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**Access to Housing for Renters and Squatters  
in Tsunami Affected Aceh, Indonesia**

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## **EXECUTIVE SUMMARY**

This Oxfam policy paper considers access to housing for renters and squatters in tsunami-affected Indonesia. It is the first paper in a series on land and housing rights in the Indonesian tsunami zone. Renters and squatters are among the poorest and most vulnerable victims of the tsunami disaster. They are disproportionately represented in the temporary living centres known as barracks. Without land of their own, they are among the last in line for housing assistance.

In June 2006, the Aceh and Nias Reconstruction Authority (BRR) issued a regulation that provided cash to renters and squatters in lieu of direct land or housing assistance (Regulation 21/2006). After domestic protests and international representations, this regulation was amended in February 2007 to allow direct land and housing assistance to renters and squatters. Implementing this new policy will require the provision of suitable land. This paper makes a number of recommendations concerning the supply of suitable land, and the development of adequate housing, infrastructure and services on that land.

This paper also highlights the need to integrate land provision programs with principles of community-based return. Returning renters and squatters to their pre-tsunami locations is to be preferred over resettlement in areas provided by the government. The best way to ensure community-based return, and its associated restoration of livelihoods, is to help renters and squatters to identify and obtain suitable land for themselves. This beneficiary-driven mechanism for housing renters and squatters will require substantial support from all parties involved in reconstruction, including international NGOs and donors.

Key recommendations made in the paper may be summarised as follows.

## **BENEFICIARY-DRIVEN LAND PROVISION:**

### **Acquisition of land by the government:**

While return and reintegration of displaced persons in their original locations is to be preferred to resettlement in different locations, it is recognized that the BRR wants to utilize some 200 ha of land to house renters and squatters. The following recommendations are made in relation to housing renters and squatters on government-acquired land:

- the land acquired by the government for resettlement should be comprehensively assessed for suitability for housing and access to services and infrastructure, and the results of the assessment should be made available to all stakeholders;
- BRR should make lists of eligible beneficiaries, lists of interested NGOs or donors, and detailed maps of government-acquired land available to stakeholders in order to match suitable locations with NGOs and donors;
- BRR should acquire more land in Banda Aceh in order to facilitate recovery of urban-based livelihoods by eligible renters and squatters. The amount of land to be acquired should be determined by reference to a livelihoods and needs assessment survey (see below);
- a detailed livelihoods and needs assessment survey should be conducted in relation to all beneficiaries who will receive housing in government-acquired locations; and
- a resettlement plan should be developed from data obtained through the livelihoods and needs assessment survey.

### **Acquisition of land by private parties:**

The new BRR policy under amended Regulation 21/2006 contemplates acquisition of land by private parties, including renters and squatters themselves. These beneficiary-driven land acquisition methods are to be preferred over resettlement on government-acquired land, and should be supported by NGOs and donors. The following recommendations are made in relation to beneficiary-driven land acquisition:

- a local or international NGO should establish liaison teams to assist renters and squatters to identify and obtain land for themselves;
- a manual should be prepared to guide acquisition of land by renters and squatters with assistance from NGOs and donors;
- further implementation guidelines for Regulation 21/2006 should be prepared to clarify specified matters and set out standard-form documents; and
- customary mechanisms for making village land available to community members and outsiders should be confirmed in law.

### **COMMUNITY-BASED RETURN:**

International standards establish that community-based return should be the preferred mechanism for population return, and that resettlement should be seen as the last option. The following recommendations are made to facilitate community-based return:

- the head of each village that had renters and squatters prior to the tsunami should report on the availability of land for return;
- renters and squatters must be able to choose between returning to their pre-tsunami village and being relocated elsewhere; and
- liaison teams should consult with local village heads and sub-district heads in order to match renters and squatters with suitable locations.

### **FURTHER RECOMMENDATIONS:**

Further recommendations include the following:

- the program for registering and verifying eligible beneficiaries should be strengthened;
- mechanisms should be put in place to ensure that all renters and squatters are re-housed with secure forms of tenure;
- a local or national NGO should be funded to provide monitoring, advocacy and advice services to and on behalf of renters and squatters;
- leases of the barracks should be extended where eviction of tsunami victims would result in homelessness;

- a technical assistance program for the drafting of regulations, guidelines and manuals should be developed;
- the 1997 Law on Land Registration allows Indonesian citizens to claim rights to land on the basis of 20 years' occupation. This should be consistently applied, and access to justice should be ensured for potential claimants;
- the implementing guidelines under amended Regulation 21/2006 should set out a clear division of responsibilities for infrastructure; and
- an information campaign on renters' and squatters' entitlements under amended Regulation 21/2006 should be conducted as a matter of urgency.

**TABLE OF CONTENTS**

<b>I. INTRODUCTION.....</b>	<b>8</b>
<b>II. THE NATURE OF THE PROBLEM: LANDLESSNESS AND HOMELESSNESS .11</b>	
<b>A. Barriers to Housing for Renters and Squatters.....</b>	<b>12</b>
1. <i>The link between housing entitlement and land ownershi.....</i>	<i>12</i>
2. <i>Imbalances in the house rental market.....</i>	<i>13</i>
3. <i>Lack of supply of suitable land.....</i>	<i>14</i>
4. <i>Other obstacles to housing for renters and squatters.....</i>	<i>17</i>
<b>III. RENTERS AND SQUATTERS IN THE INDONESIAN TSUNAMI ZONE: NUMBERS, NATURE AND CURRENT STATUS .....</b>	<b>19</b>
<b>A. Basic Definitions and Concepts.....</b>	<b>19</b>
<i>What is a renter?.....</i>	<i>19</i>
<i>What is a squatter?.....</i>	<i>19</i>
<i>What is a penumpang ("passenger")? .....</i>	<i>20</i>
<i>Is there a distinction between land and house rental? .....</i>	<i>20</i>
<i>What are the definitions used by brr? .....</i>	<i>20</i>
<b>B. Basic Statistics: Numbers and Characteristics.....</b>	<b>21</b>
<i>How many renters in aceh and nias?.....</i>	<i>21</i>
<i>How many squatters?.....</i>	<i>23</i>
<i>How many land renters? .....</i>	<i>24</i>
<i>What is the current status of land renters in aceh and nias?.....</i>	<i>25</i>
<i>How many penumpang rumah (house passengers) in aceh and nias? .....</i>	<i>26</i>
<i>How many land squatters owned their house? .....</i>	<i>26</i>
<i>Could squatters have a legal interest in land? .....</i>	<i>28</i>
<i>Were renters and squatters original inhabitants of their districts? .....</i>	<i>28</i>
<i>Have the incomes of renters and squatters suffered disproportionately since the tsunami disaster .....</i>	<i>29</i>
<i>The effect of the tsunami disaster.....</i>	<i>29</i>



<b>IV. INTERNATIONAL STANDARDS.....</b>	<b>30</b>
Non-Discrimination.....	31
Rights to Adequate Housing and Security of Tenure .....	31
Rights of Return and Restitution for Displaced Persons. ....	31
Rights to Compensation for Displaced Persons in Lieu of Return and Restitution.....	33
Application of International Standards to Aceh and Nias .....	34
<b>V. RECOMMENDATIONS .....</b>	<b>34</b>
<b>A. Beneficiary-Driven Land Provision .....</b>	<b>35</b>
1. Acquisition by the government. ....	35
2. Acquisition of land by private parties .....	39
<b>B. Community-Based Return .....</b>	<b>42</b>
<b>C. Further Recommendations .....</b>	<b>42</b>

## I. INTRODUCTION

Nanggroe Aceh Darussalam (Aceh) is situated at the northern tip of Sumatra, Indonesia. The island of Nias sits off the west coast of Sumatra. The earthquake and tsunami of December 26, 2004, and the subsequent earthquake of March 28, 2005, killed over 150,000 people,<sup>1</sup> damaged or destroyed over 200,000 homes and displaced over 500,000 in Aceh and Nias alone. Substantial damage was also suffered by local systems of land administration. The government of the Republic of Indonesia (ROI) has identified reconstruction of land rights as a key element of the rehabilitation phase, which ran from April 2005 to December 2006.<sup>2</sup>

Reconstruction of land rights in Aceh and Nias has had to proceed from circumstances of severe trauma. The disaster severely damaged or destroyed most land-related records.<sup>3</sup> Where no documentary records existed, the social memory of land rights was affected by widespread mortality and the deaths of local officials and community leaders. At least 15,000 land parcels remain under water. Large numbers of boundary markers were obscured or obliterated. As much as 7000 ha of soil has lost its fertility permanently due to the incursion of mud, salt, sand and erosion.<sup>4</sup> And all this occurred after years of conflict between government forces and secessionist Acehnese rebels - a conflict that had already displaced over 45,000 and seriously degraded most institutions of government.

To its credit, the government of Indonesia quickly recognized that rapid reconstruction of land rights was necessary for return and reconstruction. This rapid response was important not only to minimise land disputes, but to provide sufficient certainty for rebuilding, shelter and livelihood programs. At its simplest, those building houses and infrastructure needed to know that they were building in the right place for the right person. At the same time, it was well-understood that recovery of land rights had to accord with underlying principles of

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<sup>1</sup> 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 Syariah Court for Aceh began to declare all missing persons deceased.

<sup>2</sup> 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 Darussalam and Nias Islands of the Province of North Sumatra – Book 1 (“The Master Plan”) at II-10, available at <http://www.bappenas.go.id>

<sup>3</sup> Some damaged records, most notably the land books (buku tanah) for Banda Aceh, were rehabilitated over a 12 month period using deep freeze techniques in Jakarta.

<sup>4</sup> Supra note 2, p. II-5.

sustainable return after displacement. Sustainable return required participatory village planning in order to "build back better". It also required attention to a host of cost-cutting issues, including spatial planning, construction standards, restoration of livelihoods and the provision of services and infrastructure.

In April 2005, the government of Indonesia issued its master plan for the reconstruction of Aceh and Nias.<sup>5</sup> While it identified land rights as a key element of rehabilitation, it made no reference to restoring the land rights of renters and squatters. In May 2005, the government of Indonesia established the primary mechanism for restoring land rights after the disaster - the program for Reconstruction of Aceh Land and Administration System program ("RALAS"). Again, however, the RALAS program made no provision for recording and restoring the land rights of renters and squatters. Its focus is on recording the ownership and boundaries of private land.

Renters and squatters only received separate policy attention in June 2006. Regulation No. 21/2006 of the Aceh and Nias Reconstruction Authority (BRR) established distinctions among landowners, renters and squatters. Pre-tsunami landowners who needed new land would receive freehold land and a basic 36m<sup>2</sup> house. Pre-tsunami renters and squatters who could not return home would be given a cash payment. This cash could be used for housing purposes only, either as a rental instalment or as a down-payment for land or housing on credit. Without land of their own, renters and squatters would not receive a house from the government.

Renters and squatters are among the poorest and most vulnerable victims of the tsunami disaster. They are disproportionately represented in the barracks. They are among the last in line for housing assistance. Yet, for over a year, they were not identified as a separate group requiring protection. No data was collected as to their needs for land, housing and livelihoods. Their land rights were not recorded or restored through community land mapping and titling programs. Until the policy efforts of recent months, they were the forgotten people in programs of return and rehousing for displaced victims. And when policymakers did turn their attention to their plight, Regulation 21/2006 gave them substantially less assistance than that made available to other victims of the disaster.

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<sup>5</sup> Supra note 2.

In September 2006, two major demonstrations outside the Banda Aceh BRR office led to an internal BRR review of Regulation 21/2006. The demonstrators were mostly inhabitants of temporary living centres ("the barracks"). At that time, BRR estimated that among some 70,000 people who remain in the barracks, 20,000 were pre-tsunami renters and squatters.<sup>6</sup> In February 2007, BRR downgraded this estimate to 14,280 verified victim households remaining in the barracks, of which as many as 4,082 households were renters. Most of the barracks are due to close in the next six months, and there is increasing anxiety among residents as to their housing prospects.

In February 2007, BRR announced major amendments to Regulation 21/2006. These amendments substantially replaced the program of cash assistance with a policy of free land and housing for renters and squatters. Three categories of beneficiary are established under this new policy. Renters and squatters who own land will receive a minimum 36m<sup>2</sup> house either from BRR, an NGO or and international donor. Those who do not own land, but have been promised a house by an NGO or donor, will receive land from BRR for a minimum 36m<sup>2</sup> house. Those who do not own land, and have no housing commitment from an NGO or donor, will receive a 21m<sup>2</sup> house on land provided by BRR.

In August 2006, Oxfam International commissioned this policy paper on the land rights of renters and squatters in Aceh and Nias. It is the first paper in a series on land rights in the Indonesian tsunami zone. The titles of each paper in the series are as follows:

- Access to Housing for Renters and Squatters in Tsunami-Affected Indonesia.
- Housing for the Landless: Resettlement in Tsunami-Affected Indonesia
- Women's Rights to Land and Housing in Tsunami-Affected Indonesia
- Tradition, Law and Access to Justice: Managing Land Conflict in Tsunami-Affected Indonesia

This paper proceeds in the following parts. Part II discusses the land and housing problems facing renters and squatters. Part III discusses their numbers, nature and current status. Part IV outlines international standards relating to renters and squatters in post-displacement

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<sup>6</sup> Figures from BRR Special Unit on Barracks (September 2006).

contexts. Part V develops a set of recommendations based around beneficiary-driven provision of land, and community-based return of renters and squatters.

## **II. THE NATURE OF THE PROBLEM: LANDLESSNESS AND HOMELESSNESS**

### **Box 1: Cut's Story<sup>7</sup>**

Before the tsunami, Cut ran a small business in Banda Aceh. She rented a two-storey dwelling for 10 million rupiah (approximately US\$1100) a year. On the bottom floor she ran a small shop that sold Muslim shirts. She lived with her husband and son on the top floor. Over the years she had spent approximately 15 million rupiah (US\$1650) on improvements to the shop. All her savings were put back into the business. She did not apply her savings to acquire land. Five months before the tsunami, she prepaid her annual rent of 10 million rupiah.

Her husband died in the tsunami, and her shop and apartment were destroyed. She lost all of her possessions and stock-in-trade. Fortunately her young son survived. Two years after the tsunami, she now lives in a barrack in Banda Aceh. She has opened a small kiosk in the front of the barracks to sell Muslim shirts, and is selling on credit to customers that have yet to recover their livelihoods. She has requested housing assistance from a NGO operating in the area. She has also requested compensation from the shop owner for her improvements and pro rata contribution of rent. The landowner has given her 2 million rupiah.

Cut has not received a house, or any commitment of a house. She does not own land for a house. The NGO is reluctant to acquire land in order to give her a house. The NGO has told her to talk to the local government. The local government has told her to go back to the NGO. Cut's former shop and apartment have now been rebuilt. While the landowner would like her to return, she cannot afford the rent as it is now substantially higher than before the tsunami. As a result, the shop has now been rented out to someone else. She does not have enough money to rent a new house or shop.

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<sup>7</sup> Cut's name has been changed in order to preserve anonymity.

While Cut has not received any livelihoods assistance, she is receiving food support from the World Food Program. However her barrack is due to close in 2007. If she is forced to move from the barracks she will return to living in a tent. She is worried that she will lose her current food assistance, and will be unable to feed herself and her son. During her interview she said:

"Housing assistance has only been given to those who own land, if you are a renter like me it is clear that no one cares."

### **A. Barriers to Housing for Renters and Squatters**

Most renters and squatters in the tsunami zone lack adequate access to housing. Many live in poor conditions in the barracks, without housing commitments from either NGOs or the government. Their lack of access to housing has become an urgent issue because most barracks are due to close in the next six months as their land leases expire. Unless housing solutions are found quickly, or the barracks' leases are extended, large numbers of renters and squatters could be without homes or adequate shelter by June 2007.

There are three major obstacles to housing for renters and squatters in Aceh and Nias:

- A reconstruction principle that ties housing entitlement to land ownership.
- A massive imbalance of supply and demand for housing (including rental units).
- A shortage of suitable land on which to build housing for the landless.

#### ***1. The link between housing entitlement and land ownership***

As noted, the fundamental principle of reconstruction in Aceh and Nias has been that those who own land will receive a house. In all our field interviews, it was striking how often respondents associated land ownership with housing entitlement. This reconstruction principle has a practical element - land is needed to build a house. It was also confirmed by the original version of BRR Regulation 21/2006, which denied free government housing to renters and squatters who did not own land. While the amended Regulation 21/2006 now

allows NGO-supported land acquisition, further steps will be needed to facilitate NGO and donor housing for renters and squatters.

## **2. *Imbalances in the house rental market***

Widespread destruction of housing stock is a consequence of natural disasters and armed conflicts. Generally, it is associated with population displacement and the provision of humanitarian assistance. All these factors combined to create imbalances in the house rental market. Displaced persons want houses. Humanitarian agencies want houses and offices. Demand cannot meet supply and the result is rapid inflation in the land and housing market.

Imbalances in housing supply and demand are particularly severe in Aceh and Nias. Over 500,000 were displaced, and around 250,000 houses damaged or destroyed. While not all destroyed housing requires replacement because of the massive death toll, most estimates are that over 100,000 units are required. As at January 2007, around 60,000 houses had been rebuilt.

An influx of outsiders has compounded this imbalance of housing supply and demand. Rents in the housing market have increased markedly since the tsunami. Large numbers of outside labourers now require on or near-site accommodation. Unprecedented numbers of NGOs and international donors require housing and offices in the broader land market. Thousands of outsiders - Indonesian and foreigners - now reside in Aceh and Nias. While they are essential to reconstruction, they also contribute to the land and rental inflation that marks the broader housing market in Aceh and Nias.

According to one land notary, average rents in the tsunami zone have almost doubled since the disaster. Land prices have also increased substantially in areas surrounding the tsunami zone. The same notary suggests that average land price increases in Banda Aceh have been around 50%, with some affluent areas near the tsunami experiencing inflation of around 500%. While prices have fallen in severely damaged areas, increases in the broader land market have contributed to inflationary pressures in all economic sectors. They have also made it far more difficult and expensive to acquire land in order to re-house the landless.

All renters interviewed for the study identified increased rents and loss of livelihoods as the primary barrier to re-entering the rental market. Yet, inflation in the rental market has not eased - at least in a proportional way - as new houses have been rebuilt. This major obstacle to rehousing renters has a number of causes. First, there has been no program of construction or incentives aimed at rental housing. In theory at least, owners with multiple land parcels are only entitled to one house and so the focus has been on units for owner-occupiers rather than additional houses for rental investment. Second, as a general rule it has been landowners and their relatives that have occupied rebuilt houses. Landowners have been concerned with the shelter needs of their family and relatives. Very few have prioritised income-generation from rentals over their own families' shelter needs. While large numbers of land parcels have been subdivided to allow multiple dwellings, these additional units have generally gone to relatives rather than renters and squatters.<sup>8</sup>

Third, there is increased demand in the house rental market. While rental units have not come onto the market in proportion to the number of newly rebuilt houses, there are significant numbers of houses that are now available for rental because they have not been re-occupied by their owners. Some of these houses have been rented out, but they have not necessarily gone to the renters who remain in the barracks. Post-tsunami reconstruction has created new economic winners and losers. Although many victims have gained employment as a result of the boom in some sectors of the post-tsunami economy, the economics of reconstruction has also attracted and rewarded significant numbers of Indonesians who were not victims of the tsunami. By and large, it is this group that has crowded out the house rental market at the expense of pre-tsunami renters and squatters.

### **3. *Lack of supply of suitable land***

One answer to renter homelessness is not to restore rental agreements, but to provide renters (and squatters) with their own housing. This is the approach taken by the new version of Regulation 21/2006. In this event, the problem becomes largely one of access to land rather than housing itself. Most likely there are sufficient funds, public and private, to provide housing for renters and squatters. But renters and squatters also need land if they are to obtain a house. This land must be in locations that are suitable for livelihoods, infrastructure and

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<sup>8</sup> This phenomenon of relatives forming new households (KK) to obtain housing is discussed further below.



services. For renters at least, these locations must generally be urban or peri-urban because that is where most renters had their livelihoods. Acquiring the necessary amount of suitable urban and peri-urban land is an expensive and daunting task, but it is necessary if renters and squatters are to receive housing under amended Regulation 21/2006.

There are three basic mechanisms through which land may be acquired for the landless in Aceh and Nias: purchase on the private land market, acquisition by the government, and grant of communal village land. All these land acquisition methods are complex and can give rise to uncertainty or conflict. There is no easy way to provide land for renters and squatters in Aceh and Nias.

#### Purchases on the private land market

The new BRR policy set out in amended Regulation 21/2006 promises housing to renters and squatters who own land. It contemplates - and discussion with BRR has confirmed - that renters and squatters may acquire land with assistance from NGOs or donors. But purchases on the private land market are complicated by the relative lack of registered land plots. Around 25% of all affected land plots were registered with the National Land Agency. This figure broadly reflects the extent of land registration in Indonesia as a whole. Generally speaking, unregistered land plots may be purchased in urban and peri-urban areas, but there is a greater risk of fraud and disputation because the chain of ownership title may rest on poorly documented processes of transfer and inheritance. In tsunami-affected areas, these transaction risks have been compounded by the damage or destruction of most documents relating to both registered and unregistered plots. Special measures are required to facilitate the provision of land to renters and squatters through the private land market.

On a very limited number of occasions, BRR has funded the private purchase of land identified by beneficiaries with the assistance of NGOs. It seems that BRR will not fund further private purchases until the major resettlement sites at Neuheun and Labuy are complete (see below). This paper supports further funding for beneficiary-driven land acquisition in order to assist re-establishment of livelihoods and community cohesion.

Acquisition of land by the government

While there is a considerable amount of state land in Aceh and Nias, very little can be made available to renters and squatters without a prior process of "release" of land title (*pengadaan tanah*). Almost all suitable state land in Aceh and Nias is used by government agencies or cultivated to varying degrees by local communities. There is also a lack of clarity concerning the boundaries of state land. As a result in Aceh and Nias, state land cannot be provided directly to victims of the tsunami without prior negotiation and payment of compensation to government agencies or local communities who use that land. Under Regulations applicable in Aceh and Nias, the process of paying compensation and releasing title to the state is undertaken either by district governments or BRR.

Around 850 ha of land has been obtained by BRR and district governments either through direct purchase, or through the release of title mechanism. Most of this land is earmarked to resettle landowners whose land is now under water, or is otherwise unsuitable for reconstruction. Currently, two sites are earmarked for renters and squatters pursuant to amended Regulation 21/2006. These sites are located at Neuheun and Labuy, which are both in Aceh Besar (approximately 17 km from Banda Aceh). Several NGOs and donors - including the Chinese Charity Foundation, Buddha Tzu Chi, the Asian Development Bank, Islamic Relief and the International Organisation for Migration – are providing houses for renters and squatters at these locations. NGOs that may provide housing for renters and squatters either at Labuy or other sites include GenAssist, Zero to One Foundation, USAID, the Australian Red Cross and the Mennonite Central Committee (MCC). BRR has stated that further locations may be made available for renters and squatters once housing at Neuheun and Labuy has been fully committed.

Perhaps as much as half of all government-acquired land 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. An example is the Aceh Singkil site, on which a number of eligible beneficiaries have refused to resettle. Very little land has been acquired in Banda Aceh due to its cost - even though large numbers of renters live and work in urban areas. 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. In short, the option of resettling renters and squatters on land acquired by the

government also faces considerable difficulty - particularly in terms of re-establishing livelihoods and community cohesion. It should not be the only answer to housing renters and squatters in tsunami-affected Aceh.

#### Grant of village land with community consent

The third option for providing land to renters and squatters is through the grant of communal village land. At first glance, this appears to be an attractive option. As noted, field evidence suggests that land-owning communities are not antagonistic to renters and squatters, and often are willing to offer land-based solutions to their housing problems. But there is very little unused or available communal land in urban areas. And while in rural areas customary law allows the allocation of community land to community members or outsiders, there are some doubts as to the validity of these allocations in formal law. At the least, there is a risk that BPN will not recognize and issue title certificates over plots that are allocated to renters and squatters through traditional community mechanisms. Special measures are required to clarify this legal uncertainty.

What of unclaimed land? Could this be redistributed to renters and squatters? This was the expectation behind the draft BRR Resettlement Policy of December 2005, which set out principles for community-based reorganisation of landholdings. In the event, there has been little unclaimed private land in urban and peri-urban areas. Both anecdotal evidence and RALAS data suggest that living heirs do exist for the vast majority of affected land parcels. These heirs - many of whom lived outside tsunami-affected areas - have both claimed the land and (often) applied for housing assistance. As a result, there is very little unclaimed private land available for re-distribution to renters and squatters.

#### **4. *Other obstacles to housing for renters and squatters***

Three further obstacles to housing for renters and squatters deserve brief discussion. First, there are the numbers of people involved. In September 2006, BRR estimated that 70,000 victims remained in the barracks. This number includes 20,000 renters and squatters, 35,000 landowners who have lost their land, and another 15,000 who have not yet received new forms of housing. It does not include victims who lived in host communities, or in substandard housing that requires replacement. In February 2007, BRR downgraded this

estimate to 14,280 verified victim households remaining in the barracks, of which as many as 4,082 were renter households. While accurate figures are still not available, it is clear that the large numbers of landless and homeless in Aceh and Nias will affect the nature, implementation and chances of success of policies for renters and squatters.

Second, there is the question of the legal status of pre-tsunami rental agreements. Are pre-tsunami house rental agreements still valid? Can they be reinstated and enforced through legal mechanisms? According to one land notary, most urban rental agreements had a term of 3-4 years. Two years after the tsunami, there will be some agreements that had time to run. Unfortunately, however, forced restoration of pre-tsunami rental agreements is not a viable option. In legal terms, the leases have been avoided on the basis of *force majeure*, because the subject of the agreement (a house) has been destroyed.<sup>9</sup> In social terms, all those interviewed for the study indicated that they would not be seeking to enforce their pre-tsunami rental agreements. Indeed, most were not even seeking a pro-rata return of rent prepaid before the tsunami. In short, while landowners generally are willing for renters and squatters to return, the mechanism of return will arise from voluntary negotiation of agreements rather than legal enforcement.

A third obstacle to re-entry into the rental market is the policy of free housing for landowner victims. In one of our field cases, for example, a renter rejected an offer to live rent-free for five years in a rebuilt house, because of his desire to wait and see whether he would receive a free house. At the least, the fact that some NGOs will provide housing to renters and squatters, and the uncertainties surrounding government policy, has created significant confusion among renters and squatters as to their best housing option. At worst, it has created perverse incentives to wait in the barracks in the hope of receiving a windfall housing benefit.

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<sup>9</sup> The notion that a contract is discharged when the subject of a contract is destroyed holds true for both common and civil law systems. In Indonesia, the conclusion that lease contracts have been discharged when the house is destroyed is supported by the fact that residential leases relate to housing rather than land as such.

### **III. RENTERS AND SQUATTERS IN THE INDONESIAN TSUNAMI ZONE: NUMBERS, NATURE AND CURRENT STATUS**

#### **A. Basic Definitions and Concepts**

##### ***What is a renter?***

A renter in Indonesia holds a rental right (*hak sewa*). While *hak sewa* is the general Indonesian language term, "*kontrak*" (contract) is often used to describe the rent of a house in urban areas. Reference to renters in this paper includes rights arising from *sewa* and *kontrak*.

Rental rights in Indonesia rise through agreement with private landowners. They are a common phenomenon in relation to both registered (titled) and unregistered (customary) land. In formal terms, a rental rights may be acquired by an Indonesian citizen, foreigners that are resident in Indonesia, Indonesian legal bodies and foreign legal bodies that have a branch in Indonesia. Generally speaking, no law other than the agreement itself defines the rights and obligations of renters. No special laws or institutions protect the interests of residential tenants. There is no rent control; no landlords and tenants legislation; no residential tenancies board; and very little low-income public housing.

Rental rights in Indonesia are also poorly recorded. A rental right cannot be registered in the land register (although it may be "noted"). Copies of some agreements were kept in the offices of village chiefs, the sub-district head (camat), or a local land notary (PPAT). As a general rule, however, neither Indonesian law nor record-keeping systems (local or national) paid particular attention to residential tenants. In legal and institutional terms, Indonesian renters were already disadvantaged property rights-holders in Indonesia even before the tsunami.

##### ***What is a squatter?***

It is not easy to define a "squatter" in Indonesia. The general sense is clear - a squatter lives without legal rights on land owned by another. Usually, this land will be state land (*tanah negara*). Here uncertainty arises because the definition of state land in Indonesia is less clear. In Aceh, there are no maps that clearly delineate the extent and boundaries of state land. The

result is that some occupiers, defined as illegal squatters by the state, see themselves as holders of legitimate rights in customary law. This is a pan-Indonesian phenomenon that causes considerable local level conflict.

The definition of squatter is further complicated by the grant of letters of occupation (surat garap) to some occupiers of state land in Indonesia. Generally, these letters are granted by the sub-district head to raise revenue and resolve local conflicts. They are relatively common in Aceh. In formal terms, letters of occupation grant their holders rights to priority should ownership rights be issued over the (state) land, and rights to apply for ownership after a period of continuous occupation. Often, they are also used as a basis for proving and transferring rights to land (albeit that in formal terms it is state land). Again, the result is that some occupiers of state land reject their classification as illegal squatters.

***What is a *penumpang* ("passenger")?***

A *penumpang* is someone who occupies a house or cultivates land without paying rent to the owner. Commonly, *penumpang* arrangements are made with relatives or friends. As discussed below, there are a very large number of *penumpang* victims of the tsunami disaster.

***Is there a distinction between land and house rental?***

A rental agreement may exist over land, housing or land and housing. In Aceh and Nias, as with the rest of Indonesia, there is a clear distinction between a land lease and a house lease. A person may rent land on which she owns a house. Alternatively, she may rent a house on land that she owns. She may also rent both the house and the land. Unless otherwise indicated, references in this paper to renters are to house rather than land renters.

***What are the definitions used by BRR?***

The title of the original version of BRR Regulation number 21/2006 refers to victims who did not own land and a house before the tsunami disaster. It did not explicitly refer to renters and squatters. However, article 3 set out the basic intent. A household that rented or lived in another person's house would receive 40% of the average cost of a Type 36m<sup>2</sup> basic house in Banda Aceh (approximately 40 million rupiah). A household that "lived on land belonging to

another person" would receive 25% of the average cost of a Type 36m<sup>2</sup> basic house in Banda Aceh (approximately 25 million rupiah). The regulation thus limited its renter payment to house and not land renters, but included those who lived in a house without paying rent (numpang rumah). On its face, the regulation also extended the 10 million rupiah "squatter" payment to land cultivators (numpang tanah) who acted with authority on the landowner.

The amended version of Regulation 21/2006 uses the same definitions. These definitions require clarification so as to include land renters (who will otherwise not be entitled to a house), and exclude those who cultivate land with legal authority (who are not squatters and presumably have housing entitlements elsewhere).

## **B. Basic Statistics: Numbers and Characteristics**

### ***How many renters in Aceh and Nias?***

According to the 2005 census data, there are 56,689 renters in Aceh and 2911 in Nias (representing 7% and 6% respectively of the total number of house occupiers).<sup>10</sup> These are total numbers for all areas in Aceh and Nias.

In January 2006, a comprehensive survey in Aceh and Nias by the NGO Garansi and the Indonesian Bureau of Statistics recorded 34,849 renters out of a total of 347,775 displaced persons (10.02%). The breakdown per district is as follows:

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<sup>10</sup> 2005 Aceh Census Data, at 174; 2005 Nias Census Data, at 110. These figures are calculated by combining the two categories of kontrak and sewa

**Renters Displaced**

<b>District</b>	<b>Renters</b>	<b>Total Displaced</b>	<b>% of Renters</b>
Aceh Besar	3,922	40,096	9.78
Banda Aceh	4,250	29,151	14.58
Sabang	120	1,369	8.77
Aceh Barat	8,060	53,202	15.15
Aceh Jaya	248	11,235	2.21
Nagan Raya	1,042	11,234	9.28
Aceh Timur	1,302	16,410	7.93
Aceh Utara	487	23,528	2.07
Bireuen	858	27,722	3.10
Langsa	275	930	29.57
Lhokseumawe	588	5,294	11.11
Pidie	7,006	65,404	10.71
Aceh Selatan	3,038	11,870	25.59
Aceh Singkil	829	19,906	4.16
Aceh Tengah	347	1,603	21.65
Aceh Tenggara	139	366	37.98
Aceh Tamiang	319	1,577	20.23
Abdya	934	3,085	30.28
Sinabang	1,005	23,695	4.24
Bener Meriah	80	98	81.63
<b>Total</b>	<b>34,849</b>	<b>347,775</b>	<b>10.02</b>

*\* Note: 'Renters' includes all displaced persons who rented their house irrespective of who owned the land where the house was placed. There were 6,337 displaced persons who rented their house but owned their land, all other 'renters' did not own their land.*



In this paper this survey is known as the BPDE survey. It covered 347,775 displaced persons. This data is useful as an indicator of the relative proportions, locations and types of renters and squatters.

In September 2006, BRR estimated that 20,000 members of renter households remained in the barracks. By February 2007 BRR had verified 1,429 renter households in the barracks who were tsunami victims, and estimated that up to 4,082 verifiable renter households remained in the barracks. These figures are striking for two reasons. First, they exclude house renters who are living with relatives or host communities. If these renters are included, the BRR estimate is that between 7000 and 10,000 renter households will require land and housing. Second, they support the conclusions that renters are disproportionately represented in the barracks, and are among the last in line in terms of housing assistance.

### ***How many squatters?***

The census data for Aceh and Nias does not record the number of squatters. The BPDE data does record displaced persons who lived on state land. In January 2005, the total number of disaster-displaced persons who lived on state land was 7,462. This amounted to 2.15% percent of all displaced persons in Aceh and Nias. The breakdown per district was as follows.

**Squatters Displaced**

<b>District</b>	<b>Squatters</b>	<b>Total Displaced</b>	<b>% of Squatters</b>
Aceh Besar	392	40,096	0.98
Banda Aceh	844	29,151	2.90
Sabang	421	1,369	30.75
Aceh Barat	708	53,202	1.33
Aceh Jaya	53	11,235	0.47
Nagan Raya	71	11,234	0.63
Aceh Timur	932	16,410	5.68
Aceh Utara	217	23,528	0.92
Bireuen	205	27,722	0.74
Langsa	24	930	2.58
Lhokseumawe	232	5,294	4.38
Pidie	1,459	65,404	2.23
Aceh Selatan	47	11,870	0.40
Aceh Singkil	94	19,906	0.47
Aceh Tengah	277	1,603	17.28
Aceh Tenggara	15	366	4.10
Aceh Tamiang	780	1,577	49.46
Abdya	170	3,085	5.51
Sinabang	521	23,695	2.20
Bener Meriah	0	98	0.00
<b>Total</b>	<b>7,462</b>	<b>347,775</b>	<b>2.15</b>

These are survey respondents who identified themselves as living on state land. As noted, the boundaries and definition of state land are unclear: hence the number of squatters identified by the State may be higher.

***How many land renters?***

The foregoing data relates to rent of housing. They do not encompass (1) land rentals where the house is owned by the displaced household, and (2) house occupations (*penumpang*) without payment of rent where the house is owned by relatives or friends. According to the

BPDE data, 3,134 displaced persons rented land while owning houses on that land. The breakdown per district is as follows:

**Displaced Persons that Rented their Land and Owned their House**

<b>District</b>	<b>Land Renters who are House Owners</b>	<b>% of Total Displaced</b>
Aceh Besar	308	0.77
Banda Aceh	152	0.52
Sabang	19	1.39
Aceh Barat	838	1.58
Aceh Jaya	46	0.41
Nagan Raya	57	0.51
Aceh Timur	529	3.22
Aceh Utara	162	0.69
Bireuen	150	0.54
Langsa	12	1.29
Lhokseumawe	9	0.17
Pidie	351	0.54
Aceh Selatan	232	1.95
Aceh Singkil	84	0.42
Aceh Tengah	84	5.24
Aceh Tenggara	0	0.00
Aceh Tamiang	5	0.32
Abdya	24	0.78
Sinabang	81	0.34
Bener Meriah	0	0.00
<b>Total</b>	<b>3,143</b>	<b>0.90</b>

***What is the current status of land renters in Aceh and Nias?***

The basic principle for house reconstruction in Aceh and Nias has been that those who own land will receive a free house. What then is the status of those who owned a house but rented the land? Their entitlements are not entirely clear because Regulation 21/2006 (in its original and amended versions) refers to house and not land renters. However, the implementing

guidelines for amended Regulation 21/2006 now clarify that land renters may be eligible for resettlement assistance.

***How many penumpang rumah (house passengers) in Aceh and Nias?***

Both the original and amended versions of Regulation Number 21/2006 include those who lived in a house without paying rent. BPDE data for this category calculates that 140,056 displaced persons (40.27%) lived in a house belonging to their parents; and 32,640 displaced persons (9.16%) lived in a house belonging to another. In total, therefore, 172,696 displaced persons (47.66%) occupied a house without paying rent. As noted, in theory this category of occupier was eligible for 40 million rupiah under the original BRR Regulation 21/2006. In practice, of course, it would not have been possible to pay this amount to such a large category of victims, and it is unlikely that sufficient land is available for so many *penumpang*. Nevertheless, the implementing guidelines for Regulation 21/2006 state that *penumpang* are eligible beneficiaries for renter and squatter housing assistance.<sup>11</sup>

***How many land squatters owned their house?***

Similar care needs to be taken in analysing the housing rights of squatters. It is not the case that squatters had no legal rights to housing. This is illustrated again by the BPDE data. Of the 7,462 displaced persons living on state land, 3,203 (42.92%) stated that they owned their own house, 2,241 (30.03%) stated that they lived in a house owned by their parents, and 1,439 (19.28%) stated that they lived in a house owned by another. The breakdown per district is as follows:

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<sup>11</sup> Note that many *penumpang* have already received housing by forming separate households (KK) and subdividing land owned by their parents and relatives.

**Status of Housing for Squatters**

<b>District</b>	<b>Owned House</b>	<b>% of Squatters</b>	<b>Lived in Parents House</b>	<b>% of Squatters</b>	<b>Rented House</b>	<b>% of Squatters</b>
Aceh Besar	156	39.80	92	23.47	109	27.81
Banda Aceh	151	17.89	88	10.43	416	49.29
Sabang	234	55.58	119	28.27	57	13.54
Aceh Barat	280	39.55	182	25.71	160	22.60
Aceh Jaya	35	66.04	12	22.64	6	11.32
Nagan Raya	16	22.54	37	52.11	14	19.72
Aceh Timur	434	46.57	368	39.48	118	12.66
Aceh Utara	62	28.57	99	45.62	40	18.43
Bireuen	81	39.51	66	32.20	56	27.32
Langsa	2	8.33	7	29.17	12	50.00
Lhokseumawe	159	68.53	55	23.71	18	7.76
Pidie	525	35.98	397	27.21	344	23.58
Aceh Selatan	16	34.04	8	17.02	17	36.17
Aceh Singkil	8	8.51	64	68.09	21	22.34
Aceh Tengah	269	97.11	0	0.00	1	0.36
Aceh Tenggara	1	6.67	3	20.00	11	73.33
Aceh Tamiang	367	47.05	395	50.64	15	1.92
Abdya	97	57.06	58	34.12	13	7.65
Sinabang	310	59.50	191	36.66	11	2.11
Bener Meriah	0	0.00	0	0.00	0	0.00
<b>Total</b>	<b>3,203</b>	<b>42.92</b>	<b>2,241</b>	<b>30.03</b>	<b>1,439</b>	<b>19.28</b>

As noted, Indonesian law and practice distinguishes between rights to land and rights to housing. Unlike many other legal systems, an owner of land in Indonesia does not automatically become an owner of a house or other objects physically attached to the land. An Indonesian may occupy land illegally but legally own a house on that land. In legal terms, therefore, a large number of squatters in Aceh and Nias were either house owner-occupiers, or would inherit house ownership from their parents. In other words, in determining the principles of housing replacement, it is not accurate to say that squatters had no legal assets to replace. Many owned a house that was lost in the tsunami. This category of squatter would

not have been compensated by a 10 million rupiah cash payout under the original version of Regulation 21/2006.

***Could squatters have a legal interest in land?***

It is also incorrect to say that squatters lacked any legal interest in their land. Unlike many legal systems, formal Indonesian law does not recognize possession alone as a form of right to land. However, as noted, squatters often receive letters of occupation (*surat garap*) from local officials. Indonesia's 1997 Law on Land Registration also recognizes 20 years' occupation of land as *prima facie* proof of ownership in circumstances where there is no other competing title (including a claim of state land). In short, it is not correct to say that these squatters have no legal rights to restore or compensated. This category of squatter would also not have been compensated by a 10 million rupiah cash payout under the original Regulation 21/2006.

***Were renters and squatters original inhabitants of their districts?***

Broadly speaking, house renters and land squatters tend not to be original inhabitants of an area, but had migrated there in search of livelihoods for employment. According to the BPDE data for three districts the number of migrant renters or squatters is as follows:

**Renters and Squatters that are Migrants**

<b>District</b>	<b>Renters</b>	<b>% of Renters</b>	<b>Squatters</b>	<b>% of Squatters</b>
Pidie	6,083	86.83	1,128	77.31
Bireun	697	81.24	149	72.68
Aceh Barat	7,637	94.75	674	95.20

In some cases, of course, these migrants owned land and housing in their original districts. The implementing guidelines for amended Regulation 21/2006 clarify that renters and squatters who own land and houses elsewhere in Indonesia are not eligible for resettlement assistance.

***Have the incomes of renters and squatters suffered disproportionately since the tsunami disaster?***

The incomes of renters have suffered disproportionately since the tsunami disaster. According to BPDE data, 26,409 renters (75.78%) recorded monthly incomes of below 500,000 rupiah in January 2005; whereas 229,660 of non-renters (74.83%) recorded monthly incomes of below 500,000 rupiah in January 2005. In other words, the proportion of renters at the lowest recorded income level increased from 70.40 percent to 75.78 percent. The proportion of other displaced persons at the lowest recorded income level increased from 70.97 percent to 74.83 percent.

In contrast, the incomes of squatters do not appear to have suffered disproportionately after the tsunami disaster. According to BPDE data, 5,100 squatters (68.67%) recorded monthly incomes of below 500,000 rupiah in January 2005 compared with 229,660 other displaced persons (74.83%) who recorded monthly incomes of below 500,000 rupiah in January 2005. In other words, the proportion of squatters at the lowest recorded income level increased from 66.22 percent to 68.67 percent. The proportion of other displaced persons at the lowest recorded income level increased from 70.97 percent to 74.83 percent.<sup>12</sup>

***The Effect of the Tsunami Disaster***

In terms of return and rehabilitation, renters and squatters have suffered disproportionately as a result of the tsunami and subsequent policies for recovery. The BPDE data of January 2006 estimates that only 1,601 renters (4.59%) and 726 squatters (9.73%) had received housing assistance, while 55,054 other displaced persons (17.94%) had received housing assistance.

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<sup>12</sup> Note: percentages in the above income sections are calculated on the basis of total populations for each category which incorporate all displaced including those that did not respond to the income questions.

**Present Location of Displaced Persons**

<b>Location</b>	<b>Renters</b>	<b>% of Renters</b>	<b>Squatters</b>	<b>% of Squatters</b>	<b>Other Displaced</b>	<b>% of Other Displaced</b>
House of Relative	19,664	56.44	3,729	47.41	131,116	42.98
Tent	3,871	11.11	467	5.94	27,501	9.01
Barracks	4,648	13.34	1,476	18.76	51,338	16.83
Public Building	974	2.80	358	4.55	2,534	0.83
Original Location	5,683	16.31	1,836	23.34	92,576	30.35

These figures confirm BRR data that renters and squatters are disproportionately represented in the barracks. They also confirm BPDE data on the disproportionate degree of displacement suffered by renters and squatters one year after the tsunami.

**IV. INTERNATIONAL STANDARDS**

This part considers international standards relating to the treatment of renters and squatters in post-displacement contexts. International standards are discussed because they represent a consensus developed through experience and lessons learnt from other displacement contexts. They also provide normative principles against which current programs for renters and squatters in Aceh and Nias may be assessed. Four standards are highlighted.

- Rights not to be discriminated against on the basis of property.
- Rights to adequate housing and security of tenure.
- Rights of return and restitution for displaced persons.
- Rights to compensation for displaced persons in lieu of return and restitution.



## Non-Discrimination

Discrimination against renters and squatters on the basis of their property status is prohibited under the International Covenant on Civil and Political Rights.<sup>13</sup> This does not necessarily mean that renters and squatters should be treated in the same way as landowners. It does mean that the treatment of renters and squatters must meet certain minimum standards relating to tenure security, housing, return after displacement and property restitution.

## Rights to Adequate Housing and Security of Tenure

Rights to housing and security of land tenure are particularly relevant in the context of displacement. There is a basic right to adequate housing and security of land tenure.<sup>14</sup> There are also more specific rights to equality and non-discrimination in the provision of housing.<sup>15</sup>

## Rights of Return and Restitution for Displaced Persons

All displaced persons have a basic right of return to their place of origin.<sup>16</sup> This right may now include a right of return to one's home or habitual place of residence.<sup>17</sup> The Guiding Principles on Internal Displacement state that:

<sup>13</sup> Arts. 2, 24, 26. See also *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.

<sup>14</sup> *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.

<sup>15</sup> *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, United Nations, E/CN.4/Sub.2/2005/17 (2005) art 4.1.

<sup>16</sup> *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.

<sup>17</sup> *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.

Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

The Guiding Principles on Internal Displacement were unanimously approved by the UN General Assembly in 2005.

In August 2005, the UN Sub-Commission on the Protection and Promotion of Human Rights approved certain principles on housing and property restitution for refugees and displaced persons ("the Pinheiro Principles"). Principle 16 of the Pinheiro Principles states that:

States should ensure that the rights of tenants... and other legitimate occupants or users of housing, land and property are recognized within restitution programmes. To the maximum extent possible, States should ensure that such persons are able to return to and repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.

International rights of return and housing restitution for displaced persons thus apply to renters. What of squatters? On its face, squatters are excluded by the Pinheiro Principles because Principle 16 refers only to legitimate occupiers of land and housing. More generally, however, the Pinheiro Principles confirms the rights of all arbitrarily displaced persons to housing restitution.<sup>18</sup> Additionally, of course, we have seen that squatters in Aceh often owned their own house, and held forms of rights to land either in customary law or through letters of occupation.

Renters and squatters in the tsunami zone are not simply individuals. Usually they are family groups. Housing policy directed at renter and squatter households may be discriminatory where they result in the differential treatment of women and children who are victims of the

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<sup>18</sup> A Handbook on implementing the Pinheiro Principles argues that squatters are included within international law rights of housing restitution for displaced persons: see Scott Leckie, A Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the '*Pinheiro Principles*' 1 October 2006, available at [www.cohre.org](http://www.cohre.org).

disaster. In relation to the treatment of women and children, the following Pinheiro Principles are relevant.

- 12.2 States should ensure that housing, land and property restitution procedures, institutions and mechanisms are age and gender sensitive, and recognize the equal rights of men and women, as well as the equal rights of boys and girls, and reflect the overarching principle of the “best interests of the child”.
- 14.2 States and other involved international and national actors should, in particular, ensure that women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children are adequately represented and included in restitution decision-making processes, and have the appropriate means and information to participate effectively. The needs of vulnerable individuals including the elderly, single female heads of households, separated and unaccompanied children, and the disabled should be given particular attention.
- 19.1 States should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.
- 19.2 States should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.
- 19.3 States should ensure that all national policies related to the right to housing, land and property restitution fully guarantee the rights of women and girls to be protected from discrimination and to equality in both law and practice.

### **Rights to Compensation for Displaced Persons in Lieu of Return and Restitution**

Generally speaking, compensation for displaced persons in lieu of return and restitution should only be pursued when it is voluntarily accepted by beneficiaries, or restitution is not factually possible. Where housing or land is destroyed, the Pinheiro Principles prefer that displaced persons have the option to repair or rebuild whenever possible (Principle 21).

Return and reintegration is much to be preferred over resettlement or compensation for loss because livelihoods, community cohesion and mental and physical health are far more likely

to be recovered in the place of habitual residence. Even if compensation is provided, in lieu of return, that compensation should not be limited to replacement of assets lost. It should also extend to access to employment and recovery of livelihoods, and access to housing in a market that may have been transformed by the displacement-inducing events themselves. Thus, for example, the Asian Development Bank principles on resettlement include the following in their heads of compensation:

- Loss of access to land. This includes agricultural, forest, maritime and other areas used by community members for livelihood purposes. It also includes access to premises used for commercial income
- Loss of income and livelihoods. This includes primary and secondary sources of employment, as well as commercial, agricultural, forest and maritime income.

### **Application of International Standards to Aceh and Nias**

Applying these international standards to the treatment of renters and squatters in Aceh and Nias gives rise to two basic conclusions. First, the cash payout program under the original version of Regulation 21/2006 was not consistent with rights to housing, tenure security and return after displacement in international law. Second, the provision of land to renters and squatters must prioritise voluntary return to original locations, or at least beneficiary-driven identification of suitable locations, and avoid large-scale resettlement programs as much as possible.

## **V. RECOMMENDATIONS**

This policy paper supports the 2007 amendments to Regulation 21/2006. The Indonesian government deserves credit for changing its policy, and allocating substantial funds to provide land and housing to renters and squatters. The following part sets out detailed recommendations to assist implementation of the new policy on renters and squatters.

The provision of land to house renters and squatters should be based on four basic principles:

- **Non-Discrimination in Housing Assistance.** All victims of the tsunami disaster in Aceh and Nias are entitled to housing assistance. Eligibility for housing assistance should not be based on distinctions among renters, squatters and landowners.
- **Beneficiary-Driven Provision of Land.** All renter and squatter victims of the tsunami disaster are entitled to assistance to obtain land for housing. This assistance should allow renters and squatters to identify and obtain their own land, in preference to resettlement on land acquired by the government.
- **Community-Based Return of Displaced Persons.** All renter and squatter victims of the tsunami are entitled to assistance to return to their pre-tsunami communities. Community-based return should be the priority mechanism for providing land and housing to renters and squatters.
- **Voluntariness.** Renter and squatter victims of the tsunami are under no obligation to accept land or housing assistance.

The first principle - that renters and squatters have a right to housing assistance -has been established by amended Regulation 21/2006. So too has the fourth principle - that renters and squatters are under no obligation to accept land and housing assistance. The second and third principles, relating to beneficiary-driven land provision and community-based return, require detailed implementing mechanisms. These are set out as follows

## **A. Beneficiary-Driven Land Provision**

Subject to the requirements of Indonesian law, land assistance may be provided by government, donors or civil society. The three basic mechanisms for land assistance are acquisition by the government, purchase by private parties and grant of village land with community consent.

### ***1. Acquisition by the government***

As discussed in Part IIA above, approximately 700 ha of land has already been acquired by BRR and district governments for tsunami-related housing. Approximately 500 ha is earmarked to resettle landowners whose land is now under water, or is otherwise unsuitable

for reconstruction. The remaining 200 ha is now earmarked for renters and squatters. BRR wants to utilise all this land for housing. It does not want to leave Aceh and Nias with unused government-acquired land. It would prefer that renters and squatters are housed on the 200 ha of government-acquired land, rather than on private land identified and obtained by the beneficiaries themselves.

International standards prefer return and reintegration of displaced persons over resettlement in different locations. While government resettlement programs are necessary to provide housing for renters and squatters, they should by no means be the preferred or sole mechanism. There are substantial concerns over (1) the suitability of resettlement sites for livelihoods, (2) the difficulties of coordinating agencies to provide infrastructure, (3) the problems of community cohesion in sites populated by groups from a large number of different locations, and (4) the need for follow-up programs to ensure the sustainability of resettled communities.

With these points in mind, the following recommendations are made in relation to housing renters and squatters on government-acquired land.

#### Suitability assessment of government-acquired land

It may be too late for a suitability assessment of the Neuheun and Labiy sites. Nevertheless, all other land acquired by the government to house victims of the tsunami disaster should be the subject of a comprehensive suitability assessment. This assessment should focus on suitability for housing, and access to services and infrastructure. It may be conducted by an NGO or donor, in consultation with BRR, or by BRR with appropriate technical assistance. The results of the assessment should be made available to all potential beneficiaries, and NGOs or donors who wished to provide housing for renters and squatters.

#### Matching suitable locations with interested NGOs or donors

BRR has expressed its preference for NGOs or donors to provide housing for renters and squatters. In part, this preference seems to arise from political sensitivities over "windfall" land benefits to victims who prior to the tsunami had no land at all. Whatever the reason, this paper also supports the provision of housing by NGOs and donors because beneficiaries

without land of their own, or a promise of housing by an NGO or donor, will only receive a 21m<sup>2</sup> house from BRR. All other beneficiaries will receive a minimum 36m<sup>2</sup> house.

Matching suitable locations with interested NGOs or donors requires three documents:

- A verified list of renters and squatters who are eligible for housing assistance. This list should show the current location of eligible beneficiaries.
- A detailed map of suitable and available government-acquired land in each district or municipality.
- A list of NGOs or donors who are willing to provide housing for renters and squatters.

It is recommended that BRR make these documents available to stakeholders involved in renter and squatter housing policy.

#### Further land acquisition by BRR

As noted, very little land has been acquired by the government to house tsunami victims in Banda Aceh itself. More land should be acquired by BRR in Banda Aceh to facilitate recovery of urban-based livelihoods by eligible renters and squatters. This land should be acquired by BRR rather than the city government of Banda Aceh. The amount of land to be acquired should be determined by reference to a detailed livelihood survey of renter and squatter beneficiaries (see further below). Those beneficiaries who have urban-based livelihoods, and have not obtained land through private mechanisms, should be resettled on land acquired by the government (or NGOs/donors) in Banda Aceh itself.

#### Livelihoods and needs assessment survey

Government-acquired land must be suitable not only for housing and access to services and infrastructure, but for livelihoods, community cohesion and the special needs of vulnerable victims of the tsunami. A livelihoods and needs assessments survey should be conducted in relation to all beneficiaries who will receive housing in government-acquired locations. This survey may be conducted either by an expert NGO or donor, in consultation with BRR, or by BRR with expert technical assistance. The survey should build on data already compiled by the BRR Relocation Unit, and include:

- A detailed description of the means of livelihood of eligible renters and squatters prior to the earthquakes and tsunami. This description must refer to the primary occupation of beneficiaries, as well as any secondary sources of livelihood support such as:
- Residential gardens.
- Ricefields and other forms of agricultural activity (including shrimp farming and fishponds).
- Shops or other retail outlets.
- Any other forms of small business.
- Casual employment.
- Access to common property areas (e.g. forests, maritime zones, fringing reefs).
- A description of items necessary to undertake primary or secondary forms of livelihood support. These items may include such things as fishing boats, farming implements etc.
- A description of the type and approximate numbers of livestock used for livelihood support by beneficiaries prior to the earthquakes and tsunami.
- Identification of any vulnerable individuals or groups among the beneficiaries. These vulnerable individuals or groups may include women, children, the elderly and disabled persons, and the mentally or physically ill.
- Identification of the special needs of vulnerable beneficiaries, including in relation to livelihood support, tenure security, and access to health and social support services.
- Identification of social, cultural or religious institutions intrinsic to community life among beneficiaries.
- Assessment of institutional responses necessary to maintain intrinsic social, cultural or religious institutions in sites for resettlement.

Female renters and squatters, and representatives from women's groups, should participate in the formulation and conduct of this survey.

#### Preparation of a resettlement plan

A resettlement plan should be developed from data obtained through the livelihoods and needs assessments survey (see below). This resettlement plan may be prepared by an expert



NGO or donor, in consultation with BRR, or by BRR with expert technical assistance. It should encompass:

- identification of beneficiaries,
- identification of special needs of vulnerable groups (including women, orphans, the disabled and the mentally ill),
- allocation of institutional responsibilities,
- mechanisms for informed beneficiary consultation and participation,
- information on alternatives to resettlement on government-acquired land,
- mechanisms for providing land tenure security,
- mechanisms for accessing livelihood opportunities, training, employment and credit, environmental protection,
- conflict-resolution and complaints procedures,
- post-resettlement support mechanisms until livelihoods are restored, and
- an implementation schedule including monitoring and evaluation mechanisms.

Further detailed recommendations relating to infrastructure, site planning and site assessment in government-acquired locations for renters and squatters will be set out in the second policy paper of this series, which deals with resettlement generally in tsunami-affected Aceh and Nias.

## **2. *Acquisition of land by private parties***

The new BRR policy under amended Regulation 21/2006 contemplates acquisition of land by private parties, including renters and squatters themselves. Renters and squatters who obtain land privately may form community groups (of 10 or more households), and forward a proposal for housing to BRR, an NGO or a donor. Alternatively, renters and squatters may identify suitable land - with or without NGO or donor assistance - and forward a group proposal (10 or more households) to BRR for acquisition of the land by BRR. Both these beneficiary-driven land acquisition methods are to be preferred over resettlement on government-acquired land. They deserve substantial support from NGOs and donors. At the same time, NGOs and donors need to be sure that any support for land acquisition will be free of conflict, and timely enough to allow completion of housing in line with their own plans and commitments. With this in mind, the following recommendations apply.

### Renter and Squatter Liaison Teams

A local or international NGO should establish liaison teams to assist renters and squatters to identify and obtain land for themselves. Initially, these teams should focus on renters and squatters in the barracks. For each barrack, verified renters and squatters would be asked to form groups of 10 or more. In consultation with the local village head and sub-district head (see further below), each group would then be assisted to identify suitable land for housing. This land could be acquired through direct purchase, with assistance from an NGO or donor, or be the subject of a proposal for acquisition by BRR. With sufficient funding, this assistance program could be extended to renters and squatters who do not reside in the barracks.

### Preparation of a Land Acquisition Manual

A manual should be prepared to guide acquisition of land by renters and squatters with assistance from NGOs and donors. This manual should include:

- legal requirements to use an authorised land notary (PPAT);
- legal requirements to register the land rights acquired through purchase;
- a description of mechanisms for proving land rights where the right has not been registered, or where records do not otherwise exist; and
- standard pricing models prepared by BRR for different districts using land tax data.

The manual should also establish a principle that financial assistance for private land purchases should not be provided directly to renters and squatters, but rather be paid directly to the seller at the time of transfer of land.

### Implementation guidelines for amended regulation 21/2006

Implementing guidelines relating to the eligibility of beneficiaries have been prepared for amended Regulation 21/2006. Further guidelines should clarify that:

- Donors and NGOs may fund land acquisition by eligible beneficiaries in Aceh and Nias.
- Eligible renters and squatters may make a group proposal to BRR identifying suitable land and requesting acquisition of that land by BRR.
- Land may be acquired in tsunami-affected areas before land title certificates are issued by BPN under the RALAS program.

An annexure to these further implementing guidelines should also set out standard form documentation for group proposals relating to (1) requests for housing on land owned by renters and squatters, and (2) requests for acquisition of identified land by BRR.

### **3. *Grant of village land with community consent***

Generally speaking, this option will have limited applicability in urban and peri-urban areas. It may be useful in rural areas. It will satisfy the need to prioritise community-based return.

Customary law mechanisms already allow village land to be made available to community members (or outsiders on payment of an agreed fee) with community consent. These customary mechanisms require further confirmation in law. The following recommendations apply.

- Legal confirmation that communal village land in Aceh and Nias may be granted to victims of the tsunami through customary or religious mechanisms. Land that is designated and demarcated as state land may not be provided to tsunami victims through customary or religious means.
- Legal confirmation that village land may be provided to tsunami victims through gift, lease or purchase.
- Legal confirmation that village land gifted to, or purchased by, renters and squatters shall be registered as privately owned land by the National Land Agency.

## **B. Community-Based Return**

International standards establish that community-based return is the preferred mechanism of population return after displacement. Resettlement should be a last option, both for the landowners and the landless. The key figure in community-based return is the village head. The following recommendations apply.

- For each village that had renters and squatters prior to the tsunami, the village head should report on the availability of land for renters and squatters. This report should be in a standard format. It should identify the type of land that is available: state land, private land and village land. It should also identify the mechanisms by which this land may be obtained (ie through gift, purchase or rental).
- Renters and squatters are under no obligation to accept land in their pre-tsunami village. But they must be given this choice, where it is available, prior to provision of land through other means.
- Liaison teams established by a local or international NGO should consult with the local village head and sub-district head, in order to match renters and squatters with suitable locations in their pre-tsunami areas.

## **C. Further Recommendations**

### ***1. Verification***

Currently, any program of assistance for renters and squatters - whatever its form - is threatened by difficulties with registering and verifying eligible beneficiaries. There is a risk that the whole process of land acquisition for the landless will blow out as a result of unreliable registrations and illegitimate claims for housing. Doubts over the legitimacy of beneficiary lists have led some officials in BRR to resist recommendations for further land acquisition. In consultation with BRR, further funding and technical assistance may be needed to provide confidence in the beneficiary verification program.

## **2. *Tenure security***

All renters and squatters should be rehoused with secure forms of land tenure. Renters and squatters should receive ownership rights (hak milik) with free certificates from the National Land Agency. All programs of land acquisition and housing resettlement need to be coordinated with the National Land Agency's RALAS (Reconstruction of Land Administration in Aceh and Nias) program. Renters and squatters should also receive the benefit of the BRR joint titling program, which issues land titles in the names of both husbands and wives in resettlement areas. A liaison officer should be appointed, either by BRR or by an NGO in consultation with BRR, for these tenure security purposes.

## **3. *Monitoring and advocacy***

A local or national NGO should be funded to provide monitoring, advocacy and advice services on behalf of renters and squatters.

## **4. *The barracks***

Leases of the barracks should be extended where eviction of verified tsunami victims would result in homelessness.

## **5. *Technical assistance for regulatory development***

A program of legal drafting assistance be developed for relevant regulations and implementing guidelines/manuals for assistance programmes to renters and squatters.

## **6. *Squatters***

As discussed in Part II above, the 1997 Law on Land Registration allows Indonesian citizens to claim rights to land on the basis of 20 years' occupation. This right should be applied in Aceh and Nias. Potential claimants should receive comprehensive and accessible information, and the opportunity to access advocacy and legal aid services. BRR regulations should also refer to this 20 year rule.

**7.     *Infrastructure***

A clear division of responsibilities for infrastructure should be set out in implementing guidelines under amended Regulation 21/2006.

**8.     *Information campaign***

An information campaign is urgently required to inform renters and squatters of their new entitlements under amended Regulation 21/2006. This information campaign should be coordinated with the establishment of renter and squatter liaison teams by a local or international NGO.