

**Asia Research Institute  
Working Paper Series No. 142**

**The Revival Dilemma:  
Reflections on Human Rights and  
Self-Determination in Eastern Indonesia**

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**September 2010**



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## The Revival Dilemma: Reflections on Human Rights and Self-Determination in Eastern Indonesia<sup>1</sup>

### INTRODUCTION

The implementation of new national laws on decentralisation in Eastern Indonesia provides an appropriate case study to discuss dilemmas emerging out of the declaration of collective cultural rights as human rights. The promotion of the right to culture as one of the basic human rights is a highly contested domain: At the same time, culture is seen as a basic need and as one of the main hindrances to the establishment of a universal morality protecting the individual human being worldwide.<sup>2</sup> Incorporating collective rights into the catalogue of basic human rights, this cultural dimension of human rights has been advanced. This requires the translation of Western human rights concepts into local cultural contexts and, the other way around, of local structures and ideas into an internationally comprehensible human rights language. This contribution discusses the ambiguity and problematic nature of these processes, with special attention paid to the (collective) right to (cultural) self-determination and the accompanying re-empowerment of traditional leadership. Based on material from the Moluccas, an archipelago in Eastern Indonesia – in focus are the reinstallation of traditional village heads (*raja*) and the revival and re-recognition of traditional villages (*negeri*) – it analyses the uneasy relationship of the right to culture and a Western understanding of democracy. Moreover, it aims to problematise the static notion of culture involved in these debates on an international, national and local level. The dilemma of flexible cultural traits and traditions and the need to fix them in order to codify and (seemingly) protect them is a central theme of this article.

For many reasons, Indonesia provides excellent case studies to discuss the complexity and contradictions of current debates on human rights and self-determination: the country's fragmented and multi-ethnic composition, its political transformation during the last decade, its role in the 'Asian values' debate and its vivid human rights activist culture. Although Indonesia is finally on its way to democratisation and has recently ratified the two main international human rights covenants, it still frequently makes headlines due to human rights violations.<sup>3</sup> In general, the democratisation process in Indonesia had a rather miserable start. With the stepping down of its authoritarian president Suharto (1966–1998), several long suppressed economical, political, social, ethnic and religious conflicts all over Indonesia erupted. Whilst cases with a separatist background such as Aceh, Papua and East Timor dominate international headlines, large-scale violence that occurred in Kalimantan, Poso

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<sup>1</sup> I would like to thank the Asia Research Institute, National University of Singapore, for supporting this research project and the Royal Netherlands Institute of Southeast Asian and Caribbean Studies (KITLV) and the Van Vollenhoven Institute in Leiden for providing me the opportunity to discuss and revise a draft version of this paper. I also thank the anonymous reviewers for their feedback.

<sup>2</sup> For the former see e.g. the International Conference organised by the Dutch Prince Claus Fund in 2006 in The Hague, the Netherlands, as part of its *Cultural Emergency Response* (CER) program that provides global 'first aid' for cultural heritage that is damaged or destroyed by disasters caused by conflict, natural catastrophes and climate change (Chronis, 2006). For the latter see the literature on the universalism-relativism of human rights debate.

<sup>3</sup> For current human rights violations in Indonesia see e.g. the Country Report on Human Rights Practices of the U.S. Department of State (2006). For human rights in Indonesia see also Juwana (2006) and Hadiprayitno (2010).

(Sulawesi) and the Moluccas are usually only mentioned in passing on an international level.<sup>4</sup> This article focuses on the Moluccas, where one of the most violent and long-lasting post-Suharto conflicts took place from 1999 until 2002/3, due to a strategic mobilisation process, mainly between Christians and Muslims. As in many other conflicts worldwide, there is no doubt that human rights were trampled on in the Moluccas and thousands of people had to suffer. Human rights seem to be among the first victims in such cases, just like the truth is in *reporting* violent conflicts (Knightley 1975). The situation is much less clear *after* the conflict, as this article will demonstrate.

Due to internal and external pressures, new laws on decentralisation and autonomy were passed in post-Suharto Indonesia. One of the effects was a revival of *adat* – tradition and customary law – all over the country, what Aspinall and Fealy (2003a: 1/2) call "the rise of the local", Franz and Keebet von Benda-Beckmann (2001: 7) a "new form of regionalism", and Bubandt (2002: 115) "new politics of tradition". At first glance, it looks as if national and international human rights activists and local people fighting for more autonomy and indigenous peoples' rights have finally gained considerable ground. But a closer look reveals that these developments are highly ambiguous and not only an indication of a new and open pluralism in Indonesia, but also of exclusivism and divisiveness. As Henley and Davidson (2007) write in the introduction to their edited volume on *The Revival of Tradition in Indonesian Politics*:

In its ambiguous and protean character, by turns progressive and reactionary, emancipating and authoritarian, idealistic and manipulative, adat revivalism in some ways epitomizes the paradoxes of the post-New Order era. ... an era in which unprecedented political freedom and strikingly successful formal democratization ... have gone hand in hand with ethnic violence outside the electoral sphere, burgeoning corruption, continued radical failure of legal and judicial institutions, and strong persistence of New Order military, bureaucratic and business interests in most areas of political life

(Henley and Davidson 2007: 18).

The Moluccas are especially interesting since the revival of *adat* in this area was not only part of the common trend in Indonesia, but also a strategic move by local people to foster reconciliation between the warring parties. The Moluccas provide an illuminating case to discuss the challenging and problematic nature of the revival of tradition and the right to self-determination in the current democratisation process in Indonesia. Drawing on ethnographic fieldwork I conducted during several stays in the Central Moluccas (a district of the Moluccan province) between 2002 and 2008, I aim to move away from a prevailing overly legalistic and political science understanding of human rights and illustrate and stress the value of an anthropological look at these problems. What becomes clear throughout this paper is that "ethnography is not about a rehearsal or repetition of the voices of any given community but a critical engagement with it", as David Valentine, a promoter of an engaged anthropology, stated.<sup>5</sup>

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<sup>4</sup> For analyses of the conflicts in Kalimantan and Poso see, for example, Acciaioli 2001, Aragon 2001, Davidson 2008. Another case that made it into international headlines is the murder of the prominent human rights activist Munir.

<sup>5</sup> *World Views (Newsletter of the Department of Anthropology, University of Minnesota)* Fall 2005: 3 (<http://anthropology.umn.edu/events/pdf/newsletter.pdf>, 29.12.2009).

In order to position the Moluccan case in a larger context of current debates on human rights and self-determination, I will briefly outline the discourse on collective and indigenous rights in general, its problems and challenges, relevant concepts of culture and contributions social anthropology can make. Reflections on the current transition to a more decentralised state, the accompanying re-emergence of "old elites" and on the human rights situation in Indonesia then lead us to the Moluccas. This part of the article tracks and analyses the implementation of the new laws on the provincial, the district and the village level and the problems and challenges coming along with it. This section ends with reflections on the revival of tradition as means for peace building in the Moluccas. To close the circle the final part then summarizes the challenges arising in a situation where both the right to culture as a collective human right is granted and a Western understanding of democracy is applied.

### **COLLECTIVE RIGHTS, ESSENTIALISM AND CULTURAL FLEXIBILITY**

With the increasing emphasis on the cultural dimension of the human rights debate, collective rights came into the foreground, in particular indigenous rights – the so-called fourth generation of human rights (Messer 1993: 222/223). According to Messer (1993, 2006: 503), anthropologists had a crucial influence on the creation of new categories of rights in the human rights discourse, mainly through advocating rights of collectivities, especially indigenous people.<sup>6</sup> With Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries, the International Labor Organization revised Convention No. 107 (1957) and removed the latter's assimilationist orientation toward indigenous populations, promoting sustainable autonomy instead (from now on: ILO 169). In 1982 the UN established a Working Group on Indigenous Populations (WGIP). Partly integrating principles of ILO 169 (Hitchcock 2003: 221), it formulated a Draft Declaration on the Rights of Indigenous Peoples in 1994 that was revised in 2006 (UNDDRIP). Apart from indigenous peoples' right to self-determination and autonomy or self-government in matters relating to their internal and local affairs (Article 3 and 4), the UNDDRIP emphasizes their right "to practice and revitalise their cultural traditions and customs" (Article 11.1), "to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions" (Article 31.1), "to determine the structures and to select the membership of their institutions in accordance with their own procedures" (Article 33.2), including juridical systems and customs, as long as they are in accordance with international human rights standards (Article 34) – only to mention a few of the articles that are of interest for this particular paper and its focus on self-determination and the revival of tradition in Indonesia and the Moluccas. Whereas ILO 169 was only ratified by 17 countries (not by Indonesia), the 2006 draft of the WGIP was adopted with thirty votes in favour (among them Indonesia), two against, and twelve abstentions (<http://www.iwgia.org/sw248.asp>, 21.10.2006). After more than 20 years of negotiations, the United Nations General Assembly finally adopted the Declaration on September 13, 2007 (UNDRIP), with a majority of 143 votes in favour, four against and eleven abstentions (<http://www.iwgia.org/sw248.asp>, 14.11.2007).<sup>7</sup>

<sup>6</sup> For a history of the human rights–social anthropology relationship see, for example, Goodale 2006a, b, Messer 1993. Regarding anthropology and human rights or human rights and local cultures see also American Anthropological Association 2006, An-Na'im 1992a, Cowan, Dembour and Wilson 2001b, Forsythe and McMahon 2003b, Horowitz and Schnabel 2004a, Jacobsen and Bruun 2000, Merry 2006, Wilson 1997.

<sup>7</sup> For a very helpful overview of indigenous communities in Indonesian (national) legislation see Bedner and Huis 2008. For a more general recent discussion of the concept of indigeneity see Barnard 2006, Guenther, Kenrick, Kuper, et al. 2006, Kuper 2003.

The enormous challenge is "to achieve unity in basic human rights practices without destroying cultural diversity" (Messer 1993: 232). We are caught in an alleged paradox, that we somehow have to translate the human rights system with its original emphasis on individualism, bodily integrity and equality into the frameworks and standards of local cultures and contexts that are often shaped in terms of collective rights, to which individuals have to subordinate themselves (see also Merry 2005: 38/39); collective rights that are now reformulated as human rights. The enforcement of collective rights is necessary for the survival of cultures, but can also bear dangers, especially when they are seen as compatible or even superior to individual rights: Collective rights can become exclusivist rights, marginalizing categories of individuals who are external to a specific local community where they live, but are nonetheless part of the same nation state (Howard 1992: 97/98).<sup>8</sup> The emphasis on collective rights and the simplified image of the state versus cultural local communities can also blind us to essential internal differences of a seemingly homogeneous community, be they political, economic, social or cultural (see also Cowan 2001: 155, Freeman 2000: 53). Whereas Merry tries to substantiate this in her diverse publications on human rights and gender violence (see in particular Merry 2001: 38), I will do so with the Moluccan case study.

Several authors in Cowan et al.'s edited volume on anthropological perspectives on culture and rights (2001a: 150) show that both cultural activists or social movements and policy makers tend to essentialise indigenous culture. The problem is that local communities or indigenous groups often have to prove that they still live their 'traditional lifestyle' by somehow substantiating 'cultural authenticity', which often implies a static and essentialised notion of culture, in order to be accorded collective/indigenous rights.<sup>9</sup> Another instance of essentialisation is when cultural rights need to be codified. However, a prerequisite for constructing the possibilities of action (Merry 2006: 9) and the successful mediation between a universalistic human rights concept and local culture is the dismissal of culture as something reified and essentialised and the emphasis on an open and flexible notion of culture, as has been promoted by social anthropologists for the last decades. Modernity is a necessary part of that culture concept and not opposed to tradition. Just as in Indonesia, it is often exactly modernity and its achievements such as democratisation processes that drive (indigenous) people to revive their traditions, traditional structures and values as well as customary law. As the contributions to a special journal issue on *The revitalisation of tradition* illustrate, each of these recent revival processes – be it in Asia, Latin America or Africa – is based on complex negotiation processes, which oscillate between the selection of traditional elements from 'the past' and their use or instrumentalisation as future-oriented strategies (Bräuchler and Widlok 2007). To take the fluidity of culture into account implies an extremely difficult balancing act as will be illustrated with the new Indonesian autonomy law and its implementation on the various government levels.

A related question is who claims to speak for 'a culture', who constructs this uniform image that enables the community to claim their rights, out of which interests and with which legitimisation. 'Culture' has definitely become an effective tool for resistance, but caution is needed here, since 'culture' is too often politicised and essentialised. It is rather ironic to see anthropologists finally giving up static concepts of culture in favour of more dynamic ones, only to see the former being hijacked by interest groups on diverse levels, which use 'culture'

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<sup>8</sup> Compare also Kuper 2003: 390.

<sup>9</sup> See, for instance, Cowan 2001: 171, 2006: 17, Gellner 2001: 177, Guenther, Kenrick, Kuper, et al. 2006: 24, Merry 2001: 39, 42, Sieder and Witchell 2001: 201-207.

as "a rhetorical object" (Cowan, Dembour and Wilson 2001c: 3). The example at hand are the (re)emerging local elites or "new ethnic elites" (Klinken 2002) in Indonesia who are accused of using tradition as an excuse to promote their own interests as will be discussed below (compare also Franz and Keebet von Benda-Beckmann and Turner 2007: 29). 'Traditional leaders' too often do not act in the spirit of their people. In Indonesia, the so-called *putra daerah* (literally "sons of the region") issue led to a nationwide debate on whether decentralisation really leads to democratisation through the strengthening of local structures and identities or rather fosters the re-emergence of feudalistic structures in many parts of Indonesia as well as an increasing tendency to ethnic discrimination in politics and economy on the regional and the local levels.<sup>10</sup>

In line with a flexible notion of culture, human rights have to be seen as a social construct born out of and developed in a specific socio-historic context. The same is true for customary law. Customary law in post-colonial societies, which people refer to or want to revitalise nowadays, is not an unchanging heritage to be rediscovered from the pre-colonial past, but something that was (partly) constructed, if not invented in the colonial period through the interaction of the colonial powers with the local contexts (see, e.g., Keebet von Benda-Beckmann 2007). In Indonesia, for example, the Dutch were the first to record and thus 'fix' traditional law called *adat*. Nevertheless, flexibility and adaptability to changing circumstances and local needs were already seen as the main survival strategies of *adat* by those, who were the first to actually write down *adat* law in the early 20<sup>th</sup> century in a systematic way: Cornelis van Vollenhoven and his Dutch crew (Fasseur 2007: 58, 61).

## **INDONESIA: 'UNITY IN DIVERSITY', DECENTRALISATION AND HUMAN RIGHTS**

Indonesia was one of the protagonists in the 'Asian values' debate about the rejection of a Western human rights imperialism, thus, in a way, legitimising the Suharto regime's suppression of its own people.<sup>11</sup> Human rights violations were always part of practical policy in Indonesia, be it the introduction of 'guided democracy' by its first president Sukarno in 1959, be it the mass killings of 1965, where hundreds of thousands of alleged communists were massacred, the invasion of East Timor in 1975 after the Portuguese had left the country or the Dili massacre in 1991, the restriction on political parties and the freedom of the press, the killing of alleged sorcerers in East Java in the 1990s or the constant human rights violations in Papua and Aceh – just to mention a few. The Indonesian military played a prominent role in most of these cases. The motto of the Indonesian state *Bhinneka Tunggal Ika* (unity in diversity) only very superficially accommodated the cultural plurality of the country. Important instruments to foster both unification and the Suharto regime's power were the military as the preserver of national unity, transmigration programmes mainly transferring people from overpopulated Java to the outer Islands, and "a national edifice of territorial control" (Thorburn 2003) that was initiated with Law No. 5 of 1974 on Regional Government (*Undang-undang no. 5 tahun 1974 tentang pokok-pokok pemerintahan di daerah*, UU 5/1974) and culminated in the village law No. 5 of 1979 (*Undang-undang no. 5 tahun 1979 tentang pemerintahan desa*, UU 5/1979), which resulted in the standardisation or

<sup>10</sup> See, e.g., Fauzi and Zakaria 2002, Warren 2004.

<sup>11</sup> For details on the 'Asian values' debate and critique see Bruun and Jacobsen 2000: 2, Chan 2000: 60, Christie and Roy 2001: Introduction, Cowan, Dembour and Wilson 2001c: 6/7, Eysink 2006, Forsythe and McMahon 2003a: 306, Horowitz and Schnabel 2004b: 9, Jacobsen and Bruun 2000.

javanisation of governmental structures all over Indonesia from the top down to the village level. Although in the Moluccas, as in other parts of Indonesia, UU 5/1979 was not the only factor inducing change, and reactions towards the law differed (see e.g. Bartels 1977, Cooley 1961, Pannell 2003: 28, Pariela 1996), it nonetheless destroyed local structures and autonomous village units, marginalized traditional functionaries and institutions as well as customary law, and deprived them of their meaning (Fauzi and Zakaria 2002, Kato 1989, Thorburn 2003). Only after the stepping down of Suharto in 1998, did the doors open for the re-constitution of the original autonomy of local communities, the introduction of democratic values into the Indonesian state structure, and the opening up towards human rights. This became evident in three instances: the passing of laws on decentralisation in 1999 and 2004, constitutional amendments in 2000, and the passing of the Human Rights Law in 1999.

### **Decentralisation Law**

In the long run, the Indonesian government could not withstand internal and external pressures, which were to a large extent influenced by the international human rights and democratisation discourse. The 1990s in Indonesia saw a decisive opening up of space for social movements which finally resulted in substantive upheavels and the 'resignation' of the authoritarian Suharto regime in May 1998. In 1999 laws on the devolution of political authority (No. 22) and fiscal decentralisation (No. 25) were passed under the interim president B.J. Habibie replacing UU 5/1974 and UU 5/1979, which was declared as not being in accordance with Indonesia's 1945 Constitution (Fauzi and Zakaria 2002: 8/9). The main beneficiaries of the new decentralisation law in Indonesia's territorial government structure were the districts (*kabupaten*) and the villages (*desa*), not the larger provinces (*provinsi*), in order to prevent any separatist tendencies (Franz and Keebet von Benda-Beckmann 2001: 2, Kreuzer 2002: 25, Schulte Nordholt 2003: 546/565). The authorities started to implement the 1999 laws in 2001 and revised them with law No. 32 and 33 respectively in 2004 (UU 32 & 33/2004). The new legislation has been one important step on the way to a more democratic Indonesia and towards granting the right to self-determination to the Indonesian people. Chapter XI of UU 32/2004 is dedicated to the village level, the focus of my attention.<sup>12</sup>

As mentioned before, one significant effect of the new decentralisation policies was the emergence of *adat* revival movements throughout Indonesia – a quite ambiguous development according to its many observers.<sup>13</sup> On the one hand, the new law enables the re-strengthening or rediscovery of local traditions, identities, political structures (such as the *nagari* in West Sumatra and the *negeri* in the Moluccas) and traditional local mechanisms of integration and conflict resolution that might both foster peace and democracy. *Adat* is here taken as expressing the common people's way of life and giving voice to the grassroots. And, it allows for important steps towards a more just access to resources, thus setting an end to the central government's exclusive exploitation of local resources. But, on the other hand, the

<sup>12</sup> For a more general overview of the new legislation, its diverse effects, and a history of decentralisation politics in Indonesia see, for example, Aspinall and Fealy 2003a, b, Bach 2003, Kivimäki, Jacobsen and Kartasmita 2002.

<sup>13</sup> For a good discussion of the ambiguity of *adat* revivalism in post-Suharto Indonesia, including case studies from various regions in Indonesia, see Davidson and Henley 2007. Besides this there is a wealth of material available by now about revival movements throughout Indonesia; among them, for example, on Maluku (Bräuchler 2007, 2009a, b), on Minahasa (North Sulawesi) (Jacobsen 2002a, b), on Minangkabau (West Sumatra) (Franz and Keebet von Benda-Beckmann 2001), on North Maluku (Bräuchler 2007, Bubandt 2002, Klinken 2007), and another volume comprising more cases studies, edited by Schulte Nordholt and van Klinken (2007).

revival of *adat* also fosters conflict and exclusion and, in some places, legitimises the re-emergence of authoritarian local elites. The main issue here are campaigns for and self-promotion of local people, the so-called *putra daerah*, "to control local government and secure preferential treatment for their communities in the allocation of economic resources and government positions" (Aspinall and Fealy 2003a: 6) – be it the sultans in the Northern Moluccas, Dayak elites in Kalimantan, *nagari* elites in Minangkabau, the Malay elite in Riau or *raja* in the Moluccas.<sup>14</sup> In many cases, the *putra daerah* are seen as the motors for the re-establishment of feudal structures (in case such forms did exist before) and hierarchies, the exclusion of non-*adat* people, the instigation of local conflicts, the undermining of a national Indonesian identity, and the exploitation of natural resources.<sup>15</sup> The traditional leaders, whose revival and reinstallation are now legalised on certain levels, are often not democratically chosen, and genealogy is put before meritocracy, which is, at least at first sight, against any principles of individual equality, the main objective of article 2 of the Universal Declaration of Human Rights of 1948. Observers such as Bach (2003) and Davidson and Henley (2007) argue that the devolution of power in Indonesia did not lead to more democracy, but to the decentralisation of corruption and the instrumentalisation of traditional leader-/ownership structures for the benefit of small elites.

Having said this, often it is also these local leaders who are the most important interface between the local people and the Indonesian government. It is these leaders that can facilitate the empowerment of their people and it is they who have the potential to act as integrative force in conflict areas through the re-employment of integrative symbols and conflict resolution and peace mechanisms. I will come back to this later.

What is evident is that "with this new politics of tradition, important changes to the ways local identity is imagined and cultural politics is conducted are likely to occur in the coming years in Indonesia" (Bubandt 2002: 115). What is just as evident is that power, power struggles, competition, and intense negotiations play a prominent role in the implementation processes of the decentralisation law – on all levels. National laws have to be translated into local contexts. The first step is the composing of Government Regulations at the provincial level (Peraturan Daerah Provinsi, Perda Provinsi – e.g. Maluku) that deal with certain aspects of the new law, such, as in our case, the re-establishment of traditional political forms on the village level. This is then further adapted to a certain region through a Government Regulation at the district level (Perda Kabupaten – e.g. Central Moluccas). The last step will be to draft so-called village regulations (Perda *Negeri*, as for the Central Moluccas) that refer to local *adat* and can thus provide detailed information on how to implement certain aspects of national law.

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<sup>14</sup> For Bangka-Belitung, for example, see Permana 2002, for Kalimantan see Klinken 2007, McCarthy 2004, for (North) Maluku see Bräuchler 2007, Bubandt 2002, Klinken 2001a, 2007, for Riau see Bach 2003, and for West Sumatra see Franz and Keebet von Benda-Beckmann 2001. Prominent examples how the revival of traditions and traditional leadership instigated or deepened local conflicts are the sultanates and their traditional guards in Northern Maluku (see Bubandt 2002, Klinken 2001b) and the Dayak elite in West Kalimantan (Davidson 2007).

<sup>15</sup> Schulte Nordholt (2003: 571) even fears "that the environment will turn out to be decentralization's hardest-hit victim". Other researchers arguing for a negative impact of the new laws on the environment include Lounela 2004, McCarthy 2004, Resosudarmo 2003.

## Constitution of the Republic of Indonesia

To seemingly prove the serious nature of its efforts to foster democracy and human rights, the post-Suharto government even changed the national constitution of 1945 in 2000 (see also Hadiprayitno 2010). What was later put down in Article 2 (9) of UU 32/2004 is in fact a copy of the amended Article 18B (2) of the Constitution: "The Indonesian state acknowledges and respects the unity of *adat* law communities and their customary law as long as those are still alive and in line with the evolution of the people and the principles of the Unitary State of Indonesia, as regulated in its laws"<sup>16</sup> (compare Bedner and Huis 2008: 174). However, this implies that, in case of doubt, the state still has the upper hand. As argued by Bedner and Huis (2008: 175), "the issue of autonomy remains controversial, and districts still possess the instruments to hold a firm grip on the villages within their borders. The 'right of origin' as a source for autonomy is accordingly held at arm's length in order to prevent it from developing into a full-fledged weapon against central and district government control." Moreover, it is rather grotesque and contradictory to make "being alive" a condition, since it does not take the destructive forces of both colonialism and the Indonesian government into account and is also based on a rather essentialised concept of culture.

The other new provision added to the 1945 Constitution, which is of direct relevance to our discussions, is chapter XA on Human Rights. In Article 28I (3) one reads that "cultural identity and the rights of traditional communities [*masyarakat tradisional*] are respected in accordance with evolution of the times and civilization"<sup>17</sup>; a supportive statement towards the granting of cultural and collective rights to indigenous people. However, as pointed out by Bedner and Huis (2008: 170), the article avoids the term "*adat* community" (*masyarakat adat*) or "*adat* law community" (*masyarakat hukum adat*), since both terms bear connotations of autonomy.<sup>18</sup>

## Human Rights

However, the 'new Indonesia' also made other important steps in the matter of human rights. By the end of 1998, Indonesia had ratified the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the International Labour Organization's Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize. Restrictions concerning the formation of political parties were lifted and the mass media were granted freedom of expression (Christie and Roy 2001: 130). In 1999 the Indonesian government passed law No. 39 on Human Rights, which explicitly mentions that local *adat*, including traditional land rights, has to be acknowledged and protected by the law, the people and the government.<sup>19</sup> In 2005 and 2006 Indonesia ratified both Covenants on

<sup>16</sup> UU 32/2004, Chapter I, § 2 (9): *Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia, yang diatur dalam undang-undang.*

<sup>17</sup> UU Dasar Republik Indonesia, Chapter XA, § 28I (3): *Identitas budaya dan hak masyarakat tradisional dihormati selaras dengan perkembangan zaman dan peradaban.*

<sup>18</sup> Interestingly, in the Indonesian version of the 2007 UN Declaration on Indigenous Peoples, 'indigenous peoples' is translated with '*masyarakat adat*'. For an interpretation of such a translation, though in another context, see Henley and Davidson 2007: 28.

<sup>19</sup> UU 39/1999, Chapter II, § 6: *Dalam rangka penegakan hak asasi manusia, perbedaan dan kebutuhan dalam masyarakat hukum adat harus diperhatikan dan dilindungi oleh hukum, masyarakat, dan Pemerintah. Identitas budaya masyarakat hukum adat, termasuk hak atas tanah ulayat dilindungi, selaras dengan perkembangan zaman.* For a more detailed analysis of this article see Bedner and Huis 2008: 176/177.

Civil and Political Rights and Economic, Social and Cultural Rights (Eysink 2006: 9). As outlined above, the UNDDRIP/UNDRIP was also approved by Indonesia.

But there are still major shortcomings, and I only want to mention two examples. One is the draft bill establishing a Truth and Reconciliation Commission (Komisi Kebenaran dan Rekonsiliasi) that was submitted to the Indonesian parliament in 2001 (Zyl 2005: 332) and converted into law No. 27 in 2004. The body was intended to investigate political killings, disappearances and massacres that occurred during the Suharto regime. Indonesia's current president Susilo Bambang Yudhoyono never nominated the members of the commission, which was therefore doomed to inactivity until the law was nullified in December 2006 (*The Jakarta Post*, 8.12.2006). Human rights groups and international advisers had criticised certain sections of the law dealing with the compensation of victims and the treatment of human rights violators. Instead of revising those parts, the Constitutional Court decided to declare the entire law unconstitutional due to its many legal flaws. Up to the present time there has been no alternative law.<sup>20</sup> The other example that is connected to the first one is that almost none of the cases of human rights violations listed above has been properly investigated so far and a lot more have been added in the course of the many violent conflicts all over Indonesia in the post-Suharto period – a good point to switch to Eastern Indonesia and the Moluccas, where one of the most violent of these conflicts was fought out.

## **SELF-DETERMINATION AND THE REVIVAL OF TRADITION IN THE MOLUCCAS**

The Moluccan archipelago is inhabited by slightly more than two million people and has been divided into the Province of the Moluccas (Maluku) and the Northern Moluccas (Maluku Utara) since 1999. The islands became famous as the Spice Islands, since it was the nutmegs and cloves originating in the area that attracted the colonial powers from the 16<sup>th</sup> century onwards: the Portuguese, the Spaniards, the British, and, the most persistent ones, the Dutch. It was these colonisers who brought Christianity shortly after Islam had been introduced to the area. Political power, economic profits and religion were therefore closely intertwined from the very beginning. Christians were favoured during colonial times in education and bureaucracy, which has been an issue among the Muslim part of the population until today.<sup>21</sup>

### **Conflict and Decentralisation in Maluku**

Nevertheless, there were always family ties, common ancestry and traditional mechanisms to keep the Moluccans united. One of the latter is the *pela* system in the Central Moluccas, that is alliances between two or more villages irrespective of their religion (see in particular Bartels 1977). Unlike in most other parts of predominantly Muslim Indonesia, Christians in

<sup>20</sup> For background information on this decision see the press release of the International Center for Transnational Justice of 8 December 2006 ([http://www.asiapacificaction.org/statements/2006/ictj\\_constitutionalcourtstrikesdownflawedlaw\\_081206.htm](http://www.asiapacificaction.org/statements/2006/ictj_constitutionalcourtstrikesdownflawedlaw_081206.htm), 20.12.2007), and the Written Testimony of Professor Douglass Cassel before the Constitutional Court of Indonesia on 6 July 2006 ([http://www.nd.edu/~cchr/news/Cassel\\_tmony7\\_06.pdf](http://www.nd.edu/~cchr/news/Cassel_tmony7_06.pdf), 20.12.2007).

<sup>21</sup> This, due to restrictions of space, is only a very cursory historical introduction to the area. For more in-depth accounts see, for example, Andaya 1993, Bartels 1994, Chauvel 1990, Fraassen 1972, Knaap 1987.

the Moluccas constitute a substantial part of the population.<sup>22</sup> The region was praised for its religious harmony up until December 1998. This is why nobody really expected that a minor quarrel between a Christian bus driver and a Muslim passenger in Ambon city, the capital of the Moluccan province, in January 1999 would end up in a bloody and enduring multidimensional conflict, which spread over the whole of the Moluccas: hundreds of churches and mosques were destroyed, thousands of people on both sides were killed, and hundreds of thousands, nearly one third of the Moluccan population, had to flee. Moluccan society became divided along religious lines in every respect: socially and geographically. According to some observers ethnic and religious issues were instrumentalised by the Indonesian military and members of the former Suharto regime in order to mobilise the Moluccan people and agitate Muslims against Christians. Others rather stress local roots of the conflict or investigate the role of fundamentalist Islamic groups from outside the Moluccas or the media as conflict factors.<sup>23</sup> What added to all this, is that local traditions fostering interreligious harmony had come under increasing pressure through the central government's policies over the last decades: its unification strategies down to the village level, its transmigration and its Islamisation programs (see e.g. Bartels 2003). What is obvious is that the Moluccan conflict was a multidimensional one and it took many local as well as national peace initiatives to stop the violence. Eventually, the peace meeting organised by the Indonesian government in February 2002 in Malino, South Sulawesi, put an official end to the conflict, at least to mass violence. The religious borderlines dissolved only gradually. After the conflict, local actors in the Moluccas hope to build up sustainable peace through the revival and/or strengthening of traditions, traditional leaders, structures and customary law that are supposed to overcome religious differences and enable sustainable peace and a harmonious living together. The raja as traditional leaders and potential mediators play a central role here.

The new national autonomy law provides such local tendencies legal support. With this new legislation, the Indonesian government tried to meet major claims of international human rights, such as ILO 169 and the UNDDRIP. In the explanations to law No. 32/2004 concerning the village level – the main focus in this article – it says that diversity (*keragaman*) is to be acknowledged, that villages should be returned their original autonomy (*otonomi asli*), that they should be responsible for and take care of the concerns and interests of the local population in accordance with their ancestry (*asal usul*) and traditions (*adat istiadat*), that they should be allowed to reterm the villages and the village heads according to their traditions (that is rename it from *desa* back to *negeri* or *kepala desa* to *raja* in the Central Moluccas), and to reterm (in the Central Moluccan case to *saniri*) and restructure the village parliaments.<sup>24</sup> Article 203 (3) of UU 32/2004 is dedicated to the village head election and stipulates that such "elections in a specific law community [*kesatuan masyarakat hukum*] take place according to its traditional rights [*hak tradisionalnya*] as long as they are still

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<sup>22</sup> The Muslim/Christian share in the Central Moluccas used to be 50:50. Due to transmigration, i.e. the migration of Muslims from other parts of Indonesia to the Moluccas, approximately 60% of the population in the province of Maluku is now Muslim, 40% Christian; in the Central Moluccan district the Muslim percentage is even higher (Badan Pusat Statistik Propinsi Maluku 2007: 108). However, this is still in contrast to a roughly 87% Muslim population in the whole of Indonesia.

<sup>23</sup> See, for example, Aditjondro 2001, Bartels 2003, Benda-Beckmann 2004, Bertrand 2002, Bräuchler 2003, 2005, Human Rights Watch 1999, International Crisis Group 2000, 2002, Klinken 2001b, 2007, Pannell 2003, Schulze 2002, Spyer 2002. This brief treatment, of course, does not do justice to the complexity of the conflict.

<sup>24</sup> See the following explanations to UU 32/2004: General Explanations (*Penjelasan Umum*), section I, No. 10 (*Desa*), and explanations to the village chapter No. XI and to article 202 (1).

alive"; the respective *adat* law has to be specified in a Regional Regulation (Perda), guided by a Government Regulation. As Bedner and Huis (2008: 173) judge, "an important avenue for indigenous communities to implement their own system is opened up, but it remains under the control of the government."

The new laws thus enable the reinstallation of the traditional village heads in the Central Moluccas – the *raja* or kings – which is particularly interesting for discussing current issues of self-determination and the ambiguity of the revival of tradition. Importantly, I am not talking about independence and sovereignty, but cultural self-determination, which enables people "to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live" (ILO 169, preamble), in a word, to develop and maintain their culture. The *raja* are the head of the local *adat* system and at the same time part of the national government system, which makes their position very influential. Promoters of the revival process see them as moral forces and means of integration and thus as key figures in the reconciliation and peace process as well as in the decentralisation and revival discourse. Many of the topics of our discussions on collective rights will come to the fore again, that is issues of representation and authenticity, essentialisation, instrumentalisation and manipulation, and self-determination or autonomy.<sup>25</sup>

Although law No. 5/1979 on Village Government had tremendous impact on the local level, *adat* was not doomed to death in the Moluccas. Village people and *adat* functionaries found ways to either maintain their traditional institutions in parallel to the imposed governmental system (the *raja*'s function then, for example, was restricted to land issues and *adat* matters not interfering with the central government's structure) or to merge the two systems by, for instance, installing a former *raja* or a descendant of his lineage as the new village head, now called *kepala desa*. However, all these options were far from optimal to preserve village *adat*, since they are not compatible with the holistic principle of *adat*, where political, economic, social and legal aspects cannot be isolated, and both functions and installation methods of the *raja*, for instance, were quite different from those of the *kepala desa*. The 'remainders' (which is a problematic expression in itself) of former *adat* systems constitute a necessary basis in current revitalisation efforts based on the new law on decentralisation. Refining UU 22/1999, UU 32/2004 gives villages a choice and differentiates between genealogical and administrative villages (*desa geneologis* and *desa administratif*):<sup>26</sup> The formers' population is supposed to still have a common history and *adat* so that they can make the claims just mentioned. Villages with a very heterogeneous population are declared as administrative villages (with exceptions) or those that were founded through the division of a village or for transmigrants and therefore have no *adat* territory. These villages then can still use the more 'neutral' uniform system introduced by UU 5/1979. In principle it is the village population's choice, how to declare their village, but the final ratification is made by the district parliament.

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<sup>25</sup> If not mentioned otherwise, the following paragraphs are based on my field research in the Moluccas in 2002, 2005, 2006, 2007 and 2008, and interviews I conducted there on various levels, with jurists, academics, NGOs, *raja*, village people, government representatives, *adat* functionaries and religious figures. I would like to use this opportunity to thank them all for their support, cooperation and friendship.

<sup>26</sup> See General Explanations (*Penjelasan Umum*) of UU 32/2004, Section I, No. 10 (Desa).

The problem in the Moluccas is that people and the regional and local governments did not really have the time to prepare for this fundamental change due to the violent and long-lasting Moluccan conflict. Nevertheless, a handful of actors – mainly jurists from the state university in Ambon (Universitas Pattimura) – catalysed the initiation of the process and tried to negotiate draft versions for the regional regulations, in cooperation with some *raja* from Ambon. This led to the passing of the provincial *negeri* regulation in 2005 and the district regulation for the Central Moluccas in 2006: *Peraturan Daerah Provinsi Maluku Nomor 14 Tahun 2005 tentang Penetapan Kembali Negeri Sebagai Kesatuan Masyarakat Hukum Adat Dalam Wilayah Pemerintahan Provinsi Maluku* (Perda No. 14/2005 of the Moluccan Province about the Return to the *negeri* as *adat* law community in the territory of the Government of the Province of Maluku – in the following PerdaP 14/2005) and *Peraturan Daerah Kabupaten Maluku Tengah Nomor 1 Tahun 2006 tentang Negeri* (Perda No. 1/2006 of the Central Moluccan District about the *Negeri* – in the following PerdaK 1/2006), an umbrella Perda (Perda payung) that has been further specified in various sub-Perdas.<sup>27</sup> After PerdaP 14/2005 had been passed, the government of the Central Moluccan District hired a team headed by a retired Ambonese professor of law. The team then drafted PerdaK 1/2006 and 14 other Perdas in order to further specify the former.<sup>28</sup> Those academics (at home in various disciplines such as law, anthropology, agriculture and fishery) wanted to break the cycle of passivity in order not to lose the unique chances given by the new legislation and drafted regulations based on their ethnographic knowledge of the area. The regulations cover issues such as the election of the *raja*, the functioning of village governments, *negeri* and financial matters and the set-up of the *saniri*. The Perdas were socialised in a meeting with Central Moluccan *raja*, who were then supposed to evaluate them. According to the team head, it had to be academics to compose the Perdas, not the village people themselves who had no experience. And although NGOs have been involved in socialising the new decentralisation law on the village level, no Perda had resulted from their activities. It is the village representatives' turn, after the Perda Kabupaten has been socialised in the villages by the team, to formulate the Perda Negeri, that is to translate the Perda Kabupaten into the local context and specify it according to local *adat*. This will be task of the *saniri*. What local actors in the Moluccas such as the Perda team have to do is a rather difficult balancing act and the most critical level will be the Perda Negeri, since this is expected to be the most detailed one.

Generally, large parts of the Moluccan population on all levels seem to be very enthusiastic about the revitalisation prospects – and the conflict background certainly is an important reason for that. To show the strong interlinkage of transnational rights conventions and local contexts, which are seemingly so far apart, it is worth remembering that the revitalisation of cultural traditions and customs, history, language, oral traditions and so forth is explicitly mentioned in the UNDDRIP (see above). In the Moluccas, *adat* people often claim that the return to a society determined by *adat* means the return to a civilised, orderly society (*beradab*), which was almost lost due to the developments of the last decades (*biadab*). As Tania Li (2007: 337) argues, "to invoke *adat* is to claim purity and authenticity for one's

<sup>27</sup> By 2008 the Village Perdas for the other districts in the Moluccan province had not been passed yet (although for some of them drafts had already existed).

<sup>28</sup> Interestingly, when asked how such a huge variety of *adat* communities and ethnic groups can be subsumed under one provincial or district Perda that is concerned with local *adat*, the team head refers to van Vollenhoven who had, beginning of the 20<sup>th</sup> century, divided up Indonesia into 19 *adat* law areas (*adatrechtskringen*) – one of them consisting of the islands now constituting the Moluccan province – and argued that each one of them has certain key cultural elements.

cause." Many actors in the revival process in the Moluccas – be it NGOs, *raja* or other *adat* figures – try to give the impression that they want to revive an authentic, coherent and autonomous culture or a 'harmonious past', thus meeting the requirements of the law and legitimising their claims – in the case of the *raja*, claims of leadership; in the case of NGOs, often the claims of an international human rights community. As I will show in the next paragraphs, there are plenty of challenges and problems involved in the revival process.

### **Challenges of Revival and Decentralisation in Maluku**

The question immediately arising out of the differentiation of genealogical and administrative villages is the question of how to determine which village is a *negeri adat*, that is an *adat* or, in the law's terminology, a genealogical village. The main criteria for a genealogical village or *negeri* listed in PerdaP 14/2005 (Article 5 and explanations) are that an *adat* community (*masyarakat adat*) is bound together due to genealogical and territorial ties and should still adhere to its *adat* law (*hukum adat*). It shall still inhabit its traditional territory (*wilayah petuanan*) and *adat* institutions such as the *raja* and the traditional village council (*saniri negeri*) as well as *adat* symbols such as the traditional community hall (*baileo*) shall still be in place. This essentially repeats itself in the *negeri* definition in chapter 1 of PerdaK 1/2006. In the explanations it emphasises again that all needs to be based on ancestry (*asal usul*) and local customs (*adat istiadat*) as a form of authority based on original autonomy (*otonomi asli*). At the same time, however, it is stressed that the *adat* community needs to be acknowledged and respected by the Government of the Unitary Republic of Indonesia and that the way it runs its governmental affairs has to be in line with national law (see chapter 1 and § 2 in chapter 2).

Not only due to this latter restriction, all this is quite problematic. In addition and as mentioned above, forced 'cultural change' is not taken into account by the law and the rather static notion of culture used is very reminiscent of the authenticity discourse I criticised in connection with the granting of collective (human) rights. Just as the existence of such *adat* symbols, for example, does not necessarily mean that *adat* and *adat* values still determine the village people's life, their non-existence does not have to imply the absence of *adat*. Another point that needs to be considered is who claims to speak for whom regarding these matters, questions of representativeness and authenticity introduced above and that get more and more interesting the closer we get to the local level, the village. It will always be certain spokespersons of a village, certain *adat* figures or the *raja* that will try to provide proof to the evaluators. How they will do this, is again another matter (compare also Bedner and Huis 2008: 185). Fixing those local traditions in governmental regulations, another dilemma emerges; a dilemma that occurs whenever flexible and oral traditions and traditional law have to be written down or codified, thus, at least to a certain extent, fixing it. The people involved in putting together the Perda on the various levels face the same predicament as van Vollenhoven and his colleagues faced almost a hundred years ago: the problem of codifying oral traditions and, at the same time, preserving their flexibility. What van Vollenhoven had suggested back then, is to abrogate each *adat* codification automatically after ten or fifteen years "in order to force the administration continuously to adapt the *adat* regulations to new developments and changed circumstances in native society" (Fasseur 2007: 58). Accordingly, today the Perda team propagates a notion of *adat* that needs to be open to development and social engineering, and that the Perdas at the district level have to be formulated in a

sufficiently open way in order to allow for variation and flexibility.<sup>29</sup> Its head considers it to be dangerous to take the preservation of flexibility as an excuse to not write down *adat* and thus deprive the Moluccans of their unique chance; codification would also prevent the younger generation from forgetting their traditions.

Another important question in the current revitalisation process, in which traditions, traditional leaders and customary law shall be re-empowered, is actually which *adat* the actors involved refer to. Which traditions do they want to go back to and how 'traditional' are these? This illustrates one of the earlier mentioned central problems with notions of 'cultural rights': are they premised on fixed ideals of culture and, importantly, who does the fixing and what are the power dynamics at work? The same issues emerge in other regions of Indonesia, such as in Minangkabau, where there is a lot of discussion going on "to what type of *nagari* one should go back, how the representatives of the village parliament are to be chosen, what the role of the Village Adat Council will be and to what extent rights to village land (*ulayat*) are to be recognised and revitalised and who will hold them" (Franz and Keebet von Benda-Beckmann 2001: 16). The issues in the centre of attention in the Moluccas are the *negeri* and the *raja*. This is not the place to go into detail, but to provide an idea of how 'traditional' these terms are: *raja* is a title that was part of a ranking system of village heads, also introduced by the Dutch, where the *raja* was the highest position, *patih* the second highest, and *orang kaya* the lowest; and the term *negeri* was only introduced to the Moluccas through the Dutch in the 17<sup>th</sup> century, and most of these villages were reconstituted when a large part of the central Moluccan population that lived in the mountainous interior of the islands was moved to the coast in the middle of the 17<sup>th</sup> century (Leirissa, Pattikayhatu and Kartadarmadja 1982/1983, Pariela 1996: 119, see Staatsblad 19a, 1824). In this process *raja* positions were often transferred to other lineages, which were more willing to cooperate with the Dutch, and, as Keebet von Benda-Beckmann (2007: 288) emphasizes, "territory was redistributed, leading to disputes over land between neighbouring villages that have lasted until the present". The results of this restructuring process and "many of the new villages were subsequently incorporated as 'adat' by the local population, although they never fully replaced pre-colonial legal notions" (Franz and Keebet von Benda-Beckmann 2008: 14/15). However, Franz and Keebet von Benda-Beckmann (2008: 3) also warn against dangerously stereotypical "notions of colonial creations of customary adat law." This would, as argued by von Benda-Beckmann (2008: 4) "underrate(d) the agency of local people and overrate(d) the actual significance of the colonial legal constructions of adat or adat law on the legal life of the population." This admonition should also be kept in mind when we look at *adat* constructions and/or recreations in the course of the implementation of the new decentralisation law, which brings me back to the current revival processes in the Moluccas.

People in the villages do not only have to collect proof of their status as an *adat* village, but also for the legitimisation of *raja* candidates. Article 3 of PerdaK 1/2006 specifies that a *negeri* is led by a village head with the title *raja* or another name that is in line with local custom, customary law and culture (clause 1). It goes on and stipulates that a certain lineage (*matarumah/keturunan*) is entitled to the position of *negeri* head and that it is not to be transferred to another party, unless this is decided in a deliberative meeting (*musyawarah*) of

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<sup>29</sup> The adaptation of local traditions to current circumstances, or social engineering, is also promoted by those in search of peace in Maluku. *Pela*, for example, could be transformed in a way that it not only integrates two to five villages, but the whole Moluccan region (Bartels 2003, Ohorella 1999). Compare also Bräuchler 2009a.

the entitled lineage with the village council (*saniri negeri*) (clause 2).<sup>30</sup> As outlined in the explanations to article 3 (2) such an exception would be made if the entitled lineage became extinct, in case the entitled person is physically or mentally disabled in a way that (s)he cannot fulfil the required tasks, or, if the person concerned, for example, is prone to drink or gamble, or does not fulfil the legal requirements (such as age and education); this way, a certain kind of flexibility has been explicitly incorporated. If there is only one candidate who fulfils all the legal and *adat* requirements, (s)he will be appointed, if there are two or more, (s)he will be elected (article 6 (1)).

Since the *raja* were only recently reinstated as village heads, there are still many issues to be solved. Unlike the *kepala desa*, who has been in charge since the law on village unification (UU 5/1979) and who was democratically elected (at least on paper, but in fact often appointed by the central government), the *raja* is a hereditary position. Their reinstatement triggered discussions on democracy issues and who is actually allowed to step into these revived positions – questions of genealogy and descent, but also of political principles.<sup>31</sup> The discussions also illustrate the tensions between two bodies of human rights – collective and individual rights – or, in other words, the empowerment of cultural traditions and the individual's right to equality. But in most cases it is also a question of power: struggles between those who have been in power before colonial times and those in power during that period, between those elected as village heads (*kepala desa*) when UU 5/1979 was in use and those who now want to reclaim their hereditary positions (for Minangkabau compare Franz and Keebet von Benda-Beckmann 2001: 21). In many places in the Central Moluccas, *raja* installation ceremonies that have been postponed for quite a while because of the conflict, are now due. Different attempts to (re)interpret history in order to determine who and which lineage is actually entitled to being *raja* can lead to the split of whole villages or cause *raja* candidates to go to court to fight for their (alleged) rights, as had recently happened in Haria (Saparua island). On the other hand, *raja* installation ceremonies also became important peace events, where the revival of reconciliatory *adat*, such as *pela*, is very much put into the forefront, and *raja* are celebrated as mediators and peace keepers.<sup>32</sup>

What took place in Hulaliu, a village on Haruku island, can be taken as a rather dramatic instance of what might happen if deliberation about the problematic and ambivalent nature of the *raja* issue does not take place among all sides involved – policy makers, power holders and the common people.<sup>33</sup> In July 2006, the *raja* of Hulaliu was killed in his own village due to internal village disputes. He had been living in Ambon city for many years, but belonged to the proper lineage, was educated and experienced, and was therefore asked to return to his village and become *raja* in 2003. One of the issues in the murder was the (seemingly)

<sup>30</sup> PerdaK 1/2006, § 3 (1): *Negeri dipimpin oleh seorang Kepala Pemerintah Negeri dengan gelar Raja atau disebut dengan nama lain sesuai adat istiadat, hukum adat dan budaya setempat; (2) Jabatan Kepala Pemerintahan Negeri merupakan hak dari matarumah/keturunan tertentu berdasarkan garis keturunan lurus dan tidak dapat dialihkan kepada pihak lain, kecuali dalam hal-hal khusus yang ditetapkan berdasarkan hasil musyawarah matarumah/keturunan yang berhak bersama Saniri Negeri.*

<sup>31</sup> Gender, as one of the anonymous reviewers had objected, was never really an issue here. The position of the traditional village head in the Moluccas is open to men and women (given that they are from the right lineage). Although the majority of Moluccan traditional village heads is male, there are female ones as well.

<sup>32</sup> For more details and examples see Bräuchler 2009a.

<sup>33</sup> Just as in Minangkabau, the common village population felt less involved in the deliberation and decision making process and, as Franz and Keebet von Benda-Beckmann (2001: 22) put it, "they have cynical views about the political rhetoric which is so strongly emphasising *adat* values and the 'bottom-up' character of the political process."

authoritarian way with which the new *raja* had revived *adat*, in particular *adat* sanctions. One part of the village population was obviously very upset about these measures.<sup>34</sup> Even if this is an extreme case, something that has actually never happened before, it still gives expression to the rather tense (political) situation in many villages in the decentralisation era. However, the Hulaliu murder is not only a matter of power struggles, but also symptom of another phenomenon that impedes the re-empowerment of the *raja*: respect for and the influence of many Central Moluccan *raja* as moral authorities has declined enormously during the last decades, especially among the younger generation, be it due to the influence of UU 5/1979 or urbanisation and modernisation processes. This ranges from smaller issues such as villagers not paying proper respect through bowing any more when the *raja* passes by, up to quite dramatic cases such as the one in Hulaliu.

Another contentious issue in the struggle for power is article 23 (b) of PerdaK 1/2006, which prohibits the *raja* from acting as head of the village council (*saniri negeri*), in order to prevent excessive accumulation of power. According to a lecturer in law at Pattimura University, who was involved in drafting and socialising the district Perdas concerning the *negeri*, almost two third of the *raja* agreed with this stipulation in 2007. Nevertheless, this means that a third did not and showed either overt or indirect resistance. Also there are certain sub-districts, where at least half of the *raja* were not ready to accept the clause. The clause is a sharp break with the past, where UU 2/1979 required the village head to be head of the village parliament (*Lembaga Musyawarah Desa*), thus making him an influential representative of the central government on the village level. According to Cooley (1987: 238) and Bartels (1994: 308), the *raja* also used to be the head of the village council before UU 5/1979, but, as *adat* elders in a variety of central Moluccan villages affirmed to me, the *raja* then was not able to make any decision without the approval of the *saniri* – in contrast to the situation after 1979, when he was rather an autocrat, an autocrat depending on the goodwill of the Indonesian government.

To add to these difficulties, many villages experience a governmental vacuum due to the coincidence of the Moluccan conflict and the transition period. Some villages had temporary village heads (*penjabat*) for several years, and, once the *raja* were finally installed, but no governmental body formed yet, the *raja* became effective absolute rulers in their villages. Often these *raja* claim that this is not their fault, since they were still waiting for a Perda.<sup>35</sup> But in fact, the new law gives the villages quite considerable space to decide for themselves. Of course, it is not only passivity that is to be blamed, but also a matter of the socialisation of the new legislation by the government.

### Local Approaches to the Problem

There are local approaches to solving internal conflicts over some of these matters and to (re)building new old government structures. Honitetu village in Western Seram is an interesting example and is also good to show how 'translators' come into the scene, acting as "knowledge brokers between culturally distinct social worlds" (Merry 2005: 2) and helping to localise human rights discourses as well as national legislation and facilitating the transition

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<sup>34</sup> There were other issues involved as well, but further analysis would go beyond the scope of this paper.

<sup>35</sup> While the Perda Kabupaten Maluku Tengah concerning the *Negeri* was passed relatively quickly in 2006 (see above), most of the other districts are still waiting for the regulations to be passed by the regional parliaments. Passing, of course, does not yet mean implementation, and all Perda Kabupaten still need to be 'translated' into village regulations.

period. In the Moluccas, the reconstruction of history and genealogy is a crucial element in the rhetoric of the revival era and the basis for the construction of a new old collective identity and the restoration of former power structures (for Minangkabau compare Franz and Keebet von Benda-Beckmann 2001). Since the early 1990s people in Honitetu have been thinking about reviving *adat* and traditions in order to prevent further moral 'degeneracy'. However, the lack of sources and the existing variety of versions of history were major problems in the revival process. Revival activists in Honitetu therefore set up three teams of *adat* functionaries, whose task is to undertake research in the field of culture (*budaya dan kesenian* – mainly material culture and arts), tradition and customary law (*adat-istiadat*) and history (*sejarah*). These efforts are viewed as opening up the possibility for the creation of a consistent version of history, which all can identify with – a process not without its problems, since questions of representation and authority play a role as well as which mechanisms are chosen to socialise the results. Migrants, who are still a minority in Honitetu, further complicate the situation. As in most *adat* villages, immigrants are welcome as long as they accept local *adat*, follow its rules and do not carry out their own *adat* ceremonies in public.<sup>36</sup> They are not included in the current local research processes and they cannot be nominated as *raja* candidates. This makes the revival efforts in Honitetu, although they are obviously based on a thorough deliberation process, nonetheless exclusive and problematic. These 'others', that is people who have no place in the *adat* structure of the village they live in, are understandably the main critics of the current revival processes. As discussed earlier, the granting of collective rights might suppress those of individuals or minorities that are not part of this group. In Indonesia, as Bourchier (2007: 124) argues, *adat* revival "sharpen[s] distinctions between cultural insiders and outsiders, increasing the potential for horizontal conflict and violence."<sup>37</sup>

Crucial to current revival processes is the re-establishment of traditional institutions and symbols, such as the *raja*, the *saniri* and the *baileo*. These efforts of the Honitetu people were facilitated by a local NGO, which entered the area in order to support the village in the matter of logging licences in their territory, which the central government had illegally given to an external company without asking for the villagers' permission. The NGO in question is Baileo (in connection with Humanum), which was set up in Ambon in 1993 and has been engaged in *adat* matters since then.<sup>38</sup> It therefore is one of the few long-lasting and experienced NGOs in the Moluccas, which has served as 'translator' and broker in human rights issues and national legislation in many cases. These brokers also exert their influence on the people they work with, for instance, with their perceptions of 'tradition'. One example is the production of a video about the ceremonial reconstruction process of the *baileo* in Honitetu, where the NGO filmmaker complained about people involved not wearing traditional village dresses such as the loincloth, which is rarely worn today (if at all), but colourful political parties' shirts or army-like clothes, that is the clothes of the 'enemy'. One reason for this attitude is that these brokers are also torn between two sides: the interest of local populations and the international donors, who are interested in specific topics and who often tend to essentialise culture (see above and also Merry 2005: 15). Baileo/Humanum also

<sup>36</sup> This is supported by jurists involved in drafting the Perda concerning the village reforms. According to one of them this is no problem, since the only thing that counts for those migrants are territorial aspects, no genealogical ties. But, one might object, *negeri* are not only bound by genealogical ties, but also by territorial ones that can easily get in conflict with the migrants' land claims.

<sup>37</sup> Compare also Kuper 2003: 395.

<sup>38</sup> I would like to thank the Baileo/Humanum crew, who drew my attention to this particular case, for their cooperativeness and their friendship.

facilitated the reinstallation procedure of the *raja* in Honitetu. It set up meetings and helped prepare documents, but generally tried not to influence the deliberation and decision process as such. The process turned out to be a very long one (several years), in which representatives and *adat* functionaries of the two groups of the *raja* candidates often met, discussing history and genealogies, reflecting on *adat* procedures and asking the candidates to deliver proof legitimising their candidacy. Following such procedures, a document was released in July 2006 by the *saniri negeri* Honitetu, in which finally one of the candidates was declared the legitimate descendant. However, the decision was revoked again, since the opposition in the village was still too strong. Up to 2008 things were not fixed yet, the *penjabat* was still in charge. Although it is time consuming, this is, in fact, a rather positive example for practised (revived) village democracy. In order to solve the migrant problem, the part of Honitetu where most migrants live (Uraur) has been officially declared to be an independent (administrative) village (a solution not all people in Honitetu, especially *adat* people, are happy with). However, when it comes to *adat* matters such as communal land and marriage sanctions, Uraur is still under the authority of Honitetu.<sup>39</sup>

### Revival for Peace

One of the most pressing issues in the Moluccas is how to (re)build sustainable peace that enables the recovery of the region in all fields: economy, education, politics, and social. As said before, almost all levels of society involved in the peace process – *adat* functionaries and *raja*, the regional governments, religious figures and organisations, national and local NGOs, academics and other representatives of the common people – place a lot of hope in *adat* as a means to rebuild interreligious bridges and provide a common basis for rebuilding trust and harmony. We here enter another broad field of research in which I have been engaged for years now. Given the high potential of conflict arising out of the many contradictions and problems connected to collective human rights and the implementation of decentralisation in Indonesia, the question arises whether *adat* can really act as peacemaker. I can only try to raise some awareness for it at this point without being able to go into detail.

Although literature on the *putra daerah* issue and the drawbacks of the revival of *adat* prevail so far, there are scholars who have pointed at the peacemaking potential of *adat* in Indonesia such as some contributions on grassroots peace initiatives in *Reconciling Indonesia* (Bräuchler 2009c) and Laksono. Laksono (2002) described how a quick end could be put to the violence in the Southeastern Moluccas after only three months (in contrast to more than three years in the Central Moluccas) due to the still strong influence of local (traditional) leaders. A volume edited by Alpha Amirrachman (2007) dedicates itself to the influential role so-called local wisdom (*kearifan lokal*) plays in conflict resolution and peace building in the aftermath of large-scale violence in West Kalimantan, Maluku and Poso. Acciaioli (2001:

<sup>39</sup> I am here explicitly not touching upon an issue at least as important: the return of Muslim migrants in predominantly Christian Honitetu who had fled during the recent violence and have not returned yet. The Honitetu Muslims were internal migrants from Haruku, i.e. people from another Moluccan island. Another category of migrants more gravely affected by the Moluccan conflict were those from outside the area, most prominently the so-called BBM, that is people from Bugis, Buton and Makassar. Although some of those families had been settled in the Moluccas several generations ago, many of them fled during the first days of the Moluccan conflict, when it still looked as if the violence was mostly directed towards them as has been the case in such places as Kalimantan, where the indigenous Dayak were fighting and expelling Madurese migrants (see, for example, Davidson 2008). The BBM, although being Muslim, were never fully integrated into Moluccan (Muslim) society, which, among others, means that they were never granted any land rights by Moluccan people who claimed the land according to *adat* (see, for example, Benda-Beckmann 1990).

103) investigated the revival of *adat* in Central Sulawesi and emphasises that violence avoidance is facilitated when the people involved either share the same cultural background, including *adat*, or if one contending group's *adat* is recognised as a framework for arbitration that transcends the interests of all parties; as this is often unlikely when settlers as well as 'indigenous' people are involved, nationalist idioms may be invoked as a basis for institutionalising peace processes in such cases, although often with some embedded allusions to local *adat* concepts as well. According to Henley and Davidson (2007: 18), a revival of traditional structures might also support peace building, "where a traditional polity once encompassed, and to some extent claimed the loyalty of, more than one ethnic or religious group"; they provide examples of the Southeastern Moluccas, South Sulawesi and North Sumatra.

In the Central Moluccas, there are various initiatives to revive *adat* for peace. The most prominent ones are ceremonies, where old *pela* pacts are 'heated up' again. The traditional alliance system is seen as an important symbol for a reunited Moluccan society (Bräuchler 2009a). Also, the revival of real or imagined kinship ties between villages that belong to different religions and that were involved in the seemingly religiously motivated fighting, is a very promising step towards reconciliation. Another example is the reconstruction of *adat* structures that go beyond the village level and are thus able to integrate more people. Such structures were destroyed by the Dutch, who wanted to prevent any large-scale uprising against its colonial hegemony. With rare exceptions such as *pela*, *adat* has therefore been confined to the village level since then (for the latter see Keebet von Benda-Beckmann 2007: 288). In an attempt to rebuild such overarching structures, "traditional chiefs" from all over the Moluccas came together in Ambon city in November 2006, in order to establish a forum that helps "to maintain peace among Maluku's different communities, including religious communities", and to assist the provincial government in these matters (Tunny 2006). This resulted in the official establishment of a Moluccas-wide platform called *Majelis Latupati* (*latu* and *pati* being titles for traditional village heads) in October 2007 that is meant to integrate all traditional village heads of the vast Moluccan archipelago (excluding the province of the Northern Moluccas, but including the Southeastern Moluccas). Again, the *raja* are in focus. The way this forum could be effectively organised across the vast Moluccan archipelago and integrate all regions, how it could operate, and on whose *adat* it would be based is still under negotiation (compare also Li 2007: 363). Since it is the only initiative that aims to integrate the whole Moluccan province, this is a very promising development – not without its challenges as discussed above – that needs further observation and analysis.

## **CULTURAL FLEXIBILITY, COLLECTIVE RIGHTS AND DEMOCRACY**

Unfortunately, there is no simple and uniform answer about the role of the revival of tradition in conflict and peace. Each case has to be analysed individually and put into the broader context of other peace initiatives in the Moluccas and the Moluccan society at large (or respectively in other regions). There are plenty of critical voices in the Central Moluccas too, who ask how *adat* can contribute to reconciliation, while still so many problems, regarding its revitalisation and the reconstruction of *adat* governments, are unsolved. Nevertheless, I still see the current revitalisation efforts connected with the reconciliation policy in the Moluccas as very promising, although not a panacea. If both the broader context and 'the others' are taken into account, they can make substantive contributions to the creation of sustainable peace and to the research on "culture oriented recipes for conflict management" (Fritsche 2002: 21). Often these are the only means available to people affected by mass violence,

when state mechanisms are not in place (any more or yet) and the international community is not ready to intervene. The peace process, just like the conflict, has to be a multidimensional one. Otherwise, peace will not be long lasting. It would be wrong to rashly identify *adat* with peace and harmony. An unconditional revival would rather be counterproductive as shown throughout this article. As I would argue, it is crucial to preserve the flexibility of *adat* in order to adapt it to changing political, social and economic circumstances and to accommodate all those people living in such territories. I would therefore like to end this contribution with reflections on the preservation of cultural flexibility and the challenges arising in a situation where granting the right to culture collides with a Western understanding of democracy; issues that need urgent attention by policy makers and researchers.<sup>40</sup>

Both scholars and activists, as Cowan et al. (2001c: 19) argue, should start seeing "cultural change as potentially positive, as well as inevitable ... An endangered 'culture' is perceived as a pre-existing given which must be defended, rather than as something creatively reworked during struggles to actualise rights." It helps to call to mind again, that 'traditional' models such as the *negeri* so many revival activists refer to are not eternal concepts, but rather recent constructions. Change, as one of the founders of the Ambonese NGO Hualopu argues, has to be included in all thoughts about revitalisation and future planning, including the use of traditional mechanisms for peace. Dynamism and adaptability always were *the* survival strategies of 'traditional' practices and customary laws. Trying to 'freeze' them would necessarily mean their downfall. That would be exactly the opposite of what the revival process wants to achieve, that is to reassign *adat* a meaningful place in Moluccan people's life, but also in the Indonesian state that now even offers to integrate it on a political level (at least theoretically). Revitalisation therefore should not be confused with the literal 'revival of the past'. Instead it should be seen as a process of taking up traditional principles and developing them further and adapting them to the people's needs and current circumstances. Most important is that all interest groups in a village or another social, political or cultural unit are involved in the underlying negotiation processes.

To close the circle, I will now come back to the problematic relationship between collective human rights or the right to culture and Western notions of democracy that seem to prevail among observers of the decentralisation process in Indonesia. How can the idea of a democratically elected village head and parliament be reconciled with the idea of the *raja* as a hereditary position as implied in the cultural revival process? This is an even more pressing issue, since the Moluccan population seems to be divided over the question as to how far the revival of tradition should go: whether it should mainly imply a rather folkloristic revival or whether political institutions and procedures shall be reintroduced or re-empowered as well. In the former case advocates of a holistic revival fear the further dilution of local *adat*; in the latter case the advocates of democratic elections fear the return of feudalism and autocratic-genealogical structures, where individual performance and education as selection criteria come second. But they also fear that *adat* might be instrumentalised to achieve political goals, just as in the *putra daerah* cases mentioned above.

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<sup>40</sup> Boundaries are blurred. As Otto (2005: 42) argues "it is not necessary to be a consultant anthropologist in order to become caught up in moral dilemmas and political conflicts when writing about traditions ... Anthropologists get entangled in politics and morality ... because ... the subject matter of anthropology is inherently political, and because researchers cannot avoid being actors in the world they investigate."

In order to preserve flexibility and to make *adat* mechanisms fit post-conflict requirements social engineering, i.e. the planned adaptation to current circumstances, has been suggested by a number of people (see above). This is certainly an option for democracy activists such as Fauzi and Zakaria in order to adapt local notions of democracy to more Western ones. In reaction to the current omnipresence of democratisation discourses, *adat* functionaries in Moluccan villages often claim that democracy is already embedded in their *adat* system and that their decision-making processes based on deliberation and consensus (as in the Honitetu case) are even more democratic than the 'Western' idea of the concept. Fauzi and Zakaria (2002) point to the ambiguity of the current revitalisation processes and give some recommendations in their paper on 'Democratizing Decentralization: Local Initiatives from Indonesia'. They praise the new possibilities provided by the new autonomy law that explicitly recognises the village as "a legal community that possesses its own 'original rights,' norms and relations" and greatly reduces "the distance between communities and policy-makers" (Fauzi and Zakaria 2002: 3). But they also emphasize that caution is needed so that the inclusion of local communities in the political process will not "end up creating a situation wherein all of the shortcomings of the prior centralized system are merely replicated on a smaller scale by local government authorities" (Fauzi and Zakaria 2002: 9). This warning was forwarded by many observers of the new decentralisation policy (for examples see above). Concerning the reintroduction of traditional government forms on the village level, which did not have a democratically elected 'parliament' but rather a clan-based system of deliberation, the authors argue that democratic principles still have to be an imperative prerequisite and a compromise has to be found, which presents quite a challenge to *adat* leaders. They have to "show that they can develop a modern system of village governance that is more effective, and more democratic, than the New Order's *Desa* system" (Fauzi and Zakaria 2002: 20). Similarly, Merry warns us that human rights programs should be appropriated and translated into local context, but not fully indigenised: "To blend completely with the surrounding social worlds is to lose the radical possibilities of human rights. It is the unfamiliarity of these ideas that makes them effective in breaking old modes of thought, for example, denaturalising male privilege to use violence against women as a form of discipline" (Merry 2006: 178). Human rights must not be deconstructed by culturally determined arguments. What one could conclude from this argumentation is that we have to refrain both from a concept of culture as an unchangeable object and a misunderstood cultural relativism that releases people from any responsibilities, which is not tolerable any more in a globalised world. This puts anthropologists researching such issues in a difficult situation, since it is their subjects that prioritise identity and culture and a specific way of representing it (compare also Guenther, Kenrick, Kuper, et al. 2006: 18).

Despite all objections and despite serious challenges such as the *putra daerah* issue, the new law on decentralisation still provides a unique and (in Indonesia) unprecedented opportunity for more self-determination on the local level.<sup>41</sup> Although it is not my objective to formulate detailed policy and implementation guidelines, I nonetheless hope that this article has raised a number of questions and expressed various caveats that urgently need to be taken into account by whoever is involved in that. It is important to take all levels into account: the international, the national, the regional and the local. Although all of them are (seemingly) concerned with the local (when it comes to decentralisation, for example), the knowledge about it, the context and the interests involved vary extensively.

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<sup>41</sup> Analogously, Widlok (2007) warns against a rash disposal of the concept of indigeneity, as suggested by Kuper (2003), when certain elites instrumentalise indigenous rights for their advantage at the expense of the indigenous people, since this could rather aggravate the latter's situation.

As argued by Wilson (2006: 82) and Freeman (2000: 56) human rights set only a minimal standard and do not provide the means to solve all moral, political and economic problems of our times. What is still necessary is a dialogue on and between all levels, which involves all interest groups, and a lot of work on the ground. Abstract and well-meant concepts with a supposedly transnational claim do not relieve us from this. In his edited volume on *Human Rights in Cross-Cultural Perspectives* An-Na'im (1992a) strives to explore "the possibilities of cultural reinterpretation and reconstruction through *internal cultural discourse and cross-cultural dialogue*, as a means to enhancing the universal legitimacy of human rights" (An-Na'im 1992b: 3). For the Moluccan case of revitalisation and reconciliation this means internal dialogue in local communities such as in Honitetu, and also between these communities and 'the others' and with the Moluccan society at large. It also means that local discourses can be influenced externally by international discourses, such as the one on human rights, through mediators, brokers and translators such as NGOs. In the future, the way 'the others' are dealt with, perceived and integrated into reconstructed local communities and systems will significantly influence the success of the decentralisation and democratisation project. They not only have to be tolerated, but they have to be given a participatory role in the 'traditional' system. A successful dialogue would guarantee that everybody gets his say in the revitalisation and reconciliation process, which makes the implementation of human rights on all levels much more likely, be they individual or collective ones. This would enable us to translate human rights into cultural contexts without taking the risk of restricting 'other' people's rights. The universality of human rights, as An-Na'im (2003: 2) rightly argues, "should be seen as a *product of a process* rather than as an established 'given' concept and specific predetermined normative content to be discovered or proclaimed through international declarations and rendered legally binding through treaties." Ethnographic methods allow social anthropologists to conduct in-depth studies on the local level and analyse its interlinkage with 'the others' and its embeddedness in the larger context. This knowledge can make major contributions to developing strategies for integrating collective and individual human rights and for fostering a revival of tradition that is integrative rather than exclusivist.

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