I. Introduction: Land Rights in the Context of Reconstruction and Recovery

The objective of this paper is two-fold: firstly, it attempts to delineate some of the critical land rights issues that have emerged over the last two years in the Indonesian province of Aceh, the area worst-affected by the devastating earthquake and tsunami of December 2004, and one deeply scarred by three decades of armed conflict. Since the disaster struck almost two years ago, Aceh has experienced rapid change on a massive scale. The tsunami recovery effort is currently the largest reconstruction program in the developing world, with a total of US$ 8 billion allocated and pledged by donors and NGOs. The tsunami also led to a resumption of peace talks between the Acehnese independence movement and the Indonesian Government, which culminated in the signing of a peace agreement in August 2005 and officially brought the 30 year conflict to an end.

The nature and scope of land-related problems stemming from the natural disaster and the political conflict are respectively distinct and, thus, necessarily require a range of different policy and programmatic responses. At the same time, however, there are a number of cross-cutting conditions that affect both people’s capacity to cope with and resolve specific problems, as well as the sustainability and effectiveness
of those coping strategies and resolutions. Accordingly, the second objective of this paper is to identify a number of specific points of intervention through which the Indonesian Government, international donors, the UN, NGOs and other stakeholders can support Acehnese in their struggles to claim and protect their rights to land and property in the process of recovery and development of their society.

The tsunami caused a dramatic loss of life as well as huge damage to land and property in Aceh. 167,000 people were killed or declared missing, and 500,000 people were made homeless within a few hours. 252,323 houses and 300,000 parcels of land were totally or partially damaged, and whatever land records did exist were either destroyed or rendered illegible. The destruction of ownership records, the erosion of boundaries, the redistribution of inheritance on a massive scale, and the loss of physical land itself meant that securing access to land and determining who owned which parcels of land became the first priority in the process of rebuilding houses for displaced tsunami survivors. In areas where land was still accessible, it became important to first establish clarity over land and property rights to minimize potential disputes and to provide sufficient legal and social certainty for rebuilding houses and recovering livelihoods. At the same time, clear policies and procedures were needed to assist some 50,000 families whose land was submerged or rendered unsafe as a result of the tsunami, or who did not own land or housing prior to the disaster, and therefore required relocation to new land before the rebuilding process could begin.

The shock of natural disaster and need for cooperation among all elements of society in the massive recovery effort instigated a renewal of peace negotiations between the Indonesian Government and the Free Aceh Movement (Gerakan Aceh Merdeka or GAM). These talks led to a Memorandum of Understanding being signed in Helsinki on 15 August 2005, bringing an official end to three decades of armed conflict during which some 15,000 people lost their lives and tens of thousands were displaced. Rights over land and other natural resources also lay at the heart of the conflict between Aceh and the Central Government, which coincided with the emergence of a political economy which effectively marginalized Acehnese at local, provincial, and national levels. The sustainability of the newly-forged peace in Aceh depends largely on the
ways in which deep-rooted patterns which perpetuated grievance and distrust at multiple social and political levels are transformed, and the courses by which new forms of social, economic, and political institutions and relationships are developed. Questions related to the distribution of control over and access to land and natural resources will play a key role in these processes.

Rights to land hold multiple implications for tsunami-affected and conflict-affected people in the province of Aceh. The earthquake and tsunami caused sudden and massive destruction to natural, physical, financial, social, and human capital, primarily along Aceh’s coast, but also in the interior, where the disruption of family and trade networks, and the influx of people displaced by the disaster, had severe social and economic consequences. While the physical reconstruction might be completed in 10 years, full recovery could well take generations. The impact of the natural disaster was even more severe as it occurred in a land where 30-years of conflict had severely deteriorated personal and livelihoods security, social coherence, public services and infrastructure, civic institutions, and ecological stability. While the physical damage to land and property and the displacement caused by the tsunami was as sudden as it was devastating, the destruction and displacement brought about by the conflict was chronic, fuelled by entrenched patterns of competition for control of natural resources and political power.

In a context of post-disaster reconstruction and post-conflict recovery, secure access to land directly implicates the capacity of individuals, households, and differently positioned members of communities to begin the process of rebuilding their lives and accumulating assets needed to alleviate vulnerabilities, risks and poverty. Land is at once a foundation for reconstructing houses and recovering livelihoods destroyed by disaster or war and a potential source of income and accumulation of financial assets through sale/rent, or use as collateral for credit. The accumulation of natural, physical, and financial assets often forms the basis for increasing investment in human capital (for example, through education and skills training).”

“But (land) is far more than just an asset,” writes Robin Palmer, Oxfam’s Global Land Advisor. “For many in today’s structurally adjusted and economically liberalized world land often provides the ultimate form of social
security. Access to land is particularly important to women and can contribute to the protection of widowed, abandoned or single women and to their economic security.” vii Thus, secure rights to land also play an important role in protecting vulnerable groups, such as widows and orphans, and in promoting women’s economic empowerment through allowing them greater control over household and communal assets as well as their capacity to invest in the development of future generations.

The paper proceeds to describe the pre-tsunami context and the impact of the tsunami in Aceh. It then considers specific land rights issues which emerged as a result of the tsunami, including the need to establish clarity of ownership rights, the situation of landless tsunami victims, and the rise in evictions and development-related displacement. Next, land and resource issues which have emerged since the signing of the peace agreement are assessed, highlighting emerging challenges which long-term peace-building and development strategies will need to address. Finally, the conclusion proposes some immediate priorities for ensuring long-term peace and development in Aceh.

II. Aceh Before the Tsunami

Before the disaster, the security of the lives, possessions, and infrastructure in Aceh had already been threatened by three decades of armed conflict between the Indonesian military and an Acehnese insurgency, known as the Free Aceh Movement. Over the past 25 years, poverty had increased dramatically in Aceh even as the GDP of the province rose steadily as a result of natural resource exploitation. Since the discovery of natural gas and oil in 1971, Aceh became increasingly important to the national economy. With the development of natural gas exploration, Aceh’s GDP increased at a faster rate than most provinces in the country. However, this pattern of growth was accompanied by increasing poverty, especially in the rural areas. Between 1980 and 2002, poverty in the province increased by 239%, even while poverty rates throughout Indonesia fell by as much as 47% in the same period. viii Between 1999 and 2002 alone, the poverty rate in Aceh doubled from 14.7 to 28.9 per cent. According to the Indonesian Government’s own statistics, in 2002 nearly 48.5 per cent of the population had no access to clean water, 36.2 per cent of
children under the age of 5 were malnourished, and 38 per cent of this population had no access to health facilities.  

The decades under the presidency of General Suharto (1967-1998) saw the loss of thousands of lives, systematic human rights abuses against civilians, massive displacement, the erosion of livelihoods and local economic development, and the widespread disruption of public services such as water and sanitation, education, health. While Aceh’s contribution to national economic growth grew, locals came to feel excluded from the benefits of that growth, as they witnessed such developments as large-scale natural resource exploitation by a largely non-Acehnese business elite, the emergence of ethnic tensions caused by transmigration of ethnic Javanese into poor rural areas, and the appropriation of villagers’ land and property by the State apparatus, including the increasingly prominent military. During this period, Aceh’s natural assets were systematically stripped, with 75% of Aceh’s total land area carved up into huge logging and plantation concessions. In some districts, such as in South and West Aceh, more than 60% of the forest resources have been exploited. In 2000, there were least 28 logging companies (7 in the district of South Aceh alone) and 5 timber estates - including pulp and transmigration - in the province, and some 140,000 ha set aside for oil palm plantations. Concessions for timber and agricultural plantations were, and still are, largely owned by state-sponsored conglomerates based in Medan and Jakarta, with very little participation by local entrepreneurs.  

The unsustainable exploitation of Aceh’s natural resources led to multiple ecological and social problems, including flash floods, landslides, devastation of agricultural land, food shortages, and water pollution. These conditions led to confrontations between local communities and big companies (such as in the districts of South Aceh and Central Aceh). In Lhokseumawe, the natural gas facility, run jointly Pertamina and Exxon-Mobil, was guarded by the military, who were accused of committing human rights violations using company equipment  

At the same time, violence and displacement caused by the armed conflict undermined agricultural production and trade in many areas, with crops often destroyed. Extortion of
payments from farmers, traders, and businesspeople became a common pattern, as did the military’s control of illegal logging, marijuana, mining businesses. GAM also frequently taxed villagers, occasionally coupled with intimidation (although this was by no means comparable to the Indonesian military in scale or brutality). Horizontal tensions were also fueled by the Government’s transmigration programme, through which large areas of land in Aceh were given to Javanese transmigrants to set up food-crop sites and wood-processing industries. These programmes gave rise to significant inequality in land-holding patterns between Javanese and Acehnese, with Javanese transmigrants often given up to 2ha, while the majority of Acehnese landowners held plots smaller than 2ha xi.

These conditions led to the rise of an armed movement for independence and many years of brutal anti-insurgency operations by the military, which in turn fueled patterns of exploitation and abuse, and further deepened Acehnese hostility towards Jakarta. Ultimately, they set the conditions for the rise of various forms of resistance to the Central Government. The most prominent of these was the armed insurgency by GAM. But after the fall of Suharto in 1998, resistance became visibly diversified, with the emergence of a non-violent student-led civic movement leading calls for an end to military impunity, a peaceful resolution of the conflict, and greater control over resources by Acehnese. By 2000, however, civic leaders had become new targets for the military, and arbitrary arrests, intimidation, and even kidnapping and extra-judicial killings towards this group became increasingly frequent.

III. The Impact of the Tsunami

On 26 December 2004, an earthquake measuring 9.0 on the Richter scale struck off Aceh’s west coast, triggering a massive tsunami that hit the shores of Sumatra, Sri Lanka, India, Thailand, Malaysia, the Maldives, Burma, the Seychelles, and Somalia. Within the space of a few hours, the giant waves devastated thousands of kilometers of coastline and the communities that lived there. While the final death toll will never be known, official estimates indicate that at least 223,492 people perished across 12 countries, while
some 43,320 are presumed dead. A further 1.8 million people were displaced, seeking refuge in temporary camps and with host communities. The United Nations estimates that the disaster created some $10 billion in damages in 24 hours.\textsuperscript{iii} The loss of livelihoods was also devastating. The International Labour Organisation (ILO) estimated that one million jobs might have been lost to the tsunami across the region. Across the region, the people worst affected by the disaster were fishing communities, small-scale agriculturalists, laborers, and those running small businesses. Many fishing families who survived lost their boats, nets, and engines, and hence their ability to earn a living. The Asian Development Bank calculated that the disaster threatened to plunge a further two million people into poverty in the region as a whole, and that many of those already below the poverty line would slide even deeper into poverty as they lost what little earnings they had before.

Although the damage was massive across the region, Aceh was by far the area hardest hit. The total losses in infrastructure, housing, and productive capacity have been estimated at more than $4.6 billion.\textsuperscript{xiv} In addition to the devastation caused by the tsunami, a second powerful earthquake struck on 29 March 2005 off the island of Nias, Sumatra, leaving another 1,000 people dead and some 70,000 people displaced. A large proportion of victims of both disasters were women and children.\textsuperscript{ xv}

When the waves subsided, the survivors in Aceh found their lives in ruins. Some 1,000 villages and towns, 127,000 homes, 14,800 schools and 10,000 kilometers of roads were destroyed. In some areas, what had been heavily populated land was, after the tsunami, flat and featureless, every landmark and structure swept away. The damage to the civil infrastructure, in terms of both personnel and property, was such that local government was unable to operate satisfactorily until mid-2005. With 600,000 people rendered homeless, the provision of shelter quickly emerged as the chief priority in the relief and reconstruction process. At the end of 2005, some 78,000 people remained still in tents in Aceh and Nias, with hundreds of thousands more living in temporary barracks or with host communities, and agencies involved in the recovery effort launched a temporary shelter plan of action to get people out of tents.\textsuperscript{xvi} At the time of writing, almost 2 years after the
disaster, the recovery community in Aceh and Nias are working on a similar joint plan of action to address
the urgent situation of some 70,000 households still living in barracks, many of which are due to be
decommissioned at the end of 2006.xvii

In Aceh alone, some 600,000 people, about 25 per cent of the population, lost their sole source of livelihood.
The unemployment rate in Aceh rose from approximately 6.8 per cent before the tsunami to at least one in
three. 70 per cent of the small scale fishing fleet was destroyed. The loss of fishing boats and equipment also
deprived labourers who worked on boats owned by others, or in processing and associated activities, of their
means of earning a living. Others whose sole or main asset was land, found their crops destroyed and their
land ruined, because of the salt water and mud that covered them. According to the Food and Agriculture
Organisation (FAO), up to 15 per cent of the 37,500 hectares of agricultural land destroyed in Aceh may be
permanently lost.

IV. Defining land rights problem in post-tsunami Aceh

Within 10 days of the disaster, Oxfam was approached by a United Nations official and asked whether we
might explore the issue of land and property rights in the affected regions. As one of the first international
NGOs to provide emergency relief on the ground, we recognized that the already fragile land and property
rights of poor communities in the region were further threatened by the huge loss of land, livelihoods and
critical personal documents, such as identification cards and land records. Oxfam commissioned a rapid
scoping survey of the key issues in order to inform our future programme and advocacy work.xviii The report
highlighted the complexities of emerging land and property problems in Aceh, Sri Lanka and India and
recommended sustained monitoring of and advocacy for the protection of land and property rights of the
affected populations.

In March 2005, Oxfam and UNDP jointly commissioned a more in-depth study on restoring and confirming
land rights in Aceh.xix The report addressed two urgent issues: i) the need for sufficient tenure security to
support the reconstruction and recovery efforts, particularly in the housing sector, and ii) the need to avert land and property conflicts, such as land-grabbing and inheritance disputes. The report also looked at several cross-cutting issues, including international standards for sustainable return and restitution of land rights, relocation proposals and obligations of due process and compensation, the role of land consolidation, spatial planning, and protection of the land rights of vulnerable groups. The report described the extent of land-related damage in Aceh:

- Approximately 300,000 parcels of land (170,000 urban, 130,000 rural) out of an estimated 1,498,200 were affected by tsunami-related damage. Of these, only around 60,000 parcels were titled, mostly in urban areas.
- The provincial office of the National Land Agency (Badan Pertanahan Nasional, or BPN) in Banda Aceh was badly damaged.
- BPN’s provincial office in Banda Aceh lost 30% of their staff.
- Substantial loss of or damage to land records held at BPN and sub-district offices, including all cadastral index maps.
- Widespread loss of personal identity documents in tsunami-affected communities.
- A large amount of land had been submerged or rendered unsafe for return as a result of the tsunami.

The report distinguished the land rights situation in post-tsunami Aceh from other post-disaster and post-conflict contexts where judicial institutions played an important role in property restitution. Unlike the former Yugoslavia, there were no secondary occupations in Aceh and therefore no need for legally sanctioned evictions before displaced communities could return. Unlike Rwanda, East Timor, and Afghanistan, Aceh had no layered history of dispossession or inter-communal tension, even though it had undergone years of armed conflict. The land rights situation in Aceh could be defined primarily as one of massive displacement and the need for sustainable return, the main challenge being sheer scale rather than underlying complexity. The priority, the report recommended, was to support government and community-based mechanisms for establishing land tenure security to allow for quick return of displaced populations.
The report identified, however, several challenges in need of particular attention:

- Tensions between local communities and the local and central government, as a result of the long-standing conflict between Acehnese secessionists and Indonesian security forces.
- Significant mistrust between civil society organizations and government agencies.
- The need to integrate ‘bottom-up’ community mapping and village-level planning processes with ‘top-down’ land titling, spatial planning, and land consolidation programs.
- Resettlement assistance for those whose land is now submerged or otherwise unfit for return, as well as related obligations to provide due process and adequate compensation.
- The need for special attention and protective mechanisms for vulnerable landholding groups (including women/widows, orphans, lease-holders and communities with insecure forms of tenure).

V. Confirming Land and Property Rights through Land Administration

The Indonesian Government recognized the need for land rights protection in its official Master Plan for Rehabilitation and Reconstruction of Aceh and Nias, which was published in March 2005. The document proposed two measures: i) an audit of the physical condition of tsunami affected land, and ii) replacement of lost land documents and the issuance of new records for those who never held them. The government’s Rehabilitation and Reconstruction Agency for Aceh and Nias (Badan Rehabilitasi dan Rekonstruksi untuk Aceh dan Nias, or BRR) has also committed itself to the protection of land and property rights of affected communities, and regards this as a pre-condition to the reconstruction of housing and infrastructure as well as the recovery of livelihoods. Many civil society groups, including the Aceh Legal Aid Foundation and a network of the five largest NGOs in the province, have identified land rights as a priority issue in the post-tsunami context. They also acknowledged a lack of experience working on land and property rights issues, due to the fact that before the tsunami the majority of Acehnese civil society focused on human rights advocacy and community empowerment activities.
Responding to a proposal from the BPN, the Multi Donor Fund (MDF), managed by the World Bank, approved a US$28.5 million grant for a project called RALAS (Reconstruction of Aceh’s Land Administration System). The project consists of the following components: i) the reconstruction of property rights through ‘community-driven adjudication’ and the issuance of land titles, and ii) the reconstruction of the BPN institution in Aceh province. Through the RALAS project, the BPN aims to title up to 300,000 land parcels in tsunami-affected areas within 18 months, as well as an additional 300,000 in areas adjacent to tsunami-affected areas. The Ministry of Finance agreed to waive fees and taxes to guarantee that the land titling is done free of charge. According to MDF progress report, published in June 2006, 52,915 have been surveyed and 50,500 land titles were ready to be issued, but were awaiting for a Governmental Regulation on Banking and Land becomes effective.

With so many people dead or rendered missing as a result of the disaster, inheritance became a major issue to be dealt with in the process of establishing rights over land. Managing this process has also been challenging because inheritance is a family matter and necessarily can only be dealt through supporting family-level decision-making processes in a highly decentralized manner. Families may seek advice from village-based religious leaders, but rarely take inheritance cases up to the Shari’a court unless there is a serious dispute. Adat (customary) principles on inheritance do not make up a static set of rules that are applied uniformly across all situations, and in practice is always dependent on the decisions of the particular people involved. The final decision lies with the head of the household. This means that while particular principles may be widely acknowledged, for example, parents giving houses to daughters, this bears no relationship to how widely they are actually being applied at any given time. At time of writing, UNDP has just started collaborating with the RALAS project to support ‘mobile teams’ from the Shari’a courts to accompany the BPN adjudication teams to tsunami-affected communities with the aim of socializing Islamic principles of guardianship and inheritance, as well as encouraging women’s land ownership, which are recognized under Shari’a, and which often ensure greater protection of property rights to women and children (including widows and orphans) than do local adat practices.
VI. Protecting the Land Rights of Landless Tsunami Survivors

Other land problems, however, were not addressed by the RALAS project, perhaps the most urgent being the need for resettlement assistance for those who had been rendered landless by the tsunami. The Indonesian Government now estimates that some 80,000 hectares have been submerged, and that some 35,000 households who lost their land will have to be resettled to new locations.\textsuperscript{xxiv} In addition, an estimated 15,000 households did not own land or houses before the tsunami (the renters and squatters). Both groups require resettlement to new land before they can be provided with houses.

The resettlement process has been fraught with many problems: on-going policy ambiguity and debates over who should be eligible to receive resettlement assistance; a lack of mechanisms supporting community-based reintegration as a resettlement option; lengthy and expensive processes of land acquisition by the Government; and a lack of appropriate private and state land in many districts.

At the heart of the debate over who should receive resettlement assistance is the differential treatment that BRR housing policy offers to pre-tsunami land and house owners and pre-tsunami renters and squatters. At the time of writing, BRR policy stipulates that the Government will acquire land and provide free housing to pre-tsunami land and house owners who require resettlement, but denies renters and squatters access to free BRR housing in favor of a cash only option.\textsuperscript{xxv} As laid out in the regulations, pre-tsunami owners will receive basic 36 square meter houses on new land with appropriate infrastructure, while pre-tsunami renters will receive approximately US$2800, and pre-tsunami squatters approximately US$1150. Renters and squatters must use this cash as a deposit for a loan to obtain ownership of BRR land and housing.\textsuperscript{xxvi} A growing number of actors in the recovery community have voiced their criticism of these BRR policies, which are seen to be inadequate in finding housing solutions for the large number of landless tsunami victims, who are among the most vulnerable and asset-poor households affected by the disaster.
The lack of clear policy and mechanisms for providing resettlement and housing assistance to landless tsunami victims has led to on-going delays and uncertainty for this population, and as a result large numbers of these landless survivors still remain homeless and without housing commitments almost 2 years after the disaster. Many are scattered across the 300 or so government-commissioned barracks in Aceh. September 2006 saw two major demonstrations at the office of the Government of Indonesia’s Rehabilitation and Reconstruction Agency (BRR NAD-Nias) by some 2,000 people living in temporary living centers (TLCs, also known as barracks). The demonstrators demanded that BRR pay more attention to the conditions of people living in TLCs, particularly to those who had not received commitments for housing assistance. While some of the demands issued and methods employed by the protestors were deemed by the BRR as disproportionate and inappropriate, the demonstrations succeeded in reminding all those involved in the recovery effort that there is a very real and complex crisis in the TLCs, and that those who remain in these locations include the most vulnerable, including renters and squatters, those who lost land to the tsunami, single-female headed households, unaccompanied children. In response to the crisis in the TLCs, UNORC and UNICEF are working with BRR to develop a Barrack Plan of Action, aiming to stabilize conditions in the TLCs with a push to providing equitable assistance to the most vulnerable. What has become very clear, however, is that many IDPs remain in the barracks because they are unable to return to their original locations and that adequate policy solutions to this problem are urgently needed.

VII. Evictions and Development-related Displacement

Another problem which began to emerge towards the end of 2005 was the increase in eviction threats by landowners who had been allowing displaced communities to stay on their land temporarily. Delays in finding permanent housing solutions for displaced people put pressure on some landowners to claim back or seek returns for the use of their land. In one case that occurred in Aceh Besar district in mid-October 2005, over 1,200 people were evicted from a private sawmill that many had been staying on for almost 10 months. The population, nearly all from the western district of Aceh Jaya, had swelled over this period and eventually
the sawmill owner issued an ultimatum - move or start paying rent. Oxfam field staff, who had been delivering water and sanitation services to the camp since early 2005, were promptly informed about this threat, but were unable to convince the landowner reconsider his stance. When the community finally decided to move to an empty plot of government land across the road, Oxfam, UNICEF, and Concern helped them to set up their tents in the new site and provided emergency water supply and other relief services. However, while the government granted permission for the IDPs to remain at the new site until they could be moved into permanent housing, the site was too small for proper drainage work to be done, and tents were tightly cramped together, making the camp both uncomfortable and unsanitary. Oxfam coordinated with the Australian Red Cross, who committed to build temporary shelter units for the entire camp if the government could give them a larger piece of land, on which they could stay for up to two years. The government agreed and the temporary shelter units are currently under construction. In the meantime, the community continues to wait, and agencies continue to provide short-term services.

Such cases are not uncommon in post-disaster Aceh, nor on Nias island, where eviction threats were also reported to have been issued in several IDP camps in late 2005 and early 2006. In addition, major infrastructure projects also threaten to cause a new wave of displacement for tsunami victims, even as they promise to bring long-term benefits to affected-populations and the economic development of the province as a whole. Some communities have already staged protests in relation to the planned West Coast highway, funded by USAID, demanding compensation for land acquired for the road construction, including graves sites, and for the loss of newly-constructed houses. It is likely that this trend will increase as time goes by and pressures mount on land owners to revive land-based income-generating activities, or to sell their land to developers.

VIII. The Peace Agreement

The tragedy of the tsunami brought about a renewed commitment for peace, and on 15 August 2005, a historic Memorandum of Understanding between the leaders of the Free Aceh Movement (GAM) and the
Indonesian Government was signed in Helsinki, Finland. The European Union and ASEAN have supported the peace process by establishing the Aceh Monitoring Mission to monitor the implementation of the MoU, including the decommissioning of weapons, the demobilization of GAM combatants, the release of prisoners, and the reintegration of GAM members into their communities.

The months immediately following the signing of the MoU saw the establishment of the Aceh Monitoring Mission (made up of EU and ASEAN civilian monitors) and a phased withdrawal of non-organic TNI (army) and POLRI (police) troops and a decommissioning of GAM weapons. This process was completed in December 2005, with 25,890 TNI troops and 5,850 police relocated and a total of 840 GAM weapons surrendered. Since 2006, the process of implementation of the MoU has resulted in major legal, political, and institutional changes in Aceh. The principles of the MoU were to be incorporated into a new governance law (known as the Law on Governing Aceh, or LOGA) and drafting began swiftly in September 2005 with public consultations taking place at three universities. Gubernatorial elections (PILKADA) were scheduled to take place a few months after the law had been finalised, and are now due to be held on 11 December 2006. On 11 February 2006, the Governor of Aceh issued a decree which established the Badan Reintegrasi Aceh (BRA) as the main agency responsible to coordinate government bodies, donors, and supporting agencies working on implementing post-conflict assistance and peace-building programmes.

The change brought about by the peace process has been both rapid and dramatic. TAPOL, a UK-based organisation advocating for democracy and human rights in Indonesia, observed in April 2006 that Aceh had suddenly gone from years of being a “place of desperation, deprived of any space for democracy” to becoming “arguably the only place in the Indonesian republic where political participation can blossom, where local political parties and aspirations have become possible and where decentralisation has real meaning.”

xxx
IX. Post-conflict Governance: The LOGA and PILKADA

On 11 July 2006, the national parliament passed the Law on Governing Aceh (LOGA), which effectively provides the legal basis for the implementation of the MoU, and replaces Law no. 18/2001 on Aceh’s “special autonomy”.

The main features of the law include³³ï:

- General: Aceh Government to regulate all public sectors except those that are the authority of the central government, including foreign affairs, defense, security, justice, national fiscal affairs and certain functions in the field of religion.
- Economic: Aceh to receive 70% of oil and gas revenue; 80% of forestry, fishery, mining and geothermal energy revenues; additional 2% of General Allocation Funds (DAU) for 15 years and 1% for the following 5 years.
- Political: Local political parties can be established.
- Legal: Human rights court established in Aceh; Truth and Reconciliation Commission based on existing regulations; Right to implement Shari’a Law.
- Security: TNI to protect state unity and sovereignty.
- Socio-cultural: Wali Nanggroe established as non-political non-government institution.
- Subsequent required regulations: At least 4 national regulations, 3 presidential decrees, 58 provincial qanun and 35 district qanun.

While the large concession of natural resources revenues to Aceh was deemed acceptable to most Acehnese, there remained widespread dissatisfaction with the LOGA, most prominently (but not exclusively) from GAM, who claimed that it contravened the spirit as well as provisions of the MoU. GAM was particularly disappointed with the Central Government’s continuing authority to makes laws affecting Aceh, the continued role of the TNI in defense, and that the human rights courts established in Aceh would be non-
retroactive. Many Acehnese shared GAM’s disappointment in the final bill, which they perceived to have been considerably weakened.\textsuperscript{xxiii}

The mobilization of civil society groups to lobby on the LOGA process led to formation of the Aceh Democracy Network, a coalition of Acehnese and national activists. This included a Women’s Policy Network, which succeeded in getting many points of their advocacy agenda adopted into the final LOGA (Art 67 on political party, Art 121 on economy, Art 163 on education, Art 175 on health, and Art 179 on human rights). Points on women’s participation in religious decision-making bodies were not adopted.

The finalisation of the LOGA has paved the way for local elections to be held for a new Governor and District Chiefs (Bupati). A date has now been set for the PILKADA to be held on 11 December 2006, with campaigns due to begin on 24 November. While the LOGA allows for the establishment of local political parties in Aceh, GAM has decided not to run for the 2006 elections, after disagreements arose over who proposed candidates for Governor and Vice Governor during a high-level GAM council meeting in February 2006. However, GAM stated that any of its members could run for election as independent candidates. 2 prominent GAM figures are now running independently for Governor and Vice-Governor in separate pairs, each paired with non-GAM candidates.\textsuperscript{xxiii} A number of GAM members are also running for Bupati and Vice Bupati posts. There are possible splits in GAM, between Sweden-based leaders and the older generation of GAM leaders in Aceh and the younger generation of GAM leaders.

\textbf{X. Challenges in Reintegration and the Implementation of the MoU}

In March 2006, the World Bank published a GAM Reintegration Needs Assessment, which revealed that 70% of GAM ex-combatants were unemployed.\textsuperscript{xxxiv} Respondents interviewed for the assessment identified livelihoods recovery as the number one priority. Accordingly, post-decommissioning reintegration activities have focused on the dispersal of reintegration livelihoods funds. However, it has been widely-admitted that
the process remains problematic, particularly around unequal funds committed to different categories of conflict-affected social groupings, comprising GAM ex-combatants, GAM non-combatants, amnestied political prisoners, and a broad category of “conflict victims”, which includes civil servants, community leaders, villagers, IDPs, transmigrants, and, most contentiously, members of anti-separatist groups. A major issue here was insufficient funds for GAM ex-combatants, for while the Government allocated funds only for 3,000 fighters as mentioned in the MoU, it later became clear that the numbers of ex-combatants in need of reintegration assistance was much higher.

In the MoU itself, the Indonesian Government promised to rehabilitate public and private property destroyed as a result of the conflict, as well as to grant farming land or, in the case of incapacity to work, social security to three groups: GAM combatants, pardoned prisoners, and all civilians ‘who have suffered demonstrable loss due to the conflict’. xxxv It is still unclear how this article is to be implemented, and some scholars have warned that it is unlikely that sufficient appropriate land will be found to fulfill this pledge to all those who fit the criteria, which could lead to problems such as land disputes as demobilized combatants return to local communities and unlawful occupation of land promised under the agreement. xxxvi

When asked about the Government’s plan to implement this particular article, a senior BRA official admitted that the continued ambiguity around the promise of providing land epitomizes a continued lack of clarity around what particular articles of the MoU mean, as well as a lack of plans of how they will be implemented. At the same time, senior officials in the BRA and the World Bank have expressed concerns that there remains a lack of strategy for long-term economic development, particularly employment generation, in the post-reintegration phase. They have expressed the need for a more comprehensive and coordinated recovery from government, donor and supporting agencies, particularly in the area of livelihoods recovery, but also in rehabilititating water, sanitation, and health services in conflict-affected areas.
XI. Emerging Conflict-Related Land and Resource Issues: IDP Return, Military Land Claims, Transmigrant Repatriation, and the Campaign for New Provinces

Since the signing of the MoU, a number of developments have demonstrated on-going contestation over the access to and control over land and resources. These include return of conflict-affected IDPs to their villages, a government programme to repatriate transmigrants who fled Aceh as a result of the conflict, contestation over land between local communities and the military, and a campaign by some political elites to carve two new provinces out of present-day Aceh.

The first major humanitarian crisis among conflict-affected IDPs in the post-MoU period occurred in December 2005, when approximately 4,500 conflict IDPs from Bireuen and Pidie decided to return on foot to their homes in Bener Meriah and Aceh Tengah, which they had fled in May and June 2001. A week later, some 60 people, mostly women and children, collapsed of exhaustion and starvation. At the same time, institutions that have historically been involved in perpetuating and exacerbating conflict continue to generate tensions at the local community level. These include the military, anti-separatist groups (who continue to generate on-going tensions continue with GAM and local communities, particularly in Aceh Tengah, Bener Meriah, and Aceh Timur), and transmigrants.

The military’s continuing ability to intimidate locals and claim control over resources can be demonstrated by a number of cases where local communities have been faced with military land claims, such as in Aceh Barat (Kelurahan Suak Indrapuri) and Aceh Besar (Kecamatan Seulimum; Desa Meunasah Kalam and Desa Meunasah Mon). In these case of tsunami-affected villages Desa Meunasah Kalam and Desa Meunasah Mon, some 24 households are seeking new land as their own plots are being claimed by the military, who have an office, residences, and a clinic in the same area. The Canadian Red Cross has committed to building houses for all those who have land which is not disputed. A few households who are affected by the military’s claims have managed to by new land nearby, but many others are unable to do so due to a lack of
financial resources, and thus remain without housing commitments. The affected beneficiaries include a number of widows.

Although the military does not have credible proof of rights over the land (only having a map from the Dutch colonial period!), the villagers are unwilling to challenge their claim through open confrontation for fear of reprisal. The villagers have not informed the BRR about this, and are seeking support of Oxfam and the Aceh Legal Aid Foundation to advocate their case to BRR’s Department of Housing and Settlement Department and Department of Institutional Development. The BPN (National Land Agency) has conducting surveying and mapping of the village, but have not mapped the contested land.

In the meantime, the local government has started to facilitate the return of tens of thousands of transmigrants who fled during the conflict, and were assisted with jobs on palm oil and paper plantations. There have been a number of cases reported in the media of conflict-affected transmigrants being repatriated to Aceh Barat district, and local government officials have confirmed verbally that transmigrant repatriation will continue over the next few years, along with the development of plantations. This program of transmigrant return is certain to revive old tensions, as well as create new ones, including in tsunami affected areas where land for reconstruction is already scarce (such as in Desa Patek, Aceh Jaya). While the right of return of transmigrant communities must also be recognized, any repatriation programme must be especially careful not to replicate patterns of control over land-based productive assets which reproduce some of the very ethnic and class inequalities which fueled the conflict for so many years.

Another political problem is a campaign by the political elite in 11 districts to create 2 new provinces out of the territories of contemporary Aceh province. The districts involved in this mobilisation are Aceh Jaya, Aceh Barat, Nagan Raya, Aceh Barat Daya, Aceh Selatan, Simeulue, and Singkil (Aceh Barat and Aceh Selatan- ABAS) and Aceh Tenggara, Gayo Luwes, Aceh Tenggara, and Bener Meriah (Aceh Leuser Antara). These leaders have been coordinating amongst themselves and have even lobbied senior representatives of
the DPR in Jakarta in December 2005, where they threatened to boycott the PILKADA. Some leaders are very active in campaigning amongst youth and students in their districts. However, it is difficult to gauge the extent of influence this group has, as it is clear that many social elements of these districts, including GAM-supporters, ulama, and many local NGOs, have voiced their concerns that such efforts are divisive, do not reflect the aspirations of the majority of the population, and threaten to destabilise the peace process. Political analysts have also observed that there is little political support for this campaign at the highest levels in Jakarta. Nevertheless, the persistence of this mobilisation by a significant number of the political elite in the province means that it has the potential to grow into a serious challenge to the peace process in the future.


Meanwhile, there has been a rise in local-level conflict and violent crime since the signing of the peace agreement, even as there has been a steady decrease in GAM-GoI incidents during the same period (See Figure 1 and Figure 2 below). The World Bank reported that in August 2006 the number of monthly local-level conflict incidents had reached its highest since January 2005, with 84 recorded for the month of August alone. At the same time, the Aceh chapter of the Commission for Missing Persons and Victims of Violence (Kontras) reported that some 70 incidents of armed crime had been recorded since August 2005, including 15 cases where GAM ex-combatants were suspected to be involved.

A number of local NGOs consider the rise in violent crime as indicative of the Government’s failure to engage former combatants in a comprehensive and effective process of post-conflict reintegration and have called on the Government to re-evaluate its programme. "The rising crime rate proves there is something wrong with the reintegration process after the signing of the peace agreement,” observed the chair of Aceh’s Anti-Corruption Movement (GeRAK). “Reintegration does not mean merely the provision of cash aid, but also stimulating the socio-political spirit in the framework of cultural and social integrity. Former fighters need not only money, but also help to manage the capital and change their behavior. In short they badly need
a comprehensive approach.\textsuperscript{xliii} The Aceh Judicial Monitoring Institute supported this view, that the majority of these incidents took place in districts known to be GAM strongholds, with the highest number of incidents in East Aceh (16), followed by North Aceh (14), Pidie (13), and Bireuen (11).\textsuperscript{xliv}

Figure 1: GAM-GoI incidents January 2005-August 2006


Figure 2: GAM-GoI and local-level conflict January 2005- August 2006

Also on the rise in Aceh are local-level confrontations linked to moral vigilantism, including the ‘policing’ of public behaviour, particularly that of women, by Syariah officials (Wilayatul Hisbah).\textsuperscript{xlvi} Locals and outsiders alike have raised concerns about the way Syariah law is being implemented as well as the intentions behind the expansion of Syariah to criminal justice.\textsuperscript{xlv} At the same time, however, it is important to note that there seems to be growing participation of members of local communities in monitoring public behaviour in the name of Islamic values, some of which have resulted in acts of collective violence, such as spontaneous mob beatings in public places against ‘perpetrators’ of criminalized acts, such as gambling and adultery. These developments cannot simply be stamped as the coercive imposition of a political or fundamentalist agenda, or as the assertion of ‘traditional’ Acehnese cultural values and systems. Rather, they ought to be analyzed in the context of the steady erosion of public confidence in the competence and impartiality of the formal justice system, as well as the absence of effective alternative mechanisms to address grievances. The crisis of the justice system in Indonesia has been well-studied by international development actors. A report prepared by the World Bank described the Indonesian legal system as “dysfunctional”. The report continues, “the public perceives the system as incompetent, unaccountable and lacking in independence. Trust in law enforcement agencies is very low. This situation is more extreme in post-conflict areas where the stress of conflict often leads to a virtual collapse of the justice sector. Places like Maluku and Aceh suffer from severe shortages of judges, prosecutors and police – community access to formal justice is almost non-existent. Such a failure of law enforcement creates an environment where small, soluble disputes can easily lead to broader social conflict.”\textsuperscript{xlvii} In a similar vein, a 2003 report by UNDP observed that problems with the justice sector were particularly acute in Aceh: ‘there are currently no existing avenues for the Acehnese to report misconduct by, or grievances about the legal and law enforcement institutions and oversight and accountability mechanisms are minimal. Public pressure for change is limited, due to low levels of understanding of legal rights and the perception of GAM allegiance on the part of legal NGOs by the police and military forces.’\textsuperscript{xlviii}
The peace process offers the opportunity for extensive reform of the justice system, and is clearly a priority for ensuring the sustainability of long-term peace in Aceh. However, as the legacy of injustice and exclusion runs very deep in Aceh, building trust in formal legal institutions and processes seems unlikely to succeed unless accompanied by far-reaching changes in government transparency, accountability, public service delivery, and ability to generate inclusive patterns of economic development.

XIII. Conclusion

The land rights problems in present day Aceh, the site of both a devastating tsunami and decades of armed insurgency, are vast in both scale and variety. Two years on from the disaster and over a year since the signing of the Helsinki MoU, it is still too early to declare success in either the tsunami recovery or the implementation of the peace process. What is clear is that the protection of rights to land, property, and resources is a pre-condition for a sustainable recovery in the post-tsunami and post-conflict Aceh and that equitable access to land and resources lies at the heart of the province’s physical, economic, social, and political development. The struggle for land and property rights cannot be conducted in isolation from broader efforts to secure access to justice for displaced and vulnerable groups. Programmes aimed at empowering these groups to defend their rights need to take place in a holistic manner that include public education about rights and entitlements, capacity-building in advocacy skills, reform of the justice system, pro-poor economic development strategies, and improved public services.

With the reconstruction effort in Aceh and Nias currently representing the largest in the developing world, there is an unprecedented opportunity and commitment to ‘build back better’. The realization and sustainability of this vision, however, depends on economic and social measures which recognize and address historical inequalities that have perpetuated conflict and poverty and work strategically towards a model of development which is truly inclusive for all.


iii The Government of Indonesia’s Rehabilitation and Reconstruction Agency for Aceh and Nias (*Badan Rehabilitasi dan Rekonstruksi NAD-Nias*, or BRR) estimates that there are 35,000 households who owned land and houses before the tsunami and at least 15,000 families who did own housing or land before the disaster.

iv When the tsunami struck, Aceh had been under Civil Emergency for over six months, and Martial Law for a year before. Civil Emergency status was officially withdrawn on 18 May 2005, almost six months after the disaster.

v The Norwegian Refugee Council’s Global IDP Database profile for Indonesia in November 2003 estimated that the cumulative total of people displaced by the conflict may have been as high as 500,000. A previous peace process, facilitated by the Geneva-based Centre for Humanitarian Dialogue, broke down in May 2004, and Martial Law was declared in Aceh. Under Martial Law, Aceh was virtually closed to the outside world, with severe restrictions imposed on humanitarian organizations and media in the province. Human rights organizations reported extrajudicial killings, arbitrary arrests, torture, and widespread intimidation of villagers suspected of being separatist sympathizers. See, for example, Human Rights Watch reports “Aceh Under Martial Law” (2003-2004).

vi For empirical research on the economic impact of post-disaster shelter provision, see Stephen Shepard and Richard Hill, *The Economic Assessment of Shelter Assistance in Post-Disaster Settings*, CHF International (August 2005)


x See “Aceh Ecological War Zone”, Down to Earth Newsletter No. 47 (November 2000)

xi See “Mobil Oil and Human Rights Abuse in Aceh”, Down to Earth Newsletter No. 39 (November 1998)

xii Brown, “Horizontal Inequalities”.


xiv Government of Indonesia (BRR NAD-Nias), *Aceh and Nias One Year After the Tsunami: The Recovery Effort and Way Forward.* (December 2005)

xv Ibid.

xvi Figures from BRR Special Unit on Barracks (September 2006). See section VI in this paper on landless tsunami victims.


xviii Fitzpatrick, “Restoring and Confirming Rights”

xix The government, and the security forces in particular, have long been suspicious of civil society groups in Aceh, and many were labeled as being pro-separatist.

xxi Government of Indonesia (BAPPENAS), *The Master Plan for the Rehabilitation and Reconstruction of the Regions and Communities of the Province of Nanggroe Aceh Darussalam and the islands of Nias, Province of North Sumatra*.

xxii The network consists of the following NGOs: KKTGA, the Gender Transformation Working Group; SULOH, a farmer’s network; WALHI, Friends of the Earth Indonesia; Koalisi NGO HAM, the Human Rights NGO Coalition; and Forum LSM, a large NGO Forum.

xxiii Multi-Donor Fund for Aceh and Nias, *The First Year of the Multi-Donor Fund: Results, Challenges, and Opportunities* (June 2006)

xxiv Figures from BRR Resettlement Unit (October 2006)

At the time of writing, USAID is proposing to assist BRR to develop a subsidized credit programme.

The BRR now estimates that of the estimated 70,000 people who remain in barracks, as many as 20,000 are pre-tsunami renters and squatters (the majority of whom do not have housing commitments).


At the time of writing, the total number of houses that will be affected by the construction of the road is still unknown. However, as many as 100 newly-constructed houses will have to be dismantled in Aceh Jaya. Many houses in the district of Aceh Besar will have to be destroyed as well, including 8 new houses and a number food-stalls set up through Oxfam’s shelter and livelihoods projects. The Provincial Government has started to pay compensation for the land acquired and BRR has said that houses will be compensated in kind, but so far there has been little public information to beneficiaries and aid agencies on the overall compensation plan.


The two pairs are Humam Hamid, a prominent academic and civic leader, and Hasbi Abdullah, the brother of GAM’s Sweden-based Foreign Minister Zaini Abdullah; and Irwandy Yusuf, a senior GAM spokesperson and Muhammad Nazar, Chair of SIRA (Aceh Referendum Information Center), a prominent NGO which led the popular mobilisation for a non-violent referendum which emerged in 1998. In November 1999, SIRA mobilized some 1.5 million people to participate in a peaceful referendum rally at the main mosque in Banda Aceh.

The World Bank, GAM Reintegration Needs Assessment (March 2006)

Articles 3.2.4 and 3.2.5, Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement (15 August 2005).


The case was first reported to livelihood officers from Oxfam’s Aceh Besar office, and confirmed through field visit by the Senior Policy Coordinator in September 2006.

In mid-2005, the Provincial Department of Population Mobility published a proposal for returning some 40,000 transmigrants. There has been little publicity about the implementation of the transmigrant repatriation programme, and it has been difficult to obtain precise figures regarding the exact number of people who are targeted by this programme. However, independent sources estimate that the figure of 40,000 is feasible, as it corresponds to the numbers who are reported to have fled the province during the conflict.


The World Bank/Decentralization Support Facility (DSF), Aceh Conflict Monitoring Update, (August 2006). These included some 20 tsunami-related incidents, such as protests at the office of the state electricity company and confrontations with an NGO due to delays in payment of compensation for land on which the organization was building houses.


Ibid.

Ibid

Legal expert Conor Foley explains, “The laws that granted Aceh special autonomy (Law no. 18/2001), included authorization to implement Syariah in the province as long as these have been translated into local legislation and approved by the Acehnese Provincial Parliament. In March 2003, a Presidential Decree formally established Syariah Courts in Aceh by renaming the existing Religious Courts and retaining their infrastructure, jurisdiction, and staff. The special autonomy law specified that the Syariah Courts would not be allowed to violate Indonesian national law and the Presidential Decree stated that the courts should primarily concern themselves with ‘the performing of Islamic religious duties in social life’. The actual jurisdiction of these courts was to be defined by the laws and regulations (Qanun) of Aceh’s Provincial Parliament. This promptly passed a number of Qanun that expanded the jurisdiction of the Syariah courts ‘to examine, decide and resolve cases related to family, civil and criminal law’ as well as prohibiting Muslims from drinking alcohol, gambling, dressing immodestly, or being in ‘close proximity’ with unmarried persons of the opposite sex. Violations of these rules could be punished by fines, imprisonment or lashing.” Conor Foley, “Land and Property Rights in Aceh, Part II: The Legal and Political Framework”, unpublished briefing paper, (November 2005)

See, for example, International Crisis Group, “Islamic Law and Criminal Justice in Aceh”, Asia Report no. 117 (31 July 2006)

The World Bank, “Support for Poor and Disadvantaged Areas Program (SPADA), Concept Note: Mediation and Legal Empowerment Component”, unpublished report.
xlviii United Nations Development Program (August 2003)