunately, in my application for a [visa] which was completed by the same friend who assisted me with my initial protection visa application, there was a mistake.

14. For many years, my father supported our family by acting as a middleman to supply [goods] to shops in the [area]. His business folded in [year] and after that he was employed by a friend as a shop assistant in his shop in [place]. At the time the [visa] application form was completed, he had been working there for [duration]. I was confused by the member's question because it was my father who was employed in that shop. I only assisted him occasionally on a voluntary basis when I was free.

15. My own work experience was in two areas. [Information about the first job].

16. The other job I had was working part-time for [information about the second job]. The [company] had a number of offices. I worked first for about a year in the rural area of [location] which was close to my home and then for about a month in the [office]. Unfortunately, the dates provided by my friend regarding the time I worked there were incorrect.

17. [Information about the applicant's study].

18. I also need to explain to the Member about the incidents which I described in the hearing because I realise that the evidence I gave was confusing. The incident when some unknown

persons came looking for my father occurred prior to the Tsunami and was a terrifying experience for me. When I asked my father for further information about this event after the hearing he told me that the men returned. It seemed that they tried to extort money from him. Fortunately he was able to convince them that he had no money as he knew that, as an Acehnese, there was no way that he could have been given protection by the Indonesian authorities.

19. The incident I described which happened to me when I was on my motorbike coming home from [place], occurred in [year]. Being surrounded by a number of men who came on motorbikes really frightened me and convinced me that as an Acehnese woman, I could not hope to be protected by the Indonesian authorities. After that I never went alone to [place] but always in the company of someone else because I knew I was unsafe.

20. The definition of a refugee under the United Nations Convention has been explained to me. I understand that in order to be recognized as a refugee, I need to satisfy the decision maker of having a genuine and well-founded fear of persecution because of one of the five convention grounds being race, religion, nationality, membership of a particular social group and political opinion. My fear is connected to my political opinion as I continue to support the independence of Aceh from Indonesia and therefore do not agree with the Memorandum of Understanding, which was signed in Helsinki on 15th August 2005.

21 I also fear persecution because of my ethnicity as an Acehnese woman due to the political and regional instability in Aceh. I was born in the [district] of Aceh to an Acehnese family which has always believed that Aceh should be independent. [Information about the applicant's home district]. In addition, my fear of persecution is intensified because of being married to a man who is known to be opposed to the Helsinki MoU because it agreed that the Acehnese would forgo the right to independence from Indonesia.

22. In my initial application, my answers to questions 41 to 45 on form C were written on my behalf by the friend who assisted me to complete the forms. I wish to expand on the brief answers provided to these questions as follows.

23. Why I left Aceh, although the security situation in Aceh has improved since the Tsunami and particularly since the signing of the MoU, there is still a lot of killing occurring. People are still disappearing and then their bodies are found without any identifying signs in another village. Because of the aid they are receiving, the Indonesian government authorities want to show the world that everything is alright again but the truth is that no one is safe in Aceh. There is a split in the GAM movement with some continuing to fight for independence and others supporting the MoU.

24. The situation in Aceh is still not safe for women. The security situation is still unsafe and unstable in Aceh. In [year], before I left Aceh, on a couple of occasions young men on motor bikes stopped me on my way home from [place]. Fortunately there were other people who saw this happen so that the young men went away. However, after that I did not dare to go out alone - I always went with either my father or a friend to keep me safe. Many Acehnese women have been raped. I feared that I might be raped too. I knew that the situation in Aceh is very unsafe and that I would not be protected by the authorities and I felt very vulnerable.

25. What I fear may happen to me if I return to Aceh? I am frightened that if I were to be returned to Indonesia, I would be accused, by former members of GAM, of being opposed to the Memorandum of Understanding, then the authorities in Indonesia could not or would not protect me from rape, the most common method used against Acehnese women, who are targeted by either the Indonesian Military (TNI) or those who support the integration of Aceh into Indonesia. I have heard numerous firsthand accounts of terrible things happening to women in Aceh. In Australia Acehnese friends have told me that when they go on line to read the

Acehnese newspapers there are many accounts of Achenese being targeted and killed and no one protects them. Former GAM members who support the MoU, are clearly aware that Acehnese people living in [city] are opposed to the MoU and support the Independent Government of Aceh Sumatra. As an Acehnese who has lived in [city] for [duration], I would certainly come under suspicion and be likely to be targeted by them.

26. Who do I think will harm me? The Indonesian Military and those members of GAM who are angry with the Government of Independent Aceh Sumatra and its supporters in Australia.

27. Why do I think this will happen to me? As someone who has stayed in Australia for [duration] and as the wife of a man who is opponent of the Helsinki MoU, I will be under extreme suspicion both from the Indonesian military and the members of GAM who support the MoU. I fear that I will be harmed and/or raped and know that there is no one to protect me there.

28. Why I think the Indonesian authorities will not protect me? The Indonesian security forces have never cared about the well-being and protection of the Acehnese people. They do not do anything to solve the crimes against us or make any meaningful efforts to protect us. In fact I fear being harmed at the hands of the Indonesian security authorities just as much as I fear GAM supporters.

29. Due to the requirements facing all Indonesian citizens moving into a new area, it is not possible for me to simply relocate to another place in Indonesia without showing that I am a woman of Acehnese ethnicity who has been abroad. All Indonesians who move into a new district, are required to provide a letter from the place of their former residence to the head of the local neighbourhood area. Once a letter has been issued by the neighbourhood head (RT), a person must report again to the village head (lurah) and then to the district head (Camat) who has close contacts with the local military commander. This very tight system of population movement control which, ever since the Japanese occupation during World War II, has reached down to the village level as well as to "kampongs" (neighbourhoods) in towns and cities throughout Indonesia. I would therefore need to provide a letter from the Indonesian Consulate in [city] or from my local neighbourhood head in Aceh and would be forced to explain the reasons for my temporary residence in Australia and what I had been doing there.

30. Everything in this statement is true as Allah in my witness. The inconsistencies and gaps in the evidence I gave to the Tribunal were due to my nervousness and deep anxiety about my future. I did not at any time seek to deliberately mislead the tribunal. I am a Moslem woman and seek to live by Moslem principles of truth and honesty. At the Tribunal I was deeply stressed. Please note that in the past I had never appeared before a court or tribunal or ever had to present my case. As a Moslem woman, I have always had the protection of my father or brothers and never had to speak out on my own behalf. I did not know what would be expected of me.

31. The hearing was a test for which I was not prepared- an experience that I had never contemplated. It wasn't easy for me to overcome my fear, stress and anxiety when answering questions directed to me by a member of the Australian government. This is because I have always feared answering questions asked by government authorities.

32. I would welcome the opportunity to appear again before the Tribunal to explain these matters further. I need to explain more clearly my fears and the situation which I would face if returned to Aceh which convinces me that I have a well-founded fear of persecution.

Letter from the NEW authorised recipient

I have been instructed by [the applicant] to present the enclosed material to the Tribunal.

Firstly, I ask the tribunal to note that my client's primary and the review applications were prepared without the benefit of proper and expert legal advice. Some very important information were not fully conveyed to the DIAC delegate nor to the Member in the hearing.

My client has left her native region of Ache during very turbulent political times. The Helsinki Agreement, as the Member would be aware, caused a major split within the Achenes independence movement. Those GAM supporters who enjoyed the relative safety of residing outside Indonesia have mostly rejected the MoU taking the view that it does not commit in a meaningful and substantial way to achieving the level of autonomy for which GAM members and supporters have been struggling for decades.

Many advocates of independence branded the MoU as a betrayal - a sell out of their hard fought political struggle by a group of self interested and ambitious GAM members who compromised in the fundamental principles of independence by making peace with the Indonesian government. This view has been echoed by many Achenes residing outside Indonesia.

Myriad of country information by the same Tribunal confirms widespread violence perpetrated against pro independence GAM supporters who are suspected or known to oppose the MoU. In this regard, I seek to draw the member's attention to the following RRT decisions, three of which are made in favour of my former clients; RRT# 0801947, 19 May 2008, RRT # 071338985, 21 September 2007 RRT # 071317391, 29 May 2007 RRT # 061051351, 2 February 2007 RRT # 060793741, 11 January 2007 RRT # 060758255, 2 November 2006

Moreover, the DIAC has recognise the plight of this minority and persecution to which they are being subjected and granted protection visa to recently arrived Achenes.

It is relevant to note that both of my client's brothers have faced circumstances that prompted them to leave Indonesia for the safety of [Country A]. This clearly establishes an adverse family history that validly intensifies my client's fear of being harmed at the hands of the infamous TNI and pro MoU GAM members alike.

Moreover, my client was a single woman at the time she resided in Ache and has since, married a man who is of Achenes descent and an opponent of the MoU. This fact reinforces her fear of persecution for two reasons. Firstly, she would be required to explain her absence from Indonesia if questioned by the security authorities or the GAM supporters. Secondly, she could not hide the fact that she has married to her dissident husband whilst residing in Australia. These two facts combined with a family history of political dissidence would add to my client's profile as a person of adverse interest to the Indonesian authorities and their GAM counterparts. What lies at the heart of this Achenes woman's case is fear of being raped or otherwise harmed.

She has come, as previously submitted, from a region that has a documented history of violence and oppression brought by a protracted period of struggle for independence. She needs to live in a safe country where she does not need to be accompanied by a trustworthy male companion every time she wants to leave home. She needs to be safe and protected by law. She needs to be able to access State protection against being harmed and raped by those who seek to harm her because of her political views or those held by her close family members. She is in desperate

need of protection and is a person, in my respectful submission, to whom Australia owes protection pursuant to our treaty obligations. ...

33. Further documents, including a 'Notification of incorrect answer(s)' form, a new part 'B' 'Persons included in this application' form, a new part 'C' form, and a part 'D' form, were provided. The B, C and D forms included the applicant's husband. A further document, by Person X, was also provided and has been reproduced below.

[Details about Person X]

Senator Chris Evans

Minister for Immigration and Citizenship Parliament House Canberra ACT 2600

Situation in Aceh, Indonesia, and continuing risk of persecution and violence for supporters of Acehese independence

[Date]

Dear Minister,

I have been asked by the group, [group] to provide you with an account of the situation in Aceh, Indonesia, to update information I previously provided to the Refugee Review Tribunal. [Details about Person X].

The political situation in Aceh has improved greatly since the signing of the Helsinki Memorandum of Understanding (MoU) between the Free Aceh Movement (GAM) and the Indonesian Government in August 2005, leading to a dramatic reduction of violence.

However, violence continues at a low level and (of particular concern for some Acehese refugees and asylum seekers in Australia), there are still real risks of political persecution and physical harm for person associated with GAM splinter groups which reject the Helsinki MoU and continue to advocate in favour of Acehese independence. These groups include the Majelis Pemerintahan - GAM (MP-GAM) and the Government of Independent Aceh-Sumatra. They are mostly active in exile (especially in Europe, Malaysia, the US and Australia) and have few active supporters in Aceh, in part precisely because of the dangers their supporters would face there.

In particular I would like to draw your attention to the following facts:

1. It continues to be a criminal act in Indonesia to advocate the independence of Aceh, or of any other part of Indonesia. Individuals known to be associated with groups like those named above which continue to favour Aceh's independence would run the risk of harassment, arrest or prosecution in Indonesia, if their presence, views and affiliations become known to the authorities.

2. Individuals associated with these groups would also be at risk of harm from members and supporters of the mainstream GAM organisation. There is a history of bitter factional dispute, including violence, within the Acehese pro-independence movement. During the conflict years (especially 1999-2005), members of MP-GAM were targeted by supporters of the mainstream GAM. Some were killed. Since the

Helsinki MoU and local government elections in December 2006, members of the mainstream GAM now dominate local politics in Aceh. Much of the (low-level but ubiquitous) violence which continues to plague the territory has been caused by internal factional competition and rivalries among GAM members and supporters. In my fieldwork I have heard of two separate occasions where the epithet "MP-GAM" was used to justify violent attacks against a group (in Sawang, North Aceh) accused of disobeying the GAM leadership. Hostility to MP-GAM continues to run very deep among supporters of the mainstream GAM. Anybody associated with MP-GAM or allied and-N U groups, if returned to Aceh, would in my view thus face a real risk not only of political persecution, but also of violent attack.

Finally, the [group] has also asked me to comment on the issue of Acehnese refugees and asylum seekers who have in the past used multiple/false identity documents. This was a very common practice in the past, especially from the mid- 1990s on. Political activists used false/multiple identities to minimise the risk of identification and persecution by security forces. Ordinary citizens frequently used false identities when fleeing their home districts or fleeing Aceh, so as to avoid identifying themselves as being from conflict zones, to obscure their Acehnese origins, to ensure they did not endanger family members back in their home villages, and so on. In short, use of false identity documents was extremely commonplace and it was a prudent step which many people took to ensure their personal security in the difficult conditions then obtaining in Aceh (and in Malaysia, for Acehnese refugees there). Use of false papers or identifications does not necessarily reflect badly on a person's character.

Yours sincerely,

[Person X]

Second hearing held before the Tribunal

34. The applicant stated that she did not mention anything about her brothers fearing anything in Aceh at the previous hearing as that is their business, and she did not want to talk about that.
35. The applicant stated that she did not talk about GAM or the Indonesian Army at the previous hearing as she did not know what she should say.
36. The applicant stated that she married her husband. She knew him before she came to Australia. It was partly the reason for her coming to Australia, the other was that it was not safe in Aceh. Her father attended the wedding in Australia. The applicant has known her husband since they were little, in Indonesia. Her last physical contact with him before she came to Australia was many years ago. They kept in contact on the phone and by letter over the last few years. She thought they probably contacted each other twenty or so times a month. Her husband has not returned to Indonesia. She stated that her marriage had not been arranged before she came to Australia. She did not think that she had to give any notice of intention to marry.
37. The applicant agreed that she did not refer to her family history of dissidence in Australia at the previous hearing. She stated that she did not discuss her family.

38. The Tribunal stated that the applicant's husband's claims were rejected some years ago, so there is no reason to think that she would face danger because of him. She stated that she did not know about that matter.
39. The applicant agreed that she now claimed for the first time that she supported the independence of Aceh.
40. The applicant stated that if she were to return to Indonesia that she would be harmed and perhaps tortured by government forces and those who support the MOU. She believed this would be the case, even if she was outside Aceh, but within Indonesia. She stated that she would be identified in Indonesia as an Acehnese because there is a regulation that Acehnese had to carry proof of identity. The ID would lead her to being identified as an Acehnese. This would happen as when she moved from place to place she would have to provide this proof of identity.
41. The applicant stated that her claims for protection related to her fear that it would be unsafe for her to return to her home village, because she does not agree with the MOU. Further, she is married to a man who does not agree with nor support the MOU. She would fear the government and the former GAM members who support the MOU. She stated that the opponents of the MOU are not protected, especially as the conditions in Aceh are not safe at all. Her family does not support the MOU.
42. The applicant would consider her as a rebel having spent time in Australia rather than Indonesia.
43. Further, the applicant is afraid because of the matters she referred to at the last hearing. She is concerned that Aceh is not safe, especially as she has spent quite a lot of time in Australia, and is married to someone who is probably known as not being a supporter of the MOU.
44. The applicant stated that she supports the independence of Aceh, but she is not active. However, she lived in an environment which is not supportive of the MOU.
45. The applicant stated that after the first Tribunal hearing she contacted her father who stated that she should tell things as they are. He referred to the people who had been looking for him, coming back and asking for money.
46. The Tribunal asked what profile the TNI (Indonesian Military) and the pro GAM members would ascribe to the applicant as a result of her marriage and her lengthy stay in Australia. She stated that it would be very dangerous.
47. The applicant's husband gave evidence. He stated they had known each other since they were young. They lived in then same village. They were married in a mosque. He had to make arrangements with the Imam beforehand before the applicant arrived in Australia. One of the reasons she came to Australia was to be married.

48. He stated that he did not wish to live in Indonesia as his goal is for Acehese independence. And he has been an active member of GAM. If he returns to Indonesia he will be automatically arrested and tortured as he is an active member of GAM fighting for Acehese independence.

Response to invitation to provide information in writing

49. The applicant's authorised recipient provided a copy of the applicant's marriage certificate, [information about the applicant's husband deleted in accordance with s.431 as it may identify the applicant].'

INDEPENDENT COUNTRY INFORMATION

GAM is the Gerakan Aceh Merdeka (GAM-Free Aceh Movement), a separatist movement which formed in the 1970s and in 1976 declared independence from Indonesian rule, resulting in almost twenty years of conflict with the Indonesian military.

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 – 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, *CrisisWatch 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 – 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.² 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 Litang, 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: 1st January – 29th 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 – 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.¹¹ 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.¹⁴ 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).

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 McMahon, 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 on the alleged crack-down against "illegals" in Jakarta indicate that administrators in Jakarta are reportedly increasing identity checks at "all 28 entry points including public transportation stations on land and sea."

FINDINGS AND REASONS

50. The applicant has claimed, and I accept, on the basis of her photocopied passport and other evidence, that she is a national of the Republic of Indonesia.
51. Firstly, the Tribunal does not accept the applicant's husband's applications. [Information about the applicant's husband's applications deleted].

52. The applicant's claims have been provided above. Although the applicant did not provide convincing evidence at the first hearing, the Tribunal finds that in her initial claims made in her Application for a Protection visa she did refer to her substantive claims of fear of the GAM and the Indonesian military. The Tribunal also accepts the applicant's Statutory Declaration and her new authorised recipient's submissions. The applicant was also able to clarify her position at the second hearing.
53. The Tribunal accepts the applicant's claims that her family were supporters of an independent Aceh. It accepts that the applicant's father and brothers were supporters of GAM. The Tribunal accepts that the applicant is married to her husband and that he is an opponent of the Helsinki Memorandum of Understanding. The Tribunal accepts that the applicant is also against the Helsinki Memorandum of Understanding, and although not an active member, she would be considered to have an imputed political profile as an independent Aceh supporter because of her family's and her husband's political position.
54. The Tribunal also accepts the applicant's authorised recipient's submissions that the applicant's marriage to her husband:
- ...reinforces her fear of persecution for two reasons. Firstly, she would be required to explain her absence from Indonesia if questioned by the security authorities or the GAM supporters. Secondly, she could not hide the fact that she has married to her dissident husband whilst residing in Australia. These two facts combined with a family history of political dissidence would add to my client's profile as a person of adverse interest to the Indonesian authorities and their GAM counterparts. What lies at the heart of this Achenes woman's case is fear of being raped or otherwise harmed.
55. The Tribunal accepts the country information provided by Person X on behalf of the applicant, in particular that there are still real risks of political persecution and physical harm for persons associated with GAM splinter groups which reject the Helsinki MoU and continue to advocate in favour of Acehnese independence.
56. The Tribunal also accepts the independent country information 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.
57. The Tribunal also accepts Person X's comments that it continues to be a criminal act in Indonesia to advocate the independence of Aceh, and individuals associated with groups which continue to favour Aceh's independence would run the risk of harassment, arrest or prosecution in Indonesia. Further, individuals associated with these groups would also be at risk of harm from members and supporters of the mainstream GAM organisation. Moreover, the Tribunal accepts that ordinary citizens frequently used false identities when fleeing their home districts or fleeing Aceh, so as to avoid identifying themselves as being from conflict zones, to obscure their Acehnese origins, to ensure they did not endanger family members back in their home villages.

58. Looking at all the evidence, the Tribunal finds that there is discriminatory and systematic conduct against persons who continue to favour Aceh's independence leading to harassment and arrest by government forces.
59. The Tribunal accepts that the Indonesian authorities harass Acehnese as referred to by Person X above. It also accepts the comments made by UNHCR in a submission regarding the applicant's husband (folio 138 of the applicant's RRT file) that:

The impact of the conflict has also spread beyond Aceh province and now affects other parts of the country as well. In particular, many Acehnese and some human rights activists have complained of both police harassment and a climate of general suspicion against Acehnese throughout Indonesia.

60. Having regard to this information, the Tribunal finds that the police and the state would not protect the applicant because of her imputed political profile.
61. The Tribunal is satisfied that there is a real chance of persecution occurring to the applicant in the reasonably foreseeable future, if she were to return to Indonesia. The Tribunal is satisfied that the applicant's imputed political opinion is the essential and significant reason for the persecution which she fears, as required by paragraph 91R(1)(a) of the Act. The Tribunal further considers that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason.
62. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country. The international community is not under an obligation to provide protection outside the borders of the country of nationality if real protection can be found within those borders. Therefore, even if an applicant has a well-founded fear of persecution in their home region, the Convention does not provide protection if they could nevertheless avail themselves of the real protection of their country of nationality elsewhere within that country: *Randhawa v Minister for Immigration Local Government & Ethnic Affairs* (1994) 52 FCR 437 per Black CJ at 440-1.
63. However, this principle only applies to people who can genuinely access domestic protection, and for whom the reality of protection is meaningful. If relocation is not a reasonable option in the particular circumstances, it may be said that, in the relevant sense, the person's fear of persecution in relation to that country as a whole is well-founded: *Randhawa* per Black CJ at 442-3, Beaumont J at 450-1.
64. In this case, the Tribunal has considered whether relocation is a reasonable option. The Tribunal finds that because of the ID requirement when moving to different areas of Indonesia, and her husband's political profile and years in Australia, as well as the applicant's, the applicant could not hide anywhere in Indonesia and remain safe from the government authorities. As a result, the Tribunal is satisfied that relocation is not reasonable in the applicant's case.

65. Looking at the evidence cumulatively, the Tribunal is satisfied that there is a real chance of Convention-related harm occurring to the applicant should she return to Indonesia now or in the foreseeable future on the basis of her imputed political opinion.
66. The Tribunal has considered whether the applicant has a legally enforceable right to enter and reside in any other country other than Indonesia (s.36(3) of the Act). The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than Indonesia.
67. Therefore the Tribunal is satisfied on the evidence before it that the applicant has a well-founded fear of persecution for a Convention related reason.
68. Accordingly, the Tribunal is satisfied that the applicant is a refugee.

CONCLUSIONS

69. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

70. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

<p>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. PRRRNP</p>
