



Awash in Aceh: In the northernmost province of the Indonesian island of Sumatra, the tsunami brought death and devastation to more than 800 kilometers of coastline.

Conflicts in the Wake of Catastrophe

Discussions about the relationship between mankind and climate are generally focused on the effects of human activity. **Arskal Salim's** field studies in the Indonesian province of Aceh, which was hit by a tsunami in December 2004, reveal how climatic events can impact social and economic order. At the time, the scientist was working at the **Max Planck Institute for Social Anthropology** in Halle.

TEXT **BIRGIT FENZEL**

The giant wave that crashed into the coasts bordering the Bay of Bengal at Christmas time in 2004 changed the fates of multitudes on a scale that few natural disasters in recent history have equaled. It is estimated that around 230,000 people perished in the floods. Worst hit of all was Aceh, the northernmost province of the Indonesian island of Sumatra. There, the wave rolled over 800 kilometers of coastline, dragging more than 160,000 of its inhabitants to their deaths and leaving behind a swath of devastation. More than 250,000 houses were totally or partially destroyed.

Some 23,330 hectares of rice paddies and a further 126,806 hectares of arable land were ruined by mud, sand and erosion. An estimated 300,000 plots of land were lost. Many landmarks also disappeared – the paths and trees that had once delineated the boundaries of land holdings in the vicinity of the coast were, like everything else, lost to the floods. Apart from the human dimension, the catastrophe also turned social and economic order into chaos in the areas affected.

“There were frequent disputes,” says Arskal Salim, describing the mood of potential conflict in Aceh after the catastrophe. An expert in law in Muslim contexts, Salim is currently assistant professor at the Institute for the Study of Muslim Civilisations at the Aga Khan University in London. He previously spent three years working at the Max Planck Institute for Social Anthropology in Halle/Saale where, under the auspices of the Project Group Legal Pluralism, he studied the legal system of the island state.

In the course of his studies between 2007 and 2008, Salim, who himself hails from the Indonesian island of Sulawesi, spent a total of ten months in Aceh. During this time, and against the backdrop of the disaster, he authored several works that deal with the tense relationship between the civil and religious courts, and Islam and Adat law, as the customary law is called that predates Islam and that even today is still widely applied by societies in the Indonesian archipelago. “I wanted to find out how people resolve their conflicts in a legal system that permits a large number of competing subsystems, laws, norms and moral concepts,” says Salim.

LANDMARKS AND DOCUMENTS WASHED AWAY

With so many dead or missing, the survivors were suddenly faced with the task of reestablishing issues of ownership. Legal aspects of inheritance took on a new importance. Many of those who survived were orphans below the age of maturity. Now it was a question of establishing who should have custody of them and how to ensure that, when they came of age, they would receive the houses and land to which they were entitled. However, before the reconstruction could begin, the land ownership had to be settled beyond doubt.

As Salim discovered in his research in the post-tsunami region, this proved to be far from easy in practice. “The tsunami had also wiped out landmarks and land boundaries,” says Salim, enumerating one of the big problems that impeded clarification of such legal mat-



ters. Since most of the deeds and documents had disappeared in the floods, it was often very difficult to unambiguously attribute parcels of land or identify their boundaries.

“This situation provided an opportunity for many people to claim pieces of land or regain the ownership that previous reforms had deprived them of. Others simply appropriated abandoned plots whose original owners or inheritors were unknown,” explains Salim, describing the post-catastrophe scenario.

After the floods came discord. Neighbors who had previously lived in peace and harmony suddenly began to argue over land boundaries and rights of use. “All of a sudden, people were envious of one another,” says Arskal Salim of the conflicts fomenting within village communities. For example, if one neighbor received more money from the aid funds to rebuild his home than another, resentment seethed behind the freshly re-erected garden fence. For scientists who, like 39-year-old Salim, have an interest in the resolution of conflict in a plural legal sys-



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tem, the province in northeastern Sumatra offered a wealth of illustrative material as it struggled to overcome the consequences of disaster.

CATASTROPHE AS A CATALYST OF PEACE

“Legal pluralism has a long tradition in Indonesia,” explains Salim, with reference to the history of the legal system in these islands. The way in which the various laws, norms and customs have changed in competition with one another has fascinated him since the very start of his scientific career. When the sultans still held sway in the 16th century, long before the spread of Islam, a customary law was practiced; to this day, there remain regional differences in the Adat interpretation of what is lawful.

Under Dutch colonial rule, after the declaration of independence and in the throes of creating a modern central state, the legal system continued to develop new facets. In the early 2000s, for example, the Indonesian government permitted certain provinces – often

with ethnically diverse populations – to have specific laws that applied to them alone. “Paradoxically, this subculture emerged as a product of Indonesia’s efforts to create a standardized structure with a modern, homogeneous legislation,” Salim continues.

However, these attempts to create uniformity out of diversity frequently collided with ethnic differences and regional peculiarities among the traditional legal concepts and religious laws. In the province of Aceh, this led to a bloody civil war that lasted for almost 30 years and claimed the lives of around 1,200 people – though it must be said that the dispute centered mainly on control of the region’s many natural resources of which the central government and the military wished to avail themselves. The conflict was brought to an end eight months after the tsunami with a peace treaty signed in August 2005 in the Finnish capital of Helsinki by representatives of the rebel Free Aceh Movement and the Indonesian government.

“The present system of order is a product of the social and political

- 1 In his conversations with the inhabitants of Aceh, researcher Arskal Salim (left) discovered what legal issues landowners were faced with after the disaster.
- 2 Plan of a parcel of land. Many documents like this were lost in the flood.
- 3 After prolonged negotiations, most of those involved in disputes over land rights opted for a compromise solution.

events that have taken place since the tsunami,” says Arskal Salim, who credits the natural disaster with a role in the process. In his opinion, the catastrophe did not directly inspire the changes that have taken place. Rather, it acted as a catalyst for change. It is questionable whether the peace agreement signed by the Free Aceh Movement and representatives of the Indonesian government would have come about if the fatal wave had not rolled in.

“In an attempt to settle this bloody conflict, the Indonesian government made extensive legal concessions to its rebellious province,” says Salim, explaining the steps intended to ease the way to peace. Officially, Aceh was giv-



en a special autonomous status that not only once again legitimized traditional concepts of Adat law, but also permitted the religious courts to be developed into autonomous institutions under Sharia law. “The latter were given more extensive judicial powers than those of other religious courts outside of Aceh,” says the scientist.

In his mind, the question now arises as to how far the regained authority of Sharia or other religious concepts will influence the legal conflicts occasioned by the tsunami. That was the focus of his sub-project in Aceh, which he carried out as part of the comparative research work undertaken by the project group headed by Keebet and Franz von Benda-Beckmann. He was specifically interested in disputes revolving around land rights.

“One must understand that the relationship between land rights and Islam in Muslim societies is based on the concept that land is something holy, regarded more as a gift from God that is held in trust rather than as a possession or commodity,” explains Salim. It is permitted to use land for productive

purposes, but not to waste or over-exploit it. This concept of common property is typical of the Adat systems in Indonesia, which also – in contrast to Islamic law – apply this legal status to defend land as something that is not for sale.

COMPENSATION PAYMENTS CREATE DISCORD

In the ten months that Arskal Salim spent doing field studies in Aceh between 2007 and 2008, he came across two cases that illustrated to him how, in case of doubt, the inhabitants of this province deal with crucial issues when the chips are down. It was all a matter of the ownership of some land in one of the worst-affected areas of Aceh, in Lhoknga, some 20 kilometers southwest of the provincial capital of Banda Aceh. The devastation wrought by the earthquake and the tsunami in 2004 was particularly bad there. Several schools, a hospital and many other public buildings were destroyed, along with the principal road serving the area.

The highway connecting the community with the capital was so badly damaged that it seemed a better idea to start from scratch with a new road in a new location. The owners of the properties across which the new road was to be built would receive financial compensation. The money was ready and available, coming from the United States Agency for International Development (USAID). It was the responsibility of the Indonesian government to purchase the parcels of land. However, the community objected in two cases, and the reconstruction of this essential main road was put on ice.

Specifically, it was a matter of two plots of land. One of them, measuring 6,102 square meters, was situated on the right side of the old road and was due to earn its owner a billion rupiahs (about 80,000 euros) in compensation. The other encompassed 7,204 square meters of coastal land for which compensation was to be paid in the amount of 1,440,800,000 rupiahs (about 115,000 euros). These sums were claimed by two men who could even produce documents certifying their rights to the pieces of land in question.



Bird's eye view of the catastrophe of December 2004: These two aerial photos show the coast of Banda Aceh six months before the tsunami and two days after (right).

One of the men had a deed confirming his right to the property on a hereditary leasehold basis. He had acquired the right from a Dutch firm that had worked plantations in the region since colonial times. In the early 1960s, the Indonesian government had expropriated colonial property and taken it into state ownership. However, the owner had assumed that his hereditary lease was unaffected – in fact, in 1955, he had had his claims officially confirmed by the Indonesian Minister of Justice as a precaution.

Despite this, he ought to have had his lease renewed after 20 years, because early in the 1960s, during the course of renewed reforms of land ownership, the concept of the hereditary lease in Indonesia had been transmuted into a right to use and enjoy state property for a strictly limited time. The property owner had, however, failed to do this, claiming special extenuating circumstances in his proceedings against the authority responsible for the compensation payments. “He pleaded that, since the late 1950s, the whole area in question had been occu-

pied by the military and that he was therefore unable to renew his land rights,” Salim explains.

CRUCIAL ISSUES IN THE DUEL BETWEEN LEGAL SYSTEMS

As evidence, the owner presented a letter from the then commander of the army in Aceh confirming his statement. When he then also produced a letter from the prevailing military office in Aceh stating that the army had officially returned his property to him, there was no further reason for the authority not to pay the compensation.

However, the community then lodged an objection and claimed the billion rupiahs for itself. Represented by two attorneys, the village elders filed a suit with the civil court. “That enabled them to put a stop on the payment for the time being because, according to the manual covering land purchases for public infrastructure in the tsunami regions, such payments can be made only when ownership is absolutely clear,” Salim says, explaining what happened. At a meeting with represent-

atives of the council of elders, he learned their perspective on the matter. “In the opinion of one of their members, as communal property, the land belonged to everyone in the village, and as such, could not be bought by strangers.”

Thus, when the Dutch planters acquired the land in the colonial era, they could never have received title to it. At best, they would have held it on loan of some kind, or simply seized it from the community as the real owners. “So when the colonial era ended, the land should have been returned to its original owners,” says Salim, illustrating this interpretation of the underlying principles of Adat law as conceived by the community.

The community employed a similar argument to prevent the payment of compensation for the second site. Here, too, the claimant had provided the authority with official documents. He had a certificate from the Indonesian land bureau dating from 1991 that confirmed him as the owner of the parcel in question. “From a legal perspective, he had a much stronger claim to ownership than the other claimant, because



his title was granted by an official procedure under Indonesia's new land laws," says Salim.

Despite this, the community's objection was enough to prevent the money from being paid. As a result, the case came to be heard by the civil court in Jantho, where the two disputes with the community were dealt with jointly. As part of his research, Arskal Salim met with the judge who presided over the case. From her he learned that the matter was settled peaceably after three short hearings. As she explained to him, she did little more than suggest a compromise solution – just as the law prescribes in such cases.

GOING TO COURT IN LARGE NUMBERS

The three court hearings themselves were anything but quiet and peaceful. By this time, the community had mobilized a large number of its members to attend the court where they faced a crowd recruited by the son of the leaseholder from among the ranks of former resistance fighters who were there to support his father. The second landowner also brought a sizeable body of his own supporters to attend the hearings.

The solution was essentially due to the efforts of an attorney appointed by four of the village elders and a representative of the district authority. "In his view, in terms of their rights to the land, none of the parties was in a particularly strong position," Salim recalls from his discussions with the lawyer. As such, none of the parties were entitled to the compensation payments either.



- 1 Peace at last: Eight months after the tsunami, the Indonesian Minister of Justice Hamid Awaluddin, former President of Finland Martti Ahtisaari, and Malik Mahmood of the Free Aceh Movement (from left) signed a treaty between the rebel organization and the Indonesian government.
- 2 Gates of justice: The civil courts offer one of many ways for people to settle legal issues of land ownership.

And that did not sit well with the lawyer, believes Salim: "At the end of the day, he was concerned about where the community would find the money to pay his fee."

Since it was certainly not the lawyer's intention to provide his services for nothing, he left no stone unturned to bring the parties to the negotiating table. In the end, it was the leaseholder who opened the way for a compro-

mise. "He offered to donate a part of his compensation to rebuild the mosque that was destroyed by the tsunami," says Salim, describing the first step toward resolving these land disputes. After that, the parties haggled for a while over the amounts to be donated before finally agreeing that the men would each pay the community 300 million rupiahs to rebuild the mosque.

The procedures adopted by the parties in this dispute are characteristic of the skills displayed by the people of Aceh in maneuvering their way through a pluralistic legal system to assert their rights. According to Salim: "It should be noted how different interpretations of facts, norms, rules, institutions, actors, motivations and interests culminate in claims that translate into passionate disputes, and how these, in turn, lead to a solution."

A SECULAR BATTLE FOUGHT ON PAPER

The competing norms applied by the parties to protest their rights to the properties in this particular dispute are just a few of a whole range of alternatives that the pluralist legal system in Aceh has to offer: Adat law, land law dating from the Dutch colonial era, national land tenure law at various stages of reform, and Islamic law. From this perspective, the behavior of the people in this part of the Indonesian archipelago calls to mind the advertising slogan employed by a Swedish furniture store chain: "Discover the possibilities." Salim continues: "The way in which the people of Aceh pick out the arguments that offer the best prospect of success from among the plethora of rules and norms that the pluralist system in their region has to offer is like shopping around for justification."

The case also offers some interesting clues to the importance of religious concepts in the resolution of land disputes. "Given the large role that religion plays in the daily lives of the people in Aceh and the view of land as a gift from God,

one really ought to expect these factors to play a role in this context as well," says the scientist. In fact, at first sight, the sequence followed by the attempts at mediation is reminiscent of the traditional Islamic process of conflict resolution, the *musyawarah*. "Freely translated, it means something like 'consultation to reach a solution.'"

Typically, this procedure is embedded in a religious-cultural setting. It begins with a shared prayer, and at the end of the procedure, the parties to the dispute present their mutual apologies and share a meal in celebration. The whole proceedings take place in a mosque or at least in a communal building. However, all these circumstances that lend the procedure a religious character were absent from the dispute over the two plots of land. "The initiative emerged from the civil court, the whole process was driven by a lawyer, there were no prayers or celebratory feasts, and the parties met in a room adjoining the civil court," Salim says, describing the secular character of the mediation in this case.

Likewise, in terms of the arguments employed, any religiously inspired ideas were conspicuous by their absence. Instead, the two landowners fought a paper battle with official documents and deeds according to the rules of secular legal artifice, whereas their opponents sought recourse in Adat law. "The fact is that, in these proceedings, religion made an appearance only in the final result, with the parties agreeing to apply a part of the compensation payments to rebuild the mosque destroyed by the tsunami," concludes Salim in his role as a specialist in ethnog-

raphy and law. Moreover, in the end, the parties were not particularly strict in following through, as Arskal Salim noticed on another visit to the province in mid-2008. "The mosque was only partially renovated, with the work paid for with money from the national fund for reconstruction." One of the village elders eventually told Salim what had become of the donations from the two landowners: The money had been spent on enlarging the car park in front of the mosque. ◀

GLOSSARY

Legal pluralism

The coexistence of multiple concepts of legal order within one socio-political space (be it a village, a province such as Aceh, a state, or in the world as a whole). The term global legal pluralism is now also used.

Sharia

The religious rules of conduct of Islam and Islamic law.

Adat

An all-embracing term that refers to the morals, customs, traditions, social organization, law and partially pre-Islamic beliefs practiced in most ethnic societies in Indonesia. Large parts of the legal aspects of Adat were treated as Adat law in the colonial era and recognized by the law of the land as the prevailing system of law. Even beyond this degree of recognition, many Adat institutions still prevail as village or tribal law. Adat law is sometimes translated as custom or customary law. This can lead to misunderstandings, as the rules of Adat law are flexible and have, to a large extent, been adapted to changing economic, social and political circumstances.