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**Housing for the Landless:
Resettlement in Tsunami-Affected Aceh, Indonesia**

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Daniel Fitzpatrick

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EXECUTIVE SUMMARY

In the Indonesian province of Aceh, the Indian Ocean tsunami disaster inundated at least 15,000 land parcels and damaged around 74,000 ha of agricultural land, with at least 5000 ha now classified as remedy or repair. After the disaster, at least 13,000 families required resettlement because their land is submerged, uninhabitable or otherwise unavailable. These families are disproportionately represented in temporary barracks, and are among the last in line for housing assistance. While most programs have focused on housing for landowners, housing for the landless is now central to decommissioning the barracks and ensuring sufficient homes for all victims of the disaster.

This paper makes detailed findings and recommendations in an effort to promote sustainable resettlement in Aceh. The key recommendations can be summarised as follows.

Land Acquisition

- The Aceh and Nias Reconstruction Authority (BRR) continue to acquire land identified and requested by beneficiaries, NGOs and donors where financial assistance is provided by a NGO or donor.
- The provincial Parliament of Aceh utilise its new land administration powers under the Law on Governing Aceh Act 2007 to clarify that local communities may allocate available communal land to their members so long as that allocation does not infringe on any statutory or other customary rights to land.

Site Selection

- BRR, or NGOs as appropriate, further assess government resettlement sites in relation to suitability for livelihoods, and access to services and infrastructure. This suitability assessment should be distributed to all stakeholders, including the prospective beneficiaries themselves.

Registering and Verifying Beneficiaries

- Technical and staffing assistance be provided, as appropriate and requested, to the BRR beneficiary verification team.
- A documentary trail be developed by the verification team for audit/confirmation purposes.
- A local NGO be commissioned to identify vulnerable groups potentially left behind by the registration process. This identification and assistance program would concentrate on widows and female-headed households.

Institutional Responsibility

- BRR continue its efforts to develop a comprehensive Resettlement Plan that identifies roles and areas of responsibility within the government, between the government and civil society (including donors), and within civil society itself.

Consultation and Participation

- As mandated by Regulation 20/2006, BRR continue its efforts to establish Housing and Settlement Development Acceleration Committees for each of its resettlement sites. This committee should include elected representatives of housing beneficiaries
- BRR develop implementing guidelines for Regulation 20/2006 that set out the specific participatory responsibilities and mechanisms of each Housing and Settlement Development Acceleration Committee.
- NGOs and donors provide as much community infrastructure as possible in resettlement locations, including water and sanitation, health posts and education facilities. Livelihoods programs should also be run by NGOs and donors.
- To encourage greater involvement by NGOs and donors, BRR or a delegated consultant prepare for each resettlement site a Resettlement Plan with clear allocation of responsibilities and mechanisms for coordination.

Needs Assessment

- BRR, or NGOs as appropriate, implement a socioeconomic survey of a representative sample of persons eligible for resettlement assistance. This survey should be based on the template provided in the World Bank's resettlement.

Livelihoods

- BRR, or an NGO as delegated, appoint a livelihoods coordinator for each BRR resettlement site.

Site Planning and Development

- BRR, or an experienced consultant as delegated, prepare a Resettlement Plan for each BRR resettlement site that includes detailed provisions relating to site planning and development. This Resettlement Plan should prioritise NGO and donor involvement in community infrastructure and livelihood programs. It should be public and updated regularly on the BRR website.

Monitoring and Evaluation

- BRR, and NGOs as appropriate, undertake regular site inspections to ensure compliance with the Resettlement Plan.

Tenure Security

- All resettlement beneficiaries receive secure documented rights to their new land.

These recommendations are set out in more detailed form throughout the paper.

1 INTRODUCTION

The Indian Ocean tsunami disaster killed over 150,000, and displaced around 500,000 people in Indonesia alone.¹ In the worst-hit province of Aceh, it inundated at least 15,000 land parcels and damaged around 74,000 ha of agricultural land, with at least 5000 ha now classified as remedy or repair.² After the disaster, at least 13,000 families required resettlement because their land is submerged, uninhabitable or otherwise unavailable. These families are disproportionately represented in temporary barracks, and are among the last in line for housing assistance. While most programs have focused on housing for landowners, housing for the landless is now central to decommissioning the barracks and ensuring sufficient homes for all victims of the disaster.

Some landless households have received land for housing from neighbours, friends or their local communities. Others have purchased land, sometimes with the assistance of a local or national NGO. Most are slated for resettlement on sites acquired by the government. The Indonesian government has acquired approximately 850 ha of land for resettlement in tsunami-affected districts. By February 2007 these sites had received 4390 households, with a further 9320 households registered and awaiting completion of housing. Resettlement is well underway in Aceh. The priority is to promote the suitability and sustainability of new settlements, and ensure that vulnerable groups are not left behind in the rush to complete housing programmes.

The options for resettlement in Aceh range from community-based models to private land acquisition to state-arranged resettlement sites. The stakeholders include the Aceh and Nias Reconstruction Agency (BRR), district and provincial governments, civil society groups, international donors and the landless themselves. While there are urgent demands to rehouse the homeless, there are corresponding needs for effective planning and coordination. All stakeholders acknowledge that the urgent circumstances of homelessness have militated against participatory planning and threatened the sustainability of new settlements. This paper makes detailed findings and recommendations in an effort to promote sustainable resettlement in Aceh.

Part II discusses the nature and number of those requiring resettlement in Aceh. Part III outlines international standards relating to resettlement. Part IV sets out findings and recommendations relating to the key stages of resettlement in Aceh. Much of the focus is on resettlement at government-acquired sites as these are the primary locations for new settlements in Aceh. This paper does not consider resettlement requirements in disaster-affected Nias.

¹ Early Indonesian government figures were 126,602 people killed and 93,638 people missing. Some later reports give a lower figure for the number of missing: see e.g. the estimate of 36,800 missing in Tsunami Recovery Indicators: UNIMS and BRR December 2005. From 1 January 2006 the Syaria Court for Aceh began to declare all missing persons deceased.

² Supra note 2, p. II-5.

2 CHARACTERISTICS OF PERSONS REQUIRING RESETTLEMENT IN TSUNAMI-AFFECTED ACEH

2.1 The Physical Impact of the Tsunami: How Many Households Require Resettlement?

The tsunami disaster damaged 667,066 ha of land in Indonesia.³ This area includes an estimated 300,000 land parcels (170,000 urban, 130,000 rural). Around 60,000 affected parcels are registered with the National Land Agency (BPN). The remaining parcels are held under customary or local forms of land administration.⁴ As many as 15,000 land parcels were submerged or rendered uninhabitable. There was damage to around 74,000 ha of agricultural land⁵ with 50,000 ha now rehabilitated.⁶ Between 5000-7000 ha lost its fertility permanently due to the effects of mud, salt, sand and erosion⁷.

In late 2004, the NGO Garansi and the Indonesian Bureau of Statistics surveyed over 330,000 displaced people in Aceh. This survey ("the BPDE survey") collected data on an individual rather than household basis. It included questions relating to the loss or inundation of land. Approximately 30,000 respondents stated that they had lost or destroyed land in Aceh. The breakdown by district is as follows.

³ Master Plan, Republic of Indonesia, pII-9.

⁴ Aceh and Nias Two Years After the Tsunami, Progress Report, BRR and Partners, December 2006, www.e-aceh-nias.org/, p32.

⁵ Above, n1, p15.

⁶ Above, n1, 63.

⁷ Above n1, pII-5.

Number of Displaced Persons whose Land was Destroyed by the Disaster (BPDE Data)

District	Land Submerged by Salt Water	% of all Respondents	Land Lost	% of all Respondents	Total Number of Respondents with Lost or Submerged Land	% of all Households
Simeulue	167	0.7	69	0.3	236	1
Banda Aceh	847	2.9	189	0.6	1,036	3.6
Langsa	100	10.8	25	2.7	125	13.4
Aceh Utara	305	1.3	119	0.5	424	1.8
Sabang	160	11.7	147	10.7	307	22.4
Lhokseumawe	179	3.4	1	0.0	180	3.4
Bener Meriah	0	0.0	0	0.0	0	0
Aceh Jaya	398	3.5	182	1.6	580	5.2
Nagan Raya	423	3.8	65	0.6	488	4.3
Aceh Tamiang	436	27.6	11	0.7	447	28.3
Abdya	218	7.1	44	1.4	262	8.5
Bireuen	745	2.7	98	0.4	843	3
Pidie	3,726	5.7	504	0.8	4,230	6.5
Aceh Barat	5,413	10.2	1,324	2.5	6,737	12.7
Aceh Tengah	10	0.6	4	0.2	14	0.9
Aceh Timur	1,632	10.0	69	0.4	1,701	10.4
Aceh Tenggara	19	5.2	19	5.2	38	10.4
Aceh Selatan	1,245	10.5	211	1.8	1,456	12.3
Aceh Singkil	6,424	32.3	247	1.2	6,671	33.5
Aceh Besar	1,670	4.2	913	2.3	2,583	6.4
TOTAL	24,117	6.9	4241	1.2	28,358	8.2

This data highlights the disproportionate extent of inundation in Aceh Singkil, Aceh Selatan, Aceh Barat, Aceh Tamiang, Sabang and Langsa. Aceh Singkil was the worst-hit district with loss or destruction of 32.3% of affected land parcels.⁸ The devastating inundation in Singkil was caused by the tsunami of March 28, 2005, which was much less-publicised than the tsunami of late 2004.⁹

⁸ Note that BPDE responses for some districts (e.g. Aceh Tengah) are entirely unreliable as these districts do not adjoin any coastal areas

⁹ This second tsunami was much smaller in size and area of impact than the December 26 tsunami. Nevertheless, it had a particularly devastating effect on southern parts of the west coast of Aceh.

In December 2006, BRR estimated that around 12,000 households required resettlement as a result of the tsunami disaster.¹⁰ This figure was based not on the BPDE survey but on data collected by the BRR Relocation Unit. In February 2007, the Relocation Unit revised its estimate to 13,068 households.¹¹ While this estimate is based on detailed district surveys, it is provisional only and is currently undergoing verification. It should be treated with some caution. The numbers are incomplete as not all district surveys included renters and squatters, even though this group forms a major part of those without land or housing in Aceh. Official data collection has also become difficult in some barracks, largely as a result of accumulated resentment over lack of housing. The effects of this resentment may particularly be seen in the unreliable figures for Banda Aceh.

2.2 Land Requirements and Availability

The BRR Relocation Unit has compiled data on land requirements for resettlement.¹² The following table provides a breakdown per district of:

- The total number of displaced households who need to be resettled.
- The number of displaced households who had been resettled as of February 2007.
- The amount of government-acquired land that has been used for resettlement.
- The amount of government-acquired land that remains available for resettlement.
- The amount of government-acquired land that was required for resettlement as of February 2007.
- The difference between the amount of government-acquired land that is available and the amount that was required for resettlement as of February 2007.

For example, in Aceh Barat Daya 188 displaced households required resettlement after the tsunami. As of February 2007, 154 households had been resettled with a further 34 requiring resettlement. The amount of government-acquired land allocated for resettlement in Aceh Barat Daya is 51,165m². As of February 2007, 41,165m² of this land had been used for resettlement with a further 10,000m² still available. Hence there is a surplus of 480m² of government-acquired land in Aceh Barat Daya because the 34 households requiring resettlement need 9520m² of land.

As at February 2007, the BRR figures suggest that there will be surplus government-acquired land in all districts except Pidie and Aceh Utara. These calculations are provisional and subject to a number of fast-moving events (including new housing programs for renters and squatters).

¹⁰ Rebuilding Lives in Aceh and Nias, Indonesia , Testing the Community Participation Approach in Housing Reconstruction and Rehabilitation by F. Steinberg (ADB), *In Aceh and Nias Two Years After the Tsunami, Progress Report, BRR and Partners, December 2006*, www.e-aceh-nias.org/, p31.

¹¹ The data was compiled by relocation officers in their respective districts between March, 2006 and February, 2007.

¹² Above, n7.

Relocation Housing and Land Requirements (February 2007)

District	Displaced Person's Originally Needing Resettlement	Displaced Person's Resettled to date	Displaced Persons Still Needing Resettlement	Land Released for Resettlement (m²)	Land Used (m²)	Land Available for Resettlement (m²)	Total Land Needed (m²)	Land Surplus (m²)
Aceh Barat Daya	188	154	34	51,165	41,165	10,000	9520	480
Pidie	884	177	707	130,671	71,763	58,908	148,470	-89,562
Aceh Barat	4,015	396	3,619	1,887,220	111,400	1,775,820	1,013,320	762,500
Aceh Jaya	1,300	359	941	622,891	95,960	526,931	263,480	263,451
Lhokseumawe	213	0	213	50,995	0	50,995	44,730	6,265
Bireun	341	246	95	154,935	69,658	85,277	26,600	58,677
Langsa	756	0	756	172,330	0	172,330	158,760	13,570
Banda Aceh ¹³	311	720	0	151,249	81,685	69,564	0	69,564
Aceh Singkil	2,222	709	1,513	1,578,504	564,820	1,013,684	423,640	590,044
Aceh Besar	930	1,163	0	1,717,667	273,074	1,444,593	0	1,444,593
Nagan Raya	352	40	312	404,158	11,200	392,958	87,360	305,598
Aceh Tamiang	200	0	200	274,900	0	274,900	56,000	218,900
Aceh Utara	889	374	515	220,597	77,320	143,277	144,200	-923
Aceh Timur	266	40	226	245,938	22,050	223,888	63,280	160,608
Simeuleu	201	12	189	52,400	2,400	50,000	39,690	10,310
TOTAL	13,068	4,390	9,320	7,715,620	1422495	6293,125	2,479,050	3,814,075

¹³ The figures for Banda Aceh are unreliable as the initial calculation of persons requiring resettlement is lower than the numbers ready resettled.

Updated information on land availability for resettlement is a matter of significant public interest. It affects ongoing land, housing and budgetary calculations by all stakeholders. BRR wants to prioritise resettlement in government-acquired locations, in order to ensure that no surplus land remains when it completes operations in 2009. It is now reluctant to provide land for NGOs in other locations, to ensure full take-up of its current sites. It has also been reluctant to resettle renters and squatters in sites other than Labuy and Neuheun in Aceh Besar, because it wants to ensure sufficient land for landowners who require resettlement. Without clear updates on land availability, house construction and numbers of verified beneficiaries, BRR does not know whether to acquire more land for resettlement or to open more sites for renters and squatters. Equally, NGOs do not know whether to commit to housing and other support programs in BRR locations, or to request new land from BRR in other locations. It is recommended that BRR provide regular updates on (1) house construction and occupation, and (2) land requirements and availability, at its resettlement sites.

2.3 Human Causes of Resettlement: Spatial Planning

The Master Plan for reconstruction in Aceh and Nias contemplates significant relocation as a result of spatial planning and new safety standards. For example in Banda Aceh, the proposed spatial plan includes a coastal zone, a fishing/fishpond zone, and a restricted settlement zone. The fishing/fishpond zone alone extends many kilometres inland from the harbour areas of Banda Aceh.¹⁴ The plan for Aceh Jaya includes a coastal/mangrove forest zone, a fishing/fishpond and restricted rural settlement zone, and a commercial forest/green belt zone. The plan for Aceh Barat includes a minimum 100 m buffer zone from the high tide mark, to consist of mangrove forests and other protective vegetation. No buildings are allowed in this buffer zone. The adjoining zone, encompassing the area that experienced tsunami waves of greater than 1 metre, is to consist of plantation land and park land with low density settlements such as fishermen's villages and fish auction markets.¹⁵

While it sets out proposals for buffer zones and the like, the Master Plan also states that resettlement is to be voluntary. Tsunami victims have a right to choose whether to return to their place of origin or move to another location. It also notes that detailed spatial plans are required at the district and municipality level to implement its proposals. In the event, very few tsunami victims have agreed to move as a result of new spatial plans, and district and municipality governments have been slow to produce detailed plans of their own. Unlike Sri Lanka, there has been very little dispossession and resettlement as a result of proposed buffer zones in Aceh. While local resistance thus seems to have killed off district and municipality spatial plans, at least those that induce resettlement, the Indonesian planning agency recently re-stated (somewhat belatedly) the need for reconstruction in Banda Aceh to comply with its spatial planning proposals. With reconstruction well underway, it remains to be seen whether spatial planning will entail resettlement for coastal residents of Banda Aceh.

This is not to say that there has been no spatial planning in Aceh. BRR set priority for developing spatial and project plans across 60 sub-districts in the coastal areas of Aceh and Nias most heavily affected by the tsunami and earthquake. While progress has been slow,

¹⁴ Ibid. at V-12, para 5.5.1

¹⁵ (2005) Regulation of the President of Republic of Indonesia Number 30 Year 2005 on Master Plan for Rehabilitation and Reconstruction for the Regions and People of the Province of Nanggroe Aceh Daussalam and Nias Islands of the Province of North Sumatra. at V-16, para 5.5.3

approximately 20 sub-districts and 300 individual villages had been covered by December 2006 and village planning activities were underway in 402 villages.¹⁶ The focus of planning has been on the village and sub-district, rather than the district and municipality. In the great majority of cases, these planning activities have resulted in the excision of some land from a parcel rather than a wholesale taking that leads to resettlement.¹⁷

3 INTERNATIONAL RESETTLEMENT STANDARDS

3.1 Overview of Legal Principles and Standards

International law provides a framework of basic principles that apply to resettlement. These principles may be summarised as follows:

- Housing. All displaced persons have a basic right to adequate housing.¹⁸ There are also more specific rights to equality and non-discrimination in the provision of housing.¹⁹
- Restitution. All displaced persons have a basic right of return.²⁰ This right may now include a right of return to one's home. Compensation in cash or in kind, including in the form of resettlement, should only be offered to displaced persons where return to their original locations is factually impossible.²¹

¹⁶ Above, n2, p33.

¹⁷ The UNDP Head of Disaster Risk Reduction could not recall any situations in which the implementation of risk reduction measures had induced relocation in Aceh or Nias (Meeting with Robbin Willison, UNDP, 20/02/07). Additionally, the BRR spatial planning unit does not have any information on resettlement induced by environmental protection or other spatial planning initiatives (Meeting with Dr. Erwin Fahmi, Director of Environment and Spatial Planning, BRR, 01/02/07).

¹⁸ *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, United Nations, E/CN.4/Sub.2/2005/17 (2005) art 8.1; *Comprehensive Human Rights Guidelines On Development-Based Displacement*, United Nations, E/CN.4/Sub.2/1997/7 (1997) art 18; *General Comment No. 7 on Forced Evictions*, United Nations (1997) para 9.

¹⁹ *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, United Nations, E/CN.4/Sub.2/2005/17 (2005) art 4.1.

²⁰ *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, United Nations, E/CN.4/Sub.2/2005/17 (2005) art 10.1; *Guiding Principles on Internal Displacement*, United Nations, E/CN.4/1998/53/Add.2 (1998) principle 28; *UNHCR Executive Committee Conclusion No. 18 (XXXI) 'Voluntary Repatriation'*, A/AC.96/588 (1980) paras (d), (f), (i); *UNHCR Executive Committee Conclusion No. 40 (XXXVI) 'Voluntary Repatriation'*, A/AC.96/673 (1985) paras (a), (b), (d), (h); *Comprehensive Human Rights Guidelines On Development-Based Displacement*, United Nations, E/CN.4/Sub.2/1997/7 (1997) art 25.

²¹ *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, United Nations, E/CN.4/Sub.2/2005/17 (2005) arts 2.1, 13.1, 21.1; *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, United Nations Commission on Human Rights, res. 2005/35, E/CN.4/2005/L.10/Add.11 (2005) arts 19, 20; *Comprehensive Human Rights Guidelines On Development-Based Displacement*, United Nations, E/CN.4/Sub.2/1997/7 (1997) art 24.

- Tenure Security. Landholders have a right to secure forms of land tenure.²² This right encompasses protection against forced evictions.²³
- Non-discrimination. Displaced persons must not be discriminated against on the basis of race, sex, religion or property.²⁴ Special measures may be appropriate for vulnerable groups including women, children and the poor.²⁵

These basic displacement standards are supplemented by detailed World Bank, Asian Development Bank and OECD operational guidelines on development-induced resettlement.²⁶ The following section highlights key aspects of the World Bank's guidelines, which are acknowledged as the primary reference for resettlement programming.

The World Bank guidelines acknowledge that resettlement operations after disasters or conflict do not necessarily need to comply with its complete set of standards. While there are basic international principles relating to displacement after disasters, there are no detailed operational guidelines on resettlement caused by disasters or conflict. The World Bank guidelines provide a useful framework, but some of its standards may require adaptation in the urgent circumstances of disaster-induced displacement.

The World Bank guidelines set out the following broad principles of resettlement programming.

- Resettlement should be avoided to the extent possible. Where it is unavoidable, the adverse impacts of resettlement should be minimised.²⁷
- Where resettlement is unavoidable displaced persons should be assisted to improve livelihoods and standards of living, or at least to restore them to pre-displacement levels.²⁸

²² *Comprehensive Human Rights Guidelines On Development-Based Displacement*, United Nations, E/CN.4/Sub.2/1997/7 (1997) arts 9, 17, 19.

²³ *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, United Nations, E/CN.4/Sub.2/2005/17 (2005) arts 5.1, 5.3; *Comprehensive Human Rights Guidelines On Development-Based Displacement*, United Nations, E/CN.4/Sub.2/1997/7 (1997) art 15.

²⁴ Arts. 2, 24, 26. *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, United Nations, E/CN.4/Sub.2/2005/17 (2005) art 3.1; *Guiding Principles on Internal Displacement*, United Nations, E/CN.4/1998/53/Add.2 (1998) principles 1, 4, 22; *Comprehensive Human Rights Guidelines On Development-Based Displacement*, United Nations, E/CN.4/Sub.2/1997/7 (1997) art 14.

²⁵ *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, United Nations, E/CN.4/Sub.2/2005/17 (2005) arts 4.3, 12.2; *Comprehensive Human Rights Guidelines On Development-Based Displacement*, United Nations, E/CN.4/Sub.2/1997/7 (1997) art 9; *General Comment No. 7 on Forced Evictions*, United Nations (1997) para 11.

²⁶ See World Bank (2004) *Involuntary Resettlement Source Book*, World Bank; ADB (1995) *Involuntary Resettlement*, ADB; OECD (1992) *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects*, OECD;

²⁷ *World Bank Involuntary Resettlement Policy*, OP/BP 4.12 art 2(a), *Involuntary Resettlement Source Book*, World Bank (2004), pg. 371. See also *Involuntary Resettlement Policy*, para 31 (i), (ii), *Involuntary Resettlement*, ADB (1995), pg. 10; *Policy Objectives*, para 3, *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects*, OECD (1992), pg. 6.

- Resettlement programmes should be conceived and executed as sustainable development projects.²⁹
- Displaced persons, and any host communities receiving them, should be fully informed and consulted on resettlement options and mechanisms.³⁰
- Choices made by displaced persons should be the basis for new patterns of community organisation, including reestablishment wherever possible of pre-existing social and cultural institutions.³¹
- Special mechanisms should apply to protect and improve the status of vulnerable displaced persons, including those without legal title to assets, women and children, and indigenous peoples.³²
- Resettlement policy is not simply a question of relocation. It encompasses restoration of assets and livelihoods, and reestablishment of community cohesion and infrastructure.³³

The World Bank guidelines then set out certain procedural steps in resettlement programming.³⁴

- Identifying Persons Eligible for Resettlement Assistance
- Identifying Institutional Responsibilities and Capacities
- Consultation and Participation
- Conducting a Socioeconomic Survey and Needs Assessment

²⁸ *World Bank Involuntary Resettlement Policy, OP/BP 4.12* art 2(c), Involuntary Resettlement Source Book, World Bank (2004), pg. 371. See also *Involuntary Resettlement Policy*, para 31 (iii), Involuntary Resettlement, ADB (1995), pg. 11; *Policy Objectives*, para 4, Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, OECD (1992), pg. 7.

²⁹ *World Bank Involuntary Resettlement Policy, OP/BP 4.12* art 2(b), Involuntary Resettlement Source Book, World Bank (2004), pg. 371.

³⁰ *World Bank Involuntary Resettlement Policy, OP/BP 4.12* art 2(b), Involuntary Resettlement Source Book, World Bank (2004), pg. 371. See also *Involuntary Resettlement Policy*, para 31 (v), Involuntary Resettlement, ADB (1995), pg. 11; *Policy Objectives*, para 5, Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, OECD (1992), pg. 7.

³¹ *World Bank Involuntary Resettlement Policy, OP/BP 4.12* art 13(c), Involuntary Resettlement Source Book, World Bank (2004), pg. 375. See also *Involuntary Resettlement Policy*, para 31 (vi), Involuntary Resettlement, ADB (1995), pg. 11.

³² *World Bank Involuntary Resettlement Policy, OP/BP 4.12* art 8, Involuntary Resettlement Source Book, World Bank (2004), pg. 373. See also *Involuntary Resettlement Policy*, para 31 (vii), Involuntary Resettlement, ADB (1995), pg. 11; *Policy Objectives*, para 7, Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, OECD (1992), pg. 7.

³³ *World Bank Involuntary Resettlement Policy, OP/BP 4.12* art 6(b)(c), 13(b), Involuntary Resettlement Source Book, World Bank (2004), pg. 374, 375. See also *Involuntary Resettlement Policy*, para 31 (iii), Involuntary Resettlement, ADB (1995), pg. 11; *Policy Objectives*, para 4, Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, OECD (1992), pg. 7.

³⁴ *World Bank OP 4.12 – Annex A*, art 2-21, Involuntary Resettlement Source Book, World Bank (2004), pg. 384-388. See also *Resettlement Plan*, para 38, 39, Involuntary Resettlement, ADB (1995), pg. 15; *Resettlement Planning*, para 2, Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, OECD (1992), pg. 7.

- Developing a Comprehensive Legal Framework
- Site Planning and Development
- Providing infrastructure and social services
- Providing access to livelihood opportunities, training, employment and credit
- Post-resettlement support
- Environmental protection
- Complaints and Conflict Management
- Monitoring and Evaluation

The following part analyses these procedural steps as they apply to Aceh. It also considers land acquisition and site selection, community-based resettlement options and the need for tenure security in resettlement locations.

4 CURRENT PROCEDURES FOR RESETTLEMENT IN ACEH: FINDINGS AND RECOMMENDATIONS

The following material is based on:

- Interviews with NGOs, donors and government officials involved in resettlement programs.
- Interviews with tsunami victims requiring resettlement in barracks in Banda Aceh and Aceh Besar.
- A workshop on resettlement organised by the UNDP in November 2006.
- The author's experience working on resettlement policy with the UNDP from March 2005 to December 2006.

4.1 Land Acquisition

There are three basic ways to acquire land for the landless in Aceh: acquisition by the government, purchase on the private land market and grant of communal village land. Very few NGOs or donors have funded the private purchase of land to rehouse disaster victims in Aceh. Foreigners cannot purchase land directly in Indonesia; and many international agencies do not allow the transfer of funds to local entities for land purchases. Even when land is purchased, it will require subdivision through relatively slow and complex dealings with the National Land Agency (BPN). There is also the risk of fraud and disputes because the chain of ownership title may rest on poorly documented historical processes of transfer and inheritance. NGOs and donors thus tend to obtain land through the government rather than private purchase.

What of available communal land? Could this be allocated to victims requiring resettlement? This was the expectation behind the draft BRR Resettlement Policy of December 2005, which set out principles for community-based reorganisation of landholdings.³⁵ Allocation of

³⁵ These guidelines, drafted by the author, were withdrawn in July 2006 as a result of BRR's (then) new policy on cash payouts to renters and squatters.

communal land minimises the livelihoods and sustainability risks associated with government resettlement. In rural areas, there are a number of cases of communal land grants to community members who have lost land. Unfortunately, however, very few NGOs facilitated the allocation of communal land for resettlement because of the legal risk that BPN would not recognize and issue title certificates over plots allocated through traditional community mechanisms.

Government land acquisition has been central to resettlement activity in Aceh. Around 850 ha of land in Aceh has been obtained by BRR and district governments either through direct purchase, or through the release of title mechanism. Perhaps as much as half needs a degree of work (e.g. land-filling) before it is suitable for housing. Some land may not be suitable at all, particularly in terms of livelihoods and access to services. There are numerous cases of beneficiaries refusing to occupy housing in resettlement locations. The urgent circumstances have left little time for effective consultation and participation, and much greater coordination is required - both among government agencies and between the government and NGOs - in those sites where large-scale resettlement work has commenced.

BRR has acquired a number of sites requested by NGOs or donors for housing. A consistent theme in our field interviews was that land acquisition by BRR had been slow and had sometimes delivered less land than expected. As in many countries, government land acquisition in Indonesia is often delayed by large numbers of claimants and initial requirements to seek mediated agreement before compulsory acquisition can be undertaken.

BRR plans to withhold further land acquisition in order to ensure that its current sites are filled and that no surplus acquired land remains once it completes operations in 2009. Yet, it is essential that NGOs and donors have the option to request and fund acquisition of suitable sites by the government. Acquisition by the government, perhaps with financial assistance from NGOs and donors, avoids the possibility of fraud because all claims are released and new titles are issued directly to beneficiaries. It minimises the time and risks of direct negotiations in the private land market. It allows beneficiaries to identify suitable land that NGOs and donors may then recommend to the government.

It is recommended that:

- BRR continue to acquire land identified and requested by beneficiaries, NGOs and donors where financial assistance is provided by a NGO or donor.
- An experienced Indonesian lawyer prepare a land conveyancing manual to assist NGOs and donors interested in private land acquisition.
- The provincial Parliament of Aceh utilise its new land administration powers under the Law on Governing Aceh Act 2007 to clarify that local communities may allocate available communal land to their members so long as that allocation does not infringe on any statutory or other customary rights to land.

4.2 Site Selection

Regulation 20/2006 states that, while anyone may suggest a site for resettlement, the beneficiaries themselves will make the final decision on site selection. In practice, largely as a result of the scale and circumstances of disaster, the selection of government sites for

resettlement has been made by district governments and BRR. Beneficiaries have had little say – other than to refuse to occupy certain sites. The scale and circumstances of disaster militated against effective beneficiary participation in selecting and acquiring land.

BRR has assessed its resettlement sites by reference to disaster management and engineering issues relating to topography.³⁶ This paper recommends that BRR, or NGOs as appropriate, further assess the BRR locations in relation to:

- The suitability of the site for the primary occupation(s) of persons resettled, and all the secondary sources of livelihood support identified in the BRR census survey.
- The proximity of the site to primary and secondary sources of employment and livelihood support.
- The extent of access or potential access to roads, schools, markets, hospitals or health clinics, retail outlets, public transport and other social services.
- The extent of access or potential access to electricity, clean water, sewerage and drainage, telephone services and other forms of infrastructure.
- The extent of access or potential access to social support services for vulnerable persons or groups identified in the BRR census survey.

This suitability assessment should be distributed to all stakeholders, including the prospective beneficiaries themselves.

4.3 Identifying Those Who Need Resettlement

4.3.1 The Legal Definition

BRR Regulation 20/2006 on Resettlement does not provide an effective definition of eligibility for resettlement assistance. Art. 1(4) states that:

“Victims are families who, until the disaster, lived in the disaster area, and lost their residence as a result of the disaster.”

The Regulation further states that resettlement assistance will be given to victims whose houses were destroyed entirely or damaged beyond repair (art. 3(2)). There is no other provision relating to eligibility for resettlement assistance. The Regulation thus encompasses all tsunami victims who lost housing, not simply those whose land is uninhabitable. It is recommended that Regulation 20/2006 be amended to include the following definition of eligibility:

Those entitled to resettlement assistance are persons in need of housing who immediately prior to the earthquakes and tsunami occupied residential land, or who will inherit residential land, that is destroyed as a result of the earthquakes and tsunami.

³⁶ Meeting with Jeffery Ing, Technical Assistant to the BRR, USAID, 26/04/07.

The Regulation should add that:

- Renters and squatters are ineligible for resettlement assistance as they are entitled to housing assistance under amended Regulation 21/2006.
- Destroyed land includes submerged, unsafe or contaminated land. Land is not destroyed if it re-surfaces or otherwise becomes fit for habitation through natural or artificial means.

The recommended definition of eligibility focuses on the fact of occupation rather than the status of land rights. It provides assistance not only to those who held certificates of ownership (*hak milik*), but also to persons who held occupied residential land under statutory land rights (primarily the long-term building use rights known as *hak guna bangunan*),³⁷ as well as those who held under customary ownership (*hak milik adat*).

The recommended definition assumes that resettlement assistance will be limited to those whose residential land has been destroyed. Should survivors who have lost livelihoods but not residential land be eligible for resettlement assistance? International standards on development-induced resettlement suggest inclusion of those who have lost productive land in resettlement programs.³⁸ Nevertheless, it is recommended that assistance for those whose livelihoods are lost should come from livelihoods programs rather than resettlement itself. This recommendation is based on the risks and difficulties of resettlement that are elaborated in Part IV below.

4.3.2 Registering and Verifying Beneficiaries

Most NGOs and donors have conducted beneficiary identification programs for their own housing projects. Since May 2006, the BRR Relocation Unit has been registering and verifying beneficiaries for the BRR resettlement sites. NGOs and donors providing housing on BRR sites must rely on BRR's identification and verification mechanisms. Verification by BRR is emerging as a key bottleneck because BRR will not make further land available to NGOs and donors for resettlement until its current sites are fully committed; and it will not know whether its sites are committed until verification is complete. BRR also wants NGOs and donors to commit to housing at BRR sites. Yet, some NGOs and donors are reluctant to commit to housing without further progress and confidence in BRR verification mechanisms.

Current BRR verification mechanisms involve checking land and holding community meetings to confirm the legitimacy of claims for resettlement. With 14,000 families to verify, these procedures are time-consuming and productive of delays in the resettlement process. BRR is not alone in finding verification difficult. For all agencies, the principal initial sources of information on eligibility are focal people within the barracks – often village heads or people appointed by residents of the barracks. At times, beneficiary lists have excluded

³⁷ This statutory building right allows its holder to construct and own buildings on another's land for a period of no more than 30 years. It may be extended for a further 20 years.³⁷ It is a common residential right in Indonesia.

³⁸ See *Impacts Covered, World Bank Involuntary Resettlement Policy, OP/BP 4.12 art 3*, Involuntary Resettlement Source Book, World Bank (2004), pg. 372.

eligible victims and included ineligible applicants. At other times, large numbers of ineligible applicants have been approved and confirmed by the local community itself.

It is recommended that:

- Technical and staffing assistance be provided to the BRR verification team. The options for this assistance include:
 - Extra staff employed by BRR or seconded to BRR (funded by Oxfam or others).
 - Outsourcing some verification duties to a local NGO
 - Employing/seconing a Technical Adviser (probably international)
 - Funding experts to streamline and improve the verification process.
- A documentary trail be developed by the verification team for audit/confirmation purposes.
- A streamlining/lessons learnt process be put into place in order to assist any further registration and verification requirements.
- A local NGO be commissioned to identify vulnerable groups potentially left behind by the registration process. This identification and assistance program would concentrate on widows and female-headed households.

In mid-May 2007, BRR advertised that applications for resettlement assistance would close on May 20 2007. It is recommended that an exception be made for vulnerable groups that were excluded from the registration process.

4.4 Institutional Responsibility

BRR Regulation 20/2006 includes a number of provisions relating to institutional responsibility. It contemplates a number of agencies to represent resettlement beneficiaries, including Victim Community Organizations, Committees of House and Settlement Development Acceleration and Subcommittees of House and Settlement Development Acceleration. The Committee of House and Settlement Development Acceleration is to be a representative body that develops lists and data relating to eligible beneficiaries (art. 6 (2)).³⁹ Under Regulation 20/2006, NGOs may implement resettlement programs, or assist beneficiaries to obtain resettlement assistance (art. 1 (20), 1 (21)). NGOs and donors may also acquire land for resettlement, develop basic infrastructure and facilities and assist beneficiaries to obtain land title certificates from BPN (art. 6(7), 6 (22)). While the basic form of resettlement assistance is a 36m² house on at least 40m² of land, NGOs and donors may acquire land and build houses that are bigger or wider "than needed", provided that they bear the extra costs involved (art. 6(7)).

Regulation 21/2006 does not otherwise provide a comprehensive allocation of institutional responsibility for resettlement in Aceh. There are no implementing guidelines for Regulation 21/2006, and no other formal mechanism to make decisions on division of responsibility. In our field interviews, NGOs and donors highlighted uncertainty over institutional

³⁹ Note that this role is only implicit in the renters and squatters regulation. It only states that beneficiaries must assist KP4D to verify victims of the right to receive assistance (art. 7(2)).

responsibility as a key obstacle to effective resettlement. It is recommended that BRR develop a comprehensive Resettlement Plan that identifies roles and areas of responsibility within the government, between the government and civil society (including donors), and within civil society itself. This Resettlement Plan should encompass the key procedural steps discussed in this paper. Preparation of all or part of the Resettlement Plan could be delegated to an experienced international consultant. The ADB and World Bank, both of which have considerable institutional expertise in resettlement, could assist in identifying suitable consultants.

4.5 Consultation and Participation

While Regulation 20/2006 sets out principles of beneficiary participation (art. 6(9), 6(10), 6(20)), there is yet to be sufficient consultation and participation in relation to the BRR resettlement sites. This is not due to a lack of good faith on the part of the government, but stems largely from overwhelming demands to act quickly to house large numbers of disaster victims. Consultation and participation is essential to ensuring the sustainability of new settlements. It is recommended that, as mandated by Regulation 20/2006, BRR establish a Housing and Settlement Development Acceleration Committee for each of its resettlement sites. This committee should include representatives of housing beneficiaries. In addition, BRR should provide implementing guidelines for Regulation 20/2006 that set out the specific participatory responsibilities and mechanisms of each Housing and Settlement Development Acceleration Committee. The implementing guidelines should also set out mechanisms and timetables for introducing village government in resettlement locations.

The BRR should also ensure that communities bordering the new resettlement sites are more actively involved in resettlement planning procedures. This paper recommends that host communities be provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement activity.

While further government action is necessary, the best means to promote consultation and participation is greater involvement by civil society itself. Most NGOs and donors, in particular, have sophisticated participatory planning models for site development. This paper recommends that NGOs and donors provide as much community infrastructure as possible in resettlement locations, including water and sanitation, health posts and education facilities. Livelihoods programs should also be run by NGOs and donors. To encourage greater involvement by NGOs and donors, this paper recommends that BRR or a delegated consultant prepare for each resettlement site a Resettlement Plan with clear allocation of responsibilities and mechanisms for coordination. Without a comprehensive Resettlement Plan, a number of NGOs remain cautious about committing to programs in BRR resettlement locations.

Because most NGOs and donors are committed to participatory forms of resettlement, it is recommended that resettlement not be limited to large government-acquired sites in Aceh. BRR should continue to provide land identified and requested by eligible beneficiaries, NGOs and donors for new settlements.

4.6 Needs Assessment

The World Bank guidelines on resettlement recommend census and socioeconomic studies in the early stages of project preparation. Census data covers all persons requiring resettlement, and includes basic information about demographics, livelihoods, social needs and vulnerable groups. The socio-economic survey focuses on a representative sample only, and develops detailed information relating to tenure systems, socio-economic institutions and patterns of community cohesion. The BRR Relocation Unit has attempted to conduct a census survey of survivors requiring resettlement in Aceh. This survey includes questions relating to:

- Primary and secondary sources of livelihoods.
- Assets and resources necessary for re-establishment of livelihoods.
- Identification of vulnerable groups (widows, orphans, the disabled and female-headed households).
- Suitability of proposed resettlement sites for livelihoods.
- Access to social services and infrastructure (housing, capital, water and sanitation, electricity, public transport, schools, health services, markets, and religious and community facilities).

The census survey is now complete, but the data is subject to verification and is not yet available in public form. There has been no socioeconomic survey of the kind recommended by the World Bank. The World Bank's socio-economic survey focuses on representative groups of beneficiaries, and includes questions relating to:

- Pre-displacement land tenure and transfer systems.
- Patterns of social interaction in affected communities, including social networks and social support systems.
- Public infrastructure and social services.
- Social and cultural characteristics of affected communities, including a description of formal and informal institutions.
- Potential resettlement impacts in host communities.⁴⁰

It is recommended that a socioeconomic survey be conducted of a representative sample of persons eligible for resettlement assistance. This survey should be based on the template provided in the World Bank's guidelines, and undertaken by sociologists or anthropologists with experience in collecting policy-oriented data of this kind.

⁴⁰ *World Bank OP 4.12 – Annex A*, art 6(b), *Involuntary Resettlement Source Book*, World Bank (2004), pg. 385.

4.7 Developing a Comprehensive Legal Framework

This paper includes a number of recommendations relating to the legal framework for resettlement. The other policy papers in this series include legal recommendations relating to land rights generally in tsunami-affected Aceh.

4.8 Livelihoods

The World Bank guidelines distinguish between compensation for damaged assets and rehabilitation measures to help restore and improve standards of living. It is not recommended that there be evaluation of lost assets for persons requiring resettlement in tsunami-affected Aceh. The physical destruction of assets, combined with the widespread loss of records, means that any valuation enquiry will be complex, time-consuming and potentially productive of fraud. Current proposals in Aceh are that all resettlement beneficiaries will receive the same amount of land and housing. Hence the focus of rehabilitation measures will be on sustainable livelihoods for all, rather than restoration of pre-tsunami incomes for each affected family.

BRR has some livelihood programs in resettlement locations (e.g. Peukanbada and Labuy in Aceh Besar). Generally speaking, it prefers to support or facilitate programs by NGOs and donors.⁴¹ NGOs and donors are better suited to livelihood programming because of their expertise and participatory methods. As with community infrastructure, greater involvement by NGOs and donors should be encouraged in relation to livelihoods in BRR resettlement locations. This also requires a Resettlement Plan that allocates responsibilities and provides mechanisms for coordination. This paper recommends that BRR, or an NGO as delegated, develop a Resettlement Plan and appoint a livelihoods coordinator for each BRR resettlement site. This coordinator should apply the census information collected by BRR to facilitate and monitor re-establishment of livelihoods. The focus should not simply be on livelihoods, but access to training, employment and credit.

4.9 Site Planning and Development

4.9.1 Coordination and Planning

The planning and development of resettlement sites in Aceh requires greater coordination among NGOs, donors and government agencies. That is not to say there has been no coordination. For example, in Jantho (Aceh Besar) IOM provided water, sanitation, and schools in conjunction with the American Red Cross, while Mobilitis (a section of the Government's Transmigration Department) supplied livelihood programs, roads, electricity and drainage.⁴² Nevertheless, almost all NGOs and donors told us that greater coordination and planning was required in BRR resettlement locations. Their responses included the following observations. We have omitted the sources as some observations may be sensitive or controversial.

⁴¹ Meeting with Jeffery Ing, Technical Assistant to the BRR, USAID, 26/04/07.

⁴² Meeting with Nicky Rounce, Head of Liason Unit, Recovery and Rehabilitation, IOM, 06/03/07 and meeting with Jeff Jewett, American Red Cross, 08/03/07.

- In some instances, NGOs and donors have not had the capacity to provide full support to a resettled community, including in relation to schools, kindergartens and health clinics. In these situations, it would assist NGOs and donors to know the services other agencies can provide to fill the gap in resettlement programming.
- Tensions can emerge in resettlement locations that are assisted by a number of NGOs and donors, because of jealousy over the different levels of assistance received by community members.
- In some instances, tensions have emerged between resettled communities and communities that surround the new resettlement site.
- BRR has over-budgeted for its housing and is reluctant to accept NGO housing in resettlement sites (other than for renters and squatters at Labuy and Neuheun).
- BRR needs clearer lines of supervision and responsibility between its field and policy staff.
- Staff at a number of NGOs pay lipservice only to coordination because their self-interest is to spend as much money as possible, as quickly as possible. This is the criteria on which many staff at NGOs are evaluated. More NGO management incentives are required to reward coordination with other agencies, even when that coordination may lead to delays in meeting target results.
- In some resettlement locations, local government may be a better coordinator than BRR. At the least, BRR needs to ensure effective transition of coordination responsibility for new settlements to local government once BRR completes its operations in 2009.

This paper recommends that BRR, or an experienced consultant as delegated, prepare a Resettlement Plan for each BRR resettlement site that:

- Identifies implementing partners and housing constructors.
- Attaches copies of agreements with implementing partners and housing constructors. This agreement must include a statement of the number, nature and type of houses to be dealt.
- Provides detailed plan of the location of houses, roads, wells, drainage and sewerage facilities, clean water and other essential infrastructure.
- Verifies that the site plan complies with applicable spatial planning regulations, building codes, earthquake and tsunami protection requirements and other legal obligations relating to public health and safety.
- Lists the institutions that will meet the social and infrastructure needs identified in the BRR census survey, and verify that these institutions have agreed to provide the identified social and infrastructure services.

- Attaches copies of any correspondence or agreements with institutions that have agreed to provide identified social and infrastructure services.
- Specifies the way in which the site will be developed so as to meet the occupational and livelihood support needs identified in the BRR census survey, as well as any measures necessary to augment services (education, water, health, and productive services) in host communities to make them at least comparable to services available to resettlers.
- Verifies that BPN has agreed to provide land title certificates to applicants for resettlement assistance on the new site for settlement, and attach correspondence with BPN to that purpose.

This Resettlement Plan should prioritise NGO and donor involvement in community infrastructure and livelihood programs. It should be public and updated regularly on the BRR website. It should form the primary point of reference for a stakeholder's working group for each resettlement site. It is recommended that this working group be chaired both by BRR and local government representatives.

4.10 Monitoring and Evaluation

This paper recommends that BRR, and NGOs as appropriate, undertake regular site inspections. These inspections should ensure that development of the site complies with the Resettlement Plan.

4.11 Tenure Security

The following principles and recommendations apply to security of tenure in resettlement locations.

- All resettlement beneficiaries are entitled to receive secure documented rights to their new land.
- Consistent with law, resettlement beneficiaries are entitled to receive ownership rights (hak milik) to the land on which their new house is situated. If the issue of an ownership right is not allowed by law, then a building use right (HGB) should be granted to the beneficiaries.
- Resettlement beneficiaries may agree to divide land used for permanent gardens and rice fields into separate areas subject to individual ownership rights. Alternatively, the beneficiaries may agree to utilise permanent gardens or rice fields under appropriate forms of customary rights.
- Consistent with law, resettlement beneficiaries may agree as to the nature and terms of access to common property areas such as forests, beaches and fringing reefs.
- All agreements by beneficiaries in relation to the nature and status of rights to resettlement land should be incorporated into site planning and development.

- As an interim measure, ownership, use (HGB or HGU) or management rights may be granted to a legal entity in order to allow development of the site. This grant must be on condition that statutory rights will be granted to the beneficiaries within 12 weeks of completion of site development.
- Resettlement land that falls within the jurisdiction of the BPN RALAS project will be subject to community-driven adjudication and land titling processes as prescribed in the RALAS project.
- The confirmation and grant of rights to resettlement land that falls outside the jurisdiction of the RALAS project should also conform to procedures set out in the RALAS project, particularly in relation to community-driven adjudication and land titling processes.

4.12 Post-Resettlement Support

Post-resettlement support should be based on the census data, socio-economic survey and Resettlement Plan. Longer term government responsibility for settlement viability primarily rests on the district and provincial governments of Aceh. When preparing the Resettlement Plan, BRR (or its delegated consultant) should liaise with district and provincial governments in order to incorporate mechanisms for longer term post-resettlement support.

4.13 Environmental Protection

This paper recommends that environmental protection measures be included in the Resettlement Plan, consistent with the criteria set out in the World Bank's resettlement guidelines. An experienced environmental consultant should be appointed as appropriate to help incorporate environmental protection into planning for each resettlement site.

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