

# The Tsunami Two Years On: Land Rights in Aceh

30 November 2006

## Introduction

Aceh, the northern-most province of the Indonesian island of Sumatra, suffered terribly in the tsunami of December 2004. The water washed over 800km of coastline, killing 169,000 people and leaving 600,000 homeless. In several areas, no buildings, roads, or trees were left standing. Large areas of land were permanently lost. Sumatra was then hit by an earthquake on 28 March 2005, killing almost another 1,000 people on Nias island.

After the disaster the world responded generously and the aim of aid agencies working there was to make life in coastal Aceh eventually better for all, regardless of wealth or gender. In a region afflicted by poverty and conflict this represented an unprecedented opportunity.

### Case study 1: Mon Ikeun

A concrete slab is all that's left of Ruslaidi's house in the village of Mon Ikeun. The tsunami took his wife, five-year-old son, parents, and siblings, and also totally destroyed his home. Now the 38-year-old joiner lives with his 12-year-old son in a nearby barracks.

His two-bedroom house was rented from a neighbour who died in the tsunami. The house hasn't been rebuilt because the ownership has passed to a distant relative who lives in another village. 'He never comes here' said Ruslaidi. 'No one has any idea what he's going to do with the land. He's not interested in it.'

Whilst the weeds grow through Ruslaidi's old house, others have been busy. A villager who refused to give his name said: 'Some families have three houses when other families are still waiting for permanent homes. People have come back from Jakarta, got a house and left again. Contractors from Medan have left homes half-finished.'

'This village is full of injustice and anger.'

Up to November 2006, 48,000 houses<sup>1</sup> had been built in the province, but there is still much to do to reach the target of 128,000 houses. Two years on from the tsunami, rebuilding homes and re-housing the landless are two of the most important tasks

facing Aceh. Land-rights issues – the question of who owns what land – must be solved if Acehnese society is to be rebuilt on a secure footing. Without clear land rights, people who are rebuilding run the risk that a third party could come forward and claim rightful ownership of a plot of land.

Six years after the earthquake which hit the Japanese city of Kobe in 1995 some people were still living in temporary accommodation because property claims had not been agreed.

But the problems Aceh faces in re-establishing land rights are of a different order. Documents were destroyed, if indeed they ever existed. Fifteen tonnes of documents have been shipped to Jakarta to be restored.<sup>2</sup> Many land holdings along the coast were marked out by trees and paths, but after the wave these boundary markers were gone. In other areas land simply sank into the sea or was washed away. Traditional community-based institutions have been put under severe strain. Pre-tsunami renters and squatters are still stuck in barracks – long, single-storey buildings where many families live packed closely together. The barracks-dwellers face unsanitary conditions and an uncertain future.

The task of rebuilding Aceh is the largest reconstruction project in the developing world.<sup>3</sup> This paper looks at the historical background to land rights in Aceh and the effect of the tsunami and proposes how a more inclusive form of development can be followed.

## Pre-Tsunami Aceh

Aceh is a highly rural, traditional province with a complex system of land rights. The ownership and use of land is governed by a hybrid of customs and laws which were introduced over the feudal, colonial,<sup>4</sup> and finally the post-independence periods of Indonesia's history.

Before the tsunami there had been a 29-year conflict between the Indonesian government and the Free Aceh Movement (GAM). Although Aceh's identity is distinctly more Islamic than most of Indonesia, GAM's struggle was nationalist rather than religious, and aimed at gaining political control of the province.

Oil and gas were discovered in Aceh in 1971 and the region became increasingly important to the Indonesian economy. The province's natural resources – including timber and oil-palm plantations – were exploited by outside-owned business interests or state-backed companies. Seventy-five per cent of the land was taken for logging or plantation concessions.

Hostility towards the central government increased as native Acehnese were increasingly prevented from exploiting their own resources. Whilst Aceh's GDP grew, the people of Aceh became dramatically poorer: between 1980 and 2002 poverty in the province increased by 239 per cent. In the rest of Indonesia poverty rates dropped by 47 per cent in the same period.<sup>5</sup>

The conflict between the government and GAM has caused mass displacement amongst civilians fleeing the fighting. The land rights situation was further complicated when the government gave land to migrants from the Indonesian island of Java. The Javanese plots tended to be larger than those held by the native Acehnese, fuelling tensions.<sup>6</sup>

For the Acehnese, owning land is a vital form of social security. It is crucial for shelter, agriculture, and other livelihoods, such as shops and trading. Land can be sold, rented out, or used as collateral for a loan – which can lead to a rise in living standards. Land ownership provides economic stability for widowed, abandoned, or single women, and for orphans.

## Land rights in pre-tsunami Aceh

There are two forms of Indonesian law covering land tenure in Aceh:

- Adat – local, traditional laws and social codes which vary across the Indonesian archipelago. Adat institutions remain strong in Aceh
- Laws passed by the Indonesian state.

Shari'a (Islamic) law is also in operation, covering inheritance and guardianship of orphans.

Only around 25 per cent of land in the tsunami-affected areas of Aceh was statutory titled land, i.e. registered under government laws with paperwork held by landowners and in National Land Agency (BPN) offices.

The other 75 per cent of land was not registered with the land office but instead governed by adat processes. In rural areas traditional adat laws are strong. Although land is usually individually owned, communities regulate how the land can be transferred and how community members can receive rights to new plots of land.

However, even when landowners had records, they often did not update them when land was bought and sold. Many Acehnese communities are far from BPN offices – there was only one main office and ten smaller ones in an area nearly twice the size of Belgium – and either don't know how to register land or don't want to spend the time and money to deal with the BPN. This means official documents did not entirely reflect the reality of land use on the ground.

## The Immediate Aftermath of the Tsunami

Of all the regions around the Indian Ocean which were hit by the tsunami on 26 December 2004, Aceh was the worst affected. In just a few hours 169,000 people were killed.<sup>7</sup> When the waters departed the survivors faced a grim scene. Heavily populated areas were turned into wastelands where every landmark had been swept away. Over 600,000 people were made homeless and 141,000 houses were destroyed in Aceh and Nias.<sup>8</sup>

The damage, including long-term economic damage, has been estimated at more than \$4.5bn. Across the province 2,240 schools and 2,676 bridges were destroyed and over 100,000 wells were contaminated by salt water or left in need of repair.<sup>9</sup>

A quarter of Aceh's population lost their jobs and the unemployment rate rose from 6.8 per cent to around 30 per cent.<sup>10</sup> Small businesses, labourers, small-scale farmers, and fishing communities were worst hit. About 70 per cent of the small-scale fishing fleet was destroyed.

Over 150,000 hectares (1,500 sq km) of agricultural land<sup>11</sup> were made unfit for growing crops after being inundated with salt water and mud. Within three weeks rice crops were yellowing in the fields, and, according to the UN's Food and Agriculture

Organisation, up to 15 per cent of western Aceh's agricultural land may be permanently lost.<sup>12</sup>

The provision of shelter was the most urgent task facing Aceh, but in the longer term the province needed to relocate and re-house a massive number of displaced people. An estimated 25,000 families needed relocating to new land, because their land had been submerged or made unsafe, or because they did not own land or housing before the tsunami.<sup>13</sup>

The disaster was a factor in bringing the Indonesian government and GAM to the negotiating table. In August 2005 the two sides signed a Memorandum of Understanding in Finland, which was followed by troop withdrawal and decommissioning of weapons, the reintegration of GAM combatants, the release of political prisoners, and new laws to implement the peace agreement.

#### **Oxfam's response**

Oxfam was one of the first international aid agencies to arrive in Aceh and Nias and has so far helped over 474,000 people. The agency has supplied over 40 million litres of water, given jobs to over 100,000 people through various livelihoods schemes, and built more than 800 homes, with another 200 currently under construction. Oxfam has also built over 30 bridges and repaired 100km of road. Up to September 2006 the agency had spent \$67m and aims to spend \$104m in Aceh and Nias over four years.

## **Land Rights in Post-Tsunami Aceh**

Survivors had to clearly establish land and property rights to minimise potential disputes and provide a firm legal and social basis for rebuilding Acehnese society. But this was very difficult to do. Most people lost their identification documents and the duplicates, held in offices, were also lost. On the ground many natural land-boundary markers disappeared. Landowners were killed and the region faced a massive number of inheritance claims.

Local government offices were crippled by the tsunami – the damage was so great that many local authorities could not work properly until August 2005. The provincial office of the BPN in Banda Aceh was badly damaged and 30 per cent of the staff – 41 people – were killed. All public property records were destroyed or made illegible, as were those records of adat land rights that existed.

In areas where no records existed, the social networks which regulated land use have been ruptured by the deaths of community leaders or, in some cases, the loss of entire communities. Many young men survived, whilst more women and elderly people perished, changing community dynamics.

As one of the first non-governmental organisations (NGOs) to provide emergency relief, Oxfam realised that the fragile land and property rights of poor communities pre-tsunami were further threatened by the huge loss of land, livelihoods and critical personal documents, such as ID cards and land records.

Other problems facing Aceh include:<sup>14</sup>

- The need to help those whose land is submerged or unfit to return to
- The need for special protection for women, widows, orphans, and insecure communities

- The need to combine the planning and rebuilding organised at the village level with land-titling schemes run by local and central government
- Tensions between local communities and the central government
- Mistrust between civil society organisations and government agencies.

#### **The largest reconstruction site in the developing world**

The land rights situation in Aceh is very different from other post-disaster and post-conflict regions.

In the former Yugoslavia ethnically cleansed areas were repopulated by incomers, but in Aceh there have been no so-called 'secondary occupations', so there is no need for evictions before displaced communities can return. Unlike Rwanda, East Timor and Afghanistan, there is little history of inter-communal tension in tsunami-affected areas – the conflict was mostly between GAM and the Indonesian army rather than rival ethnic groups.

In Aceh the land rights situation is one of massive displacement and the need for sustainable return. The task of rebuilding Aceh is the largest reconstruction project in the developing world and the main challenge is the scale of the problem, not its complexity.

## **Rebuilding Aceh – making a start**

When the Indonesian government produced its official reconstruction master plan in March 2005 it proposed an audit of the physical condition of the land, replacement of lost documents, and issuing of new documents for those who never had them. The government also set up an agency dedicated to rebuilding Aceh, the Aceh-Nias Rehabilitation and Reconstruction Agency (BRR).

The Multi-Donor Fund, managed by the World Bank, approved a \$28.5m grant for the Reconstruction of Aceh's Land Administration System project (RALAS). Starting in August 2005, this involves a process of 'community-driven adjudication' and land titling through a (rebuilt) BPN in the province. RALAS aims to title up to 600,000 plots of land by December 2008.

Survivors in each village are brought together to discuss property locations and boundaries. A map is drawn up based on their discussions and survivors and community leaders sign the map to certify that it is a correct record of the village. Surveyors then mark out the land and legal titles are drawn up.

#### **Case study 2: Aceh Jaya and a community-led solution**

In the Jaya subdistrict of north-western Aceh 1,130 people in 14 villages lost their land to the tsunami. They needed 44 hectares for resettlement. Villagers and sub-district officials found appropriate new sites for each village and negotiated with landowners before taking the case to the district authorities, who then took the case to the BRR and provincial government. Oxfam advocacy and shelter teams worked with the village and local authorities through the entire process.

This is a remarkable example of a successful community-led process receiving financial and legal support from the provincial authorities. The new land has now been effectively acquired by the government and will come under the joint titling programme to ensure equal ownership rights for men and women.

Oxfam is working with partner NGOs in Aceh to assess and evaluate RALAS' work. By mid-2006 RALAS had surveyed around 53,000 land parcels but had only issued 2,608 land certificates,<sup>15</sup> due to administrative delays in Jakarta. Partner NGOs are concerned that if RALAS is pressured by the Indonesian government to speed up the process then the system could be abused.

Inheritance became a major issue to deal with in establishing land rights. The large number of deaths meant a huge redistribution of property through inheritance had to take place before houses could be rebuilt.

The situation regarding widows' rights is also a cause for concern. Although under adat and Shari'a law women can inherit property, there are fears that in practice women may not be given equal recognition in the inheritance process.

Many orphans are entitled to new houses but this throws up many problems. Once a house has been built for them, who owns it? If someone acts as a guardian for them, how can the authorities guarantee that the house will be handed over to the orphan when they become 18? What happens when four children inherit one house?

Inheritance matters follow Shari'a law rather than adat, although there are variations from region to region, particularly in the treatment of daughters. The United Nations Development Programme (UNDP) and RALAS set up mobile Shari'a court teams. One of the aims was to protect the rights of orphans, who could otherwise end up losing land they were entitled to.<sup>16</sup>

Whilst this process has had a number of successes, Oxfam partner NGOs have identified concerns with the Shari'a court system:

- It is relatively new and people don't know how the system works<sup>17</sup>
- It is not pro-active in finding orphans
- The process is slow because many witnesses are needed.

## The plight of the landless

There is one major problem that RALAS does not deal with – the resettlement of those 25,000 households who have been left landless after the tsunami.<sup>18</sup>

### **The landowners**

Around 10,000 households were previously landowners and now need resettling because their land has been submerged. As of October 2006 the Aceh-Nias BRR has spent \$7.7m on buying 700 hectares of land for resettlement,<sup>19</sup> and plans to buy another 50 hectares.

Progress has been slow – so far over 2,000 of the 10,000 houses have been rebuilt but only 700 occupied.<sup>20</sup> The number needing resettlement is constantly changing. For example, some submerged land is starting to reappear as sea defences are rebuilt and the tides kept at bay. Data gathering has been slow and there have been co-ordination problems between the BRR and local government.<sup>21</sup>

It can take up to six months to buy a plot of land, which must then be prepared before it can be built upon. Aceh's high water table means many areas are swampy and to prepare a piece of land for building can cost four times as much as buying the land.

The Indonesian government made a huge step forward in September 2006 when it announced that land must be registered in the names of both men and women in areas acquired by the BRR for resettlement.<sup>22</sup>

### **Renters and squatters**

Many poorer members of coastal communities in Aceh did not own their land before the tsunami, but rented it from wealthier Acehnese or 'squatted' on state land. There are 15,000 households of renters and squatters with nowhere to live who must be resettled on new land before they can be given houses.<sup>23</sup>

Together these three groups (renters, squatters, and the landless) form the bulk of the 70,000-strong population<sup>24</sup> currently housed in around 150 government barracks scattered across Aceh.

The lack of a clear policy for the landless has led to a huge amount of uncertainty and delay and is why many of the landless survivors are still homeless and without the prospect of a home two years after the disaster.

By the end of 2005, when Oxfam first called for clear land policies for landless tsunami survivors, there were no government assistance programmes specifically targeting renters and squatters.

In June 2006 the BRR issued regulations on the resettlement of renters and squatters. These regulations demonstrate that the government of Indonesia recognises the importance of providing assistance to the landless survivors, including those who did not own houses before the disaster, and Oxfam applauds this as a first step.

Under these regulations pre-tsunami home owners are entitled to free land and a basic 36 square metre house, whilst pre-tsunami renters will receive around \$2,800 and squatters \$1,150.

However, Oxfam believes the government's approach does not fully tackle the problem, because delays in the scheme combined with inflation in the land rental market (general inflation in Aceh was running at 40 per cent in 2005<sup>25</sup>) mean renters and squatters will remain homeless and confined to the barracks for the foreseeable future. There is also significant potential for fraud and the frittering away of benefits.

The cash payout policy will not give vulnerable renters and squatters access to housing and the problem of the barracks dwellers will remain.

The BRR regulations also only allow for settlement on land given by the government, which is often unsuitable for earning a living from. Community-based reintegration of renters and squatters combined with village-level planning is more efficient, sustainable, and just.

The confusion and inequitable regulations have led to a simmering crisis in the barracks. In September 2006 frustrations spilled into major demonstrations outside government offices.

## **Conclusion and Recommendations**

The protection of rights to land, property, and resources is vital to Aceh's recovery. Equitable access to land and resources lies at the heart of the province's development. Two years after the tsunami struck, the poorest and most marginalised groups in Acehnese society – squatters, women-headed households, and orphans – are still facing

a crisis over where and when they will be resettled. There is an urgent need to find a solution to this problem and get people out of the barracks as quickly as possible.

**Case study 3: Oxfam helps the villagers of Lhokseudu to help themselves**

Fifty families in the village of Lhokseudu, one of the regions worst affected by the tsunami, lost their land and homes. Only a few months after the disaster these families started negotiating over new land with landowners in the village. By mid-May, 38 of the households had agreed to buy 5,000 square metres of land with a two-year loan. With the villagers, Oxfam surveyed and mapped the land, divided it into plots, and started planning the village. The success of this project encouraged the other 12 families to move into the new site and reintegrate into their community.

UN agencies and the BRR are working on an action plan for the barracks, which includes registering the displaced people and their movements, improving conditions in the barracks, and helping them to move into new houses once they have been built.

Oxfam calls for stronger co-ordination and commitment from the government (at all levels) and the international community in Aceh to find a long-term solution and ensure an effective decommissioning of temporary living centres.

Oxfam is increasing its support for the barracks-dwellers, with engineers and health workers providing extra support to those most in need. They will monitor sanitation and public health in barracks in Aceh Besar and Banda Aceh. However, this is not a long-term solution.

A new policy towards the renters and squatters, as well as those who need resettlement, is urgently needed. The BRR should clarify its policy on renters and squatters as soon as possible by making formal legal amendments rather than ad hoc policy decisions.

All NGOs providing housing in Aceh should prioritise the granting of free housing to renters and squatters.

There should also be more co-operation between the Indonesian government and NGOs to provide a range of options for renters and squatters, including more support for the restoration of rental agreements.

However, Oxfam does not advocate that renters and squatters should automatically receive exactly the same treatment as pre-tsunami landowners; that would be socially divisive. Oxfam believes that restoring previous rental agreements – where possible – should form one part of a successful land-rights policy.

Oxfam believes resettlement and re-integration should be done on a village-by-village basis where possible. Land boundaries and plots within a village's territory should be adjusted, with the agreement of all village members, so as to make land available to the landless. Oxfam has already participated in a similar process in Aceh Besar.

It would then be up to each individual community whether to make land available to rent, or whether to donate or sell that land and turn renters or squatters into owners. Either way, vulnerable groups of people would be re-housed close to their pre-tsunami livelihoods.

The alternative – a state-run resettlement process – risks dumping the poorest Acehnese into inappropriate areas and creating the slums of the future. If this happens then the promise to make life better for all in Aceh will have been cruelly broken.



# Notes

- 1 Kuntoro Mangkusubroto, head of BRR, quoted on ReliefWeb press release, 21 November 2006.
- 2 Dr. Hasanuddin Abidin , 'Post-Tsunami Land Parcel Reconstruction in Aceh: Aspects, Status and Problems', Paper given to XXIII International FIG Congress, Munich, Oct 2006.
- 3 'Aceh Public Expenditure Assessment', September 2006, World Bank.
- 4 The Dutch controlled all or parts of Indonesia from 1602 to 1942.
- 5 Graham Brown, 'Horizontal Inequalities, Ethnic Separatism and Violent Conflict: The Case of Aceh', UNDP Human Development Report, Occasional Paper no. 28, 2005.
- 6 *Ibid.*
- 7 UN Office of the Special Envoy for Tsunami Recovery, from <http://www.tsunamispecialenvoy.org/country/humantoll>.
- 8 UN Office of the Special Envoy for Tsunami Recovery, from <http://www.tsunamispecialenvoy.org/country/indonesia.asp>.
- 9 *Ibid.*
- 10 OCHA Indonesia, 20 June 2005.
- 11 Section II – 5 of 'Master Plan for the Rehabilitation and Reconstruction for the Regions and People of the Province of Nanggroe Aceh Darussalam and Nias Islands of the Province of North Sumatra', available at <http://www.bappenas.go.id>.
- 12 'Agricultural Recovery swift in some areas, slower in others, depending on the regional recovery capacities', UN Farming and Agriculture Organisation, available at <http://www.fao.org/ag/tsunami/assessment/assess-damage.html>.
- 13 Lilianne Fan, 'The Struggle for Land Rights in Post-Tsunami and Post-Conflict Aceh, Indonesia', paper presented to the World Bank, November 2006.
- 14 This analysis comes from Dr. Daniel Fitzpatrick's UNDP/Oxfam report, 'Restoring and Confirming Rights to Land in Tsunami-affected Aceh', p.5, July 2005.
- 15 'First Year of the Multi Donor Fund Progress Report II', June 2006.
- 16 See [http://www.tsunamispecialenvoy.org/pdf/UNDP\\_ERTR\\_newsletter.pdf](http://www.tsunamispecialenvoy.org/pdf/UNDP_ERTR_newsletter.pdf), p.2.
- 17 Although Aceh has had religious courts for many years, it was only in 2001 and 2003 that they were formally authorised.
- 18 Figures from BRR resettlement unit, October 2006, as reported by Lilianne Fan, *ibid.*
- 19 From interview with BRR director of land, November 2006.
- 20 *Ibid.*
- 21 *Ibid.*
- 22 'Joint Land Titling in the Rehabilitation and Reconstruction Process', BRR press release, 19 September 2006.
- 23 Government of Indonesia estimate, via BRR Special Unit on Barracks, September 2006.
- 24 BRR special unit on barracks, September 2006.
- 25 Central Bureau of Statistics (BPS) of Nanggroe Aceh Darussalam, December 2005, Catalogue BPS: 4701.11.

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**Oxfam observer member.** The following organisation is currently an observer member of Oxfam International, working towards possible full affiliation:

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