

**Asia Research Institute  
Aceh Working Paper No. 3**

**Women's Rights to Land and Housing in  
Tsunami-Affected Aceh, Indonesia**

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**April 2008**



**This paper was produced with funding and support from Oxfam International.  
It forms part of the Oxfam International policy paper series  
on land in tsunami-affected Aceh.**

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## **Women's Rights to Land and Housing in Tsunami-Affected Aceh, Indonesia**

**Daniel Fitzpatrick**

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### **ACKNOWLEDGEMENTS**

This paper is based on extensive fieldwork in tsunami-affected Aceh, Indonesia, between August 2006 and January 2007. Several researchers assisted in the field, including Ernita Dewi, Siti Rahmah, Samuel Situmorang, Laura Meitzner Yoder, and Myrna Safitri. Katherine Ray provided additional research assistance in relation to co-titling marital land. Luke Swainson and Jane Dunlop provided research and editing assistance. The paper could not have been produced without the excellent efforts of all these colleagues, and the time and patience of our interviewees. All Further assistance was provided by the dedicated staff of Oxfam Great Britain in Banda Aceh, most notably Lilianne Fan, Christelle Chapoy and Ian Small. All names in our field examples have been changed in order to protect identities.

Invaluable comments were received from Hannah Derwent (IDLO), Arabiyani Abubakar (BRR), Erna Heryani (BRR), MS Shivakumar (World Bank), Robin Palmer (former Oxfam Land Adviser), Keith Bell (World Bank), Susana Lastarria-Cornhiel (previously with Wisconsin Land Tenure Centre), Garcia Zaraido (FAO), Kaori Izumi (FAO), Thomas Jayne (Michigan State University), and Christopher Tanner (consultant). These comments led to significant changes to earlier drafts. All errors and omissions are my own.

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## EXECUTIVE SUMMARY

This policy paper focuses on two key land rights issues for women in tsunami-affected Aceh, Indonesia: inheritance and documentation of land rights. More than 150,000 people died in Indonesia as a result of the Indian Ocean tsunami disaster. Most land records were severely destroyed or damaged. The inheritance of land, and the restoration of land rights certainty, will be major determinants of recovery for women.

The following major findings and recommendations are made in the paper.

### Documenting Land Rights

In Aceh, the primary formal mechanism for confirming land rights is the RALAS (Reconstruction of Aceh Land Administration System) project. RALAS involves a process of community mapping and land titling with the aim of registering up to 600,000 land parcels by the end of 2008. It is implemented by Indonesia's National Land Agency (BPN). RALAS also works with a mobile Syariah Court to make inheritance determinations and appoint guardians for orphans.

#### *Joint Titling of Marital Property*

Preliminary RALAS data suggest that less than 5% of land parcels have been recorded in the joint names of husbands and wives. Indonesian law provides that marital land is co-owned by a husband and wife.

- Land title certificates should be issued in the names of husbands and wives where land is identified as marital property (*harta bersama*). The relevant RALAS documents should include two questions: Is this land owned by a husband and wife? Is this land co-owned by persons other than a husband and wife? If the answer to either question is "yes", then the adjudicating officer must ensure that more than one name has been recorded in the list of owners.
- Without adequate information and training programs, there is a risk that joint titling of marital land will have an unintended dispossessionary impact on married women who have independent ownership of land. Hence it is vital that (1) BPN's socialisation program for joint titling, and (2) donors or NGOs engaged in documenting land rights, include comprehensive training and information programs relating to the difference between independent and marital property.

#### *Female Participation in Land Adjudication*

The RALAS manual should provide that the scheduling and location of public meetings and site adjudication should consider such limitations as household duties and transportation costs. Such an addition to the manual would be consistent with the World Bank's report on gender guidelines for land administration projects (the "World Bank gender guidelines").

#### *Gender Mapping and Community Facilitators*

In practice, there does not appear to have been a balanced composition of male and female

facilitators in the RALAS project, either in community facilitation teams or in the BPN adjudication teams.

- Every effort should be made to include female representation in each adjudication team.
- Training programs should be instituted to ensure qualified female representation in facilitation and adjudication teams.
- BPN should ensure that community facilitators work with its adjudication teams whether or not the area has been subject to community land mapping. These community facilitators should include women.
- The RALAS project should coordinate more with the World Bank's Kecamatan Development Program (KDP), in order to obtain suitably trained facilitators.

### *Gender Disaggregated Data*

The initial design of RALAS did not include systematic collection and publication of gender disaggregated data. The RALAS manual is also silent on the need to collect such data. The failure of RALAS to collect and publish comprehensive gender disaggregated data is not consistent with the World Bank's gender guidelines. A lack of baseline data, and a failure to collect gender-relevant data during and after a titling project, prevents rigorous assessment of project impacts on women.

- Where adjudication by BPN has not yet commenced, BPN should conduct a baseline study in accordance with the detailed templates set out in the World Bank gender guidelines.
- BPN should collect and analyse gender disaggregated data throughout the life of RALAS in accordance with the detailed templates set out in the World Bank gender guidelines.

Should BPN not be willing to collect data of this kind, it is recommended that support be given for data collection by an experienced NGO or civil society organisation.

### *Monitoring*

Initially, NGOs were included in a Steering Committee to assist the monitoring of RALAS. However, a number of NGOs expressed frustration at a perceived lack of transparency in the RALAS project. Civil society monitoring of RALAS is now largely inactive. While consultants have been engaged from Jakarta to undertake internal monitoring and evaluation of RALAS, it is recommended that NGO monitoring be re-activated through the RALAS Steering Committee and other appropriate programs.

### *Advocacy*

It is recommended that Oxfam and other civil society groups mobilise advocacy strategies to persuade BPN to amend and reform the RALAS project in accordance with this paper's recommendations.

## **Inheritance**

### *Supplementing the Mobile Syariah Court*

In theory, all inheritance cases in Aceh will be resolved through the mobile Syariah Court that accompanies the RALAS project. In practice, there are concerns as to the relatively slow pace of RALAS. The mobile Syariah Court requires legal and institutional supplements.

- Village heads should be granted legal authority to refer inheritance disputes to the Syariah Court. Impoverished claimants should receive legal aid for Syariah Court litigation arising from a village head referral.
- Specialist NGOs should be granted legal standing to bring representative inheritance cases before the Syariah Court on behalf of vulnerable clients.
- Claimants that refuse to accept an inheritance determination by the village head must bring the case to the Syariah Court within a three-year period, or else lose their rights to claim the land in question.
- The Syariah Court should be assisted to provide information and training programs in Syariah inheritance law for village leaders.

### *Denial of Women's Claims: Village Leaders and Social Pressure*

Our research reveals a number of cases where village leaders were unable or unwilling to prevent relatives from denying legitimate claims by widows or daughters. These dispossessionary acts commonly took the form of:

- Implicit threats of violence by male relatives.
- Arguments that female claimants could not obtain land unless they married (or remarried).
- Arguments that widows could not claim land because the land had been independently owned by their husband (i.e. it was not marital land).

The Syariah Court does not have the outreach capacity to resolve all of these cases. Some village-level arbitral authority is necessary to protect female claimants from illegitimate pressure from relatives. At the same time, the exercise of village arbitral authority requires close monitoring by civil society and the Syariah Court; and female claimants themselves need more information and options to seek redress for inappropriate village head decisions.

- The arbitral authority of village heads should be clarified, strengthened and made accountable through implementing guidelines to Regional Regulation 7/2000.
- Village heads should be given authority to refer unresolved cases directly to the Syariah Court, with or without the consent of the claimants themselves.



- NGO legal assistance and information programs for women should be greatly expanded. These programs should include a major media component.

#### *The Status of Custom and Locally Negotiated Solutions*

While there are examples of local abuse of power, family groups and village leaders can also shape solutions for inheritance cases that are more beneficial to women than the strict provisions of Syariah law. These locally negotiated solutions are often based on local customs that differ from Syariah law. They need sufficient space in order not to be excluded by over-zealous application of Syariah rules. This paper does not recommend major restructuring of Acehese law to prefer custom over Syariah. However, it does recommend that more space and certainty be given to custom and locally negotiated arrangements in two ways:

- Provide legal authority and institutional support for village-level determinations that are accepted by all parties (but not necessarily consistent with Syariah law). As noted, this legal space for village decisions could be set out in implementing guidelines for Regional Regulation 7/2000.
- Introduce and support a mediation function in the Syariah Court to assist consensual agreements without necessarily applying Syariah law.

This paper also recommends support for a workshop on custom and Syariah law in Aceh, which would involve the Syariah Court, Dinas Syariah and the Council of Adat Studies.

#### *Information Issues for Women*

Both the Syariah Court, with the assistance of Oxfam and IDLO, have undertaken information campaigns which target inheritance issues. This paper recommends further support and extension of these information programs, which should be developed and targeted with the assistance of local NGOs working on women's rights.

#### *Social Constraints on Access to Land Rights by women*

There are no easy solutions to socio-economic constraints on gendered land rights. Nevertheless, this paper recommends

- Support for a decentralised land and housing resource centre that has a particular focus on claims by women.
- Assistance to legal aid organisations to provide special support for women's land claims.
- Reactivation of a local NGO land rights network. The network should have a particular focus on the land rights of women.

*Limited Activity by NGOs*

This paper recommends:

- Support for reactivation of a local NGO land rights monitoring network.
- Training, information and funding support for this NGO network.

*A Research Program*

This paper recommends support for a research program, involving local staff and organisations, to generate greater knowledge of inheritance issues and cases at the local level.

## 1 INTRODUCTION

This policy paper considers land rights for women after the tsunami in Aceh, Indonesia. More than 150,000 people died or are missing in Indonesia as a result of the Indian Ocean tsunami disaster. Most land records were severely destroyed or damaged. The inheritance of land, and the restoration of land rights certainty, will be major determinants of recovery for women.

All natural disasters tend to have a disproportionate impact on women. Women who are primary caregivers, with greater responsibility for household work, will have less time and capacity to mobilise resources for recovery. They are less likely to participate in the public sphere in which relief is organised and delivered. They may be overlooked if relief efforts target programs at household heads, or focus on primary employment as the sole source of livelihoods. And if these relief efforts also fail to collect gender disaggregated data, the disproportionate impacts on women may not even register in monitoring mechanisms.

Disaster-induced displacement removes women from kinship structures that provide basic forms of social insurance against poverty and violence. Displacement also removes women from location-specific income, including access to common property resources. After displacement, women who return home are at risk from relatives or neighbours who take advantage of social turmoil and government weakness to deny their claims to land.<sup>1</sup> In some cases, returning women will lose access to land because prevailing social or legal norms mediate their entitlement to land through a deceased or missing husband or relative. This is particularly the case for women who are widows, or who stand to inherit land from a deceased relative.

Women often face pre-displacement constraints on rights to land, and are at greater risk of losing access to land after disasters. Yet, the aftermath of disaster is the time when women most need land for recovery. Women require land for a range of needs: housing and physical security, sustenance, livelihoods and access to credit, and social status in times of renegotiated social arrangements. Women who lacked land before a disaster, or who accessed land through a deceased husband or relative, will need specific programs to support their rights to land. Without gender-sensitive land programs, many women will have less access to land than before the disaster, at a time when they most need land for recovery.

This paper is structured to reflect these concerns about women and land rights in disaster-affected Indonesia. It focuses on the two key land rights issues for women in tsunami-affected Aceh: inheritance and documentation of land rights. Part II outlines the impact of the disaster on rights and access to land for women in Aceh. Part III considers international and comparative standards relating to gender and land rights after major disasters. Part IV analyses inheritance law and practice in tsunami-affected Aceh. Part V discusses the gender dimensions of the reconstruction of land administration in Aceh and project (RALAS). Detailed recommendations are set out in Parts IV and V.

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<sup>1</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 2-3.

## **2 THE EFFECTS OF THE TSUNAMI AND THE NEEDS OF WOMEN: GENDER DISAGGREGATED DATA**

Gender disaggregated data is important to shape relief programming, target vulnerable groups and map social impacts. There is no comprehensive gender disaggregated data on mortality and survivorship for the disaster in Indonesia. The following part develops gender disaggregated data from available sources in Aceh. The primary source is a December 2005 survey ("the BPDE survey") conducted in Aceh by the NGO Garansi and the Indonesian Bureau of Statistics. The BPDE survey covered 347,775 out of a total of over 500,000 displaced persons in Aceh.<sup>2</sup>

### **2.1 Number of Female Deaths and Survivors**

According to the 2005 census data, there are 2,025,826 women (50.25%) and 2,005,763 men (49.75%) in Aceh.<sup>3</sup> These are total numbers for all areas in Aceh. Out of a total of 347,775 displaced people interviewed for the BPDE survey, 166,771 (47.9%) were women and 181,053 (52.1%) were men. While there is no gender disaggregated mortality data for Aceh, the lower percentage figure for female survivors (47.9%) compared to all women in Aceh (50.25%) supports anecdotal evidence that women died in disproportionate numbers in the tsunami disaster.

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<sup>2</sup> In doing so, the survey encompassed some districts holding displaced persons that were affected by the secessionist conflict in Aceh rather than the tsunami itself.

<sup>3</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.

The gender breakdown of displaced persons by district is as follows.

Gender Breakdown of Displacement					
District	Female	% of Total	Male	% of Total	Total
Simeulue	11,449	48.3	12,246	51.7	23,695
Banda Aceh	12,866	44.1	16,285	55.9	29,151
Langsa	494	53.1	436	46.9	930
Aceh Utara	11,786	50.1	11,741	49.9	23,527
Sabang	657	48.0	712	52.0	1,369
Lhokseumawe	2,675	50.5	2,619	49.5	5,294
Bener Meriah	48	49.0	50	51.0	98
Aceh Jaya	5,337	47.5	5,898	52.5	11,235
Nagan Raya	5,306	47.3	5,921	52.7	11,227
Aceh Tamiang	780	49.5	797	50.5	1,577
Abdya	1,517	49.2	1,568	50.8	3,085
Bireuen	14,123	50.9	13,598	49.1	27,721
Pidie	32,075	49.0	33,399	51.0	65,474
Aceh Barat	24,945	46.9	28,257	53.1	53,202
Aceh Tengah	861	53.7	742	46.3	1,603
Aceh Timur	8,123	49.6	8,270	50.4	16,393
Aceh Tenggara	180	49.2	186	50.8	366
Aceh Selatan	5,592	47.1	6,278	52.9	11,870
Aceh Singkil	9,916	49.8	9,995	50.2	19,911
Aceh Besar	18,041	45.0	22,055	55.0	40,096
TOTAL	166,771	47.9	181,053	52.1	347,824

The number of female survivors is disproportionately low in areas where mortality was high, including Banda Aceh (44.1%), Aceh Besar (45%), and Aceh Barat (46.9%). These figures also support accounts of disproportionate female deaths.

### 2.1.1 Widows and Female-Headed Households: The Marital Status of Survivors

The BPDE data allows a breakdown of marital status of displaced persons. As at December 2005, the total number of displaced women who were unmarried was 82,660, representing 49.6% of the total number of female displaced persons. This figure is notably high. It suggests that older women died in disproportionate numbers in the disaster. The number of married women who were displaced persons was 69,935, representing 41.8% of all displaced women. There were 14,319 displaced widows (8.6%). The breakdown by district is as follows:

Marital Status of Displaced Persons								
District	Not Yet Married (Female)	% of Total Displaced Women	Married Women	% of Total Displaced Women	Widow	% of Total Displaced Women	Widower	% of Total Displaced Men
Simeulue	5,808	50.7	4,673	40.8	965	8.4	174	1.4
Banda Aceh	6,420	49.9	5,381	41.8	1,056	8.2	894	5.5
Langsa	284	57.5	151	30.6	59	11.9	18	4.1
Aceh Utara	5,752	48.8	5,263	44.7	766	6.5	141	1.2
Sabang	284	43.2	331	50.4	42	6.4	6	0.8
Lhokseumawe	1,486	55.6	1,035	38.7	150	5.6	15	0.6
Bener Meriah	38	79.2	9	18.8	1	2.1	2	4.0
Aceh Jaya	2,054	38.5	2,603	48.8	671	12.6	395	6.7
Nagan Raya	2,546	48.0	2,346	44.2	414	7.8	155	2.6
Aceh Tamiang	467	59.9	261	33.5	52	6.7	10	1.3
Abdya	765	50.4	612	40.3	140	9.2	30	1.9
Bireuen	7,251	51.3	5,423	38.4	1,438	10.2	174	1.3
Pidie	16,256	50.7	12,512	39.0	3,269	10.2	639	1.9
Aceh Barat	11,712	47.0	11,121	44.6	2,080	8.3	1,003	3.5
Aceh Tengah	476	55.3	315	36.6	70	8.1	8	1.1
Aceh Timur	4,480	55.2	3,042	37.4	601	7.4	78	0.9
Aceh Tenggara	105	58.3	53	29.4	22	12.2	3	1.6
Aceh Selatan	2,849	50.9	2,183	39.0	555	9.9	208	3.3
Aceh Singkil	5,310	53.5	4,106	41.4	500	5.0	82	0.8
Aceh Besar	8,317	46.1	8,215	45.5	1,468	8.1	963	4.4
TOTAL	82,660	49.6	69,635	41.8	14,319	8.6	4,998	2.8

The disproportionate numbers of widows in some districts may be due to a high level of secessionist conflict prior to the tsunami. In conflict-affected districts, our field evidence suggests that the effects of war on women are often difficult to disentangle from the effects of the tsunami itself.

The links between conflict and disaster, and their combined impact on women, is highlighted by an Aceh Institute study of women's land rights in Aceh.<sup>4</sup> This study identified 203 widows in 4 villages in Pidie District, of which only 22 were widows as a result of the tsunami. In the district of Bireun there were 168 widows in 4 sampled villages, of which only 5 lost their husbands in the tsunami. Even in the comparatively less conflict-affected city of Banda Aceh, there were 251 widows in the 4 sampled villages, of which 37 were widows as a result of the tsunami.

<sup>4</sup> Kadriah et al, *Perlindungan Terhadap Perempuan Korban Tsunami Dalam Mendapatkan Hak Kepemilikan Atas Tanah* ["The Protection of Female Victims of the Tsunami in the Context of Land Ownership"], University of Syiah Kuala Darussalam Law School, Banda Aceh, December 2006, pp. 9-12.

In the BPDE survey, the total number of women that identified themselves as heads of their household (Kepala Keluarga or “KK”) was 20,751 (12.4%). Married women tend not to identify themselves as household heads because of the patriarchal nature of Acehnese society. Most displaced female heads of households are likely to be widows. Generally speaking, these women would also have dependent children due to their status as a "household". The breakdown of female-headed households by district is as follows.

<b>Family Relationship of Female Displaced Person</b>		
<b>District</b>	<b>Head of Household</b>	<b>% of Total IDPs</b>
Simeulue	801	7.0
Banda Aceh	1,510	11.7
Langsa	154	31.2
Aceh Utara	1,276	10.8
Sabang	85	12.9
Lhokseumawe	192	7.2
Bener Meriah	74	154.2
Aceh Jaya	860	16.1
Nagan Raya	736	13.9
Aceh Tamiang	160	20.5
Abdya	317	20.9
Bireuen	1,570	11.1
Pidie	5,022	15.7
Aceh Barat	2,254	9.0
Aceh Tengah	217	25.2
Aceh Timur	662	8.1
Aceh Tenggara	57	31.7
Aceh Selatan	1,575	28.2
Aceh Singkil	782	7.9
Aceh Besar	2,447	13.6
<b>TOTAL</b>	<b>20,751</b>	<b>12.4</b>

### *2.1.2 Female Poverty Prior to the Tsunami*

The BPDE data confirms that women, especially widows and female-headed households, are disproportionately poor members of Acehnese society. A total of 121,284 female displaced persons (72.2%) had monthly incomes of less than 500,000 rupiah (approximately US \$45) prior to the tsunami. Relative poverty was even worse for widows, with 11,489 (80.2%) earning less than 500,000 rupiah prior to the tsunami; and for female heads of households with 16,694 (80.4%) earning less than 500,000 rupiah prior to the tsunami. The breakdown for large districts is as follows.

Gender Breakdown of Monthly Income Before the Tsunami (Rp)											
District	Category of Displaced Person	> 500,000	% of Category	500,000 - 1,000,000	% of Category	1,000,000 - 2,000,000	% of Category	2,000,000 +	% of Category	Not specified	% of Category
Simeulue	All Females	8,400	73.4	435	3.8	80	0.7	13	0.1	2,522	22.0
	Female Household Head	694	86.6	57	7.1	6	0.7	0	0.0	45	5.6
	Widows	832	86.2	35	3.6	5	0.5	0	0.0	92	9.5
Banda Aceh	All Females	8,843	68.7	1,235	9.6	267	2.1	56	0.4	2,561	19.9
	Female Household Head	1,073	71.1	248	16.4	47	3.1	13	0.9	137	9.1
	Widows	764	72.3	155	14.7	35	3.3	8	0.8	93	8.8
Aceh Utara	All Females	8,035	68.2	507	4.3	47	0.4	2	0.0	3,195	27.1
	Female Household Head	1,039	81.4	92	7.2	6	0.5	0	0.0	142	11.1
	Widows	606	79.1	64	8.4	2	0.3	0	0.0	93	12.1
Lhokseumawe	All Females	2,043	76.4	142	5.3	1	0.0	0	0.0	489	18.3
	Female Household Head	161	83.9	21	10.9	0	0.0	0	0.0	12	6.3
	Widows	118	78.7	18	12.0	0	0.0	0	0.0	13	8.7
Aceh Jaya	All Females	3,486	65.3	769	14.4	208	3.9	68	1.3	806	15.1
	Female Household Head	611	71.0	180	20.9	35	4.1	14	1.6	20	2.3
	Widows	476	70.9	139	20.7	27	4.0	13	1.9	16	2.4
Nagan Raya	All Females	3,969	74.8	208	3.9	30	0.6	8	0.2	1,098	20.7
	Female Household Head	662	89.9	41	5.6	6	0.8	1	0.1	25	3.4
	Widows	357	86.2	28	6.8	4	1.0	1	0.2	24	5.8
Bireuen	All Females	10,830	76.7	785	5.6	117	0.8	21	0.1	2,370	16.8
	Female Household Head	1,293	82.4	145	9.2	18	1.1	2	0.1	112	7.1
	Widows	1,168	81.2	114	7.9	16	1.1	2	0.1	149	10.4
Pidie	All Females	23,197	72.3	2,555	8.0	528	1.6	195	0.6	5,596	17.4
	Female Household Head	3,982	79.3	581	11.6	121	2.4	46	0.9	299	6.0
	Widows	2,615	80.0	373	11.4	82	2.5	30	0.9	175	5.4
Aceh Barat	All Females	18,488	74.1	2,025	8.1	373	1.5	109	0.4	3,949	15.8
	Female Household Head	1,785	79.2	312	13.8	59	2.6	16	0.7	82	3.6
	Widows	1,644	79.0	235	11.3	45	2.2	12	0.6	144	6.9
Aceh Singkil	All Females	7,507	75.7	149	1.5	10	0.1	6	0.1	2,244	22.6
	Female Household Head	750	95.9	15	1.9	0	0.0	0	0.0	17	2.2
	Widows	463	92.6	5	1.0	0	0.0	0	0.0	32	6.4
Aceh Besar	All Females	12,603	69.9	965	5.3	144	0.8	31	0.2	4,298	23.8
	Female Household Head	1,893	77.4	202	8.3	26	1.1	4	0.2	370	15.1
	Widows	1,122	76.4	117	8.0	14	1.0	1	0.1	214	14.6
TOTAL	All Females	121,284	72.7	10,670	6.4	1,933	1.2	558	0.3	32,440	19.5
	Female Household Head	16,694	80.4	2,136	10.3	365	1.8	108	0.5	1,467	7.1
	Widows	11,489	80.2	1,388	9.7	242	1.7	73	0.5	1,139	8.0

### 2.1.3 The Income Effects of the Tsunami

The BPDE data confirms that incomes for women, especially widows and female-headed households, suffered as a result of the tsunami. A total of 125,077 displaced women (75%) had incomes of less than 500,000 rupiah after the tsunami. This represents a relative increase of 3.13% over pre-tsunami figures. A total of 12,219 displaced widows (85.3%) had incomes of less than 500,000 rupiah after the tsunami. This represents a relative increase of 3.99% over pre-tsunami figures. A total of 17,691 displaced female household pets (85.3%) had



incomes of less than 500,000 rupiah after the tsunami. This represents a relative increase of 5.97% over pre-tsunami figures.

According to the BPDE data, these income effects on women were not disproportionate compared to other disaster survivors. The relative increase for all displaced persons in the lowest income category was 5.62%. For men it was 8.04%. The disproportionate relative impact on men may reflect the fact that they had more to lose because of their relatively high pre-tsunami incomes.

#### *2.1.4 Women and Rights to Land: Before the Tsunami*

The BPDE survey asked all displaced persons to state their land status. The range of responses included individually owned, rented, owned on credit, owned by parents and state land. In total, 47.7% of all displaced persons answered that they owned land. Only 9.8% rented land for housing. Interestingly, the responses indicate - at least on the level of respondent perception - that women may not have faced systematic discrimination in terms of land ownership. Indeed, while the figure for landowning displaced women (44.8%) is a little lower than the total for all displaced persons (47.7%), 74.7% of all widows and 68.5% of all female household heads stated that they owned land themselves.<sup>5</sup> In other words, displaced widows and female household heads have significantly higher levels of land ownership than the average for all displaced persons. Correspondingly, however, widows and female household heads are more likely to be renters only. While 9.8% of all displaced persons were house renters, 22.4% of female household heads and 18.2% of widows rented their housing before the tsunami.

The widespread destruction of land records means that these figures are the best available empirical data for land rights before the tsunami. The high degree of female land ownership is especially significant as it does not appear to be reflected in available data for post-tsunami land titling under the RALAS project. This major finding is discussed further in Part V below.

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<sup>5</sup> These are figures for land ownership without credit. It is possible that a selection bias distorts these results. Large numbers of displaced persons (approximately 48%) categorised themselves as "passengers" (penumpang). Penumpang live without paying rent in the house of a friend or relative. Many penumpang are younger people that have insufficient money to buy or rent a house. On average, widows and female Household Heads are less likely to fall into the penumpang category because they are older, or they have their own family responsibilities.

The breakdown of land rights for large districts is as follows.

District	Category of Displaced Person	Land Status									
		Own Land	% of Category	Rent	% of Category	Credit	% of Category	Land Owned by Parents	% of Category	State Land	% of Category
Simeulue	All Displaced	11,951	50.4	970	4.1	37	0.2	10,094	42.6	521	2.2
	All Females	6,095	53.2	458	4.0	20	0.2	4,565	39.9	249	2.2
	Widows	791	82.0	24	2.5	2	0.2	127	13.2	12	1.2
	Female KK	671	83.8	32	4.0	1	0.1	80	10.0	12	1.5
Banda Aceh	All Displaced	12,543	43.0	3,761	12.9	67	0.2	11,160	38.3	844	2.9
	All Females	5,826	45.3	1,650	12.8	31	0.2	4,627	36.0	350	2.7
	Widows	742	70.3	112	10.6	2	0.2	151	14.3	17	1.6
	Female KK	959	63.5	225	14.9	2	0.1	277	18.3	16	1.1
Aceh Utara	All Displaced	12,341	52.5	563	2.4	48	0.2	9,579	40.7	217	0.9
	All Females	6,365	54.0	299	2.5	26	0.2	4,531	38.4	99	0.8
	Widows	630	82.2	14	1.8	0	0.0	111	14.5	3	0.4
	Female KK	1,054	82.6	30	2.4	1	0.1	176	13.8	6	0.5
Aceh Jaya	All Displaced	7,292	64.9	189	1.7	32	0.3	3,423	30.5	53	0.5
	All Females	3,580	67.1	100	1.9	14	0.3	1,496	28.0	27	0.5
	Widows	592	88.2	7	1.0	0	0.0	53	7.9	2	0.3
	Female KK	749	87.1	10	1.2	0	0.0	85	9.9	2	0.2
Nagan Raya	All Displaced	5,626	50.1	1,053	9.4	38	0.3	4,277	38.1	71	0.6
	All Females	2,807	52.9	503	9.5	18	0.3	1,864	35.1	27	0.5
	Widows	333	80.4	31	7.5	0	0.0	46	11.1	1	0.2
	Female KK	461	62.6	179	24.3	0	0.0	84	11.4	0	0.0
Bireuen	All Displaced	12,930	46.6	860	3.1	77	0.3	11,707	42.2	205	0.7
	All Females	6,858	48.6	419	3.0	36	0.3	5,652	40.0	94	0.7
	Widows	1,151	80.0	28	1.9	3	0.2	191	13.3	5	0.3
	Female KK	1,342	85.5	36	2.3	4	0.3	144	9.2	10	0.6
Pidie	All Displaced	28,473	43.5	6,354	9.7	270	0.4	27,083	41.4	1,459	2.2
	All Females	14,800	46.1	2,848	8.9	132	0.4	12,735	39.7	697	2.2
	Widows	2,394	73.2	234	7.2	6	0.2	476	14.6	70	2.1
	Female KK	3,233	64.4	693	13.8	9	0.2	846	16.8	90	1.8
Aceh Barat	All Displaced	24,498	46.0	8,252	15.5	298	0.6	18,097	34.0	708	1.3
	All Females	11,818	47.4	3,828	15.3	124	0.5	8,130	32.6	324	1.3
	Widows	1,495	71.9	274	13.2	4	0.2	244	11.7	23	1.1
	Female KK	1,642	72.8	320	14.2	6	0.3	232	10.3	29	1.3
Aceh Singkil	All Displaced	4,498	22.6	874	4.4	49	0.2	9,344	46.9	94	0.5
	All Females	4,947	49.9	461	4.6	26	0.3	4,408	44.5	48	0.5
	Widows	428	85.6	15	3.0	1	0.2	48	9.6	0	0.0
	Female KK	679	86.8	32	4.1	0	0.0	65	8.3	3	0.4
Aceh Besar	All Displaced	30,511	76.1	3,519	8.8	1,670	4.2	913	2.3	0	0.0
	All Females	3,859	21.4	1,558	8.6	715	4.0	369	2.0	0	0.0
	Widows	1,143	77.9	176	12.0	52	3.5	20	1.4	0	0.0
	Female KK	1,892	77.3	210	8.6	105	4.3	56	2.3	0	0.0
TOTAL	All Displaced	165,968	47.7	34,060	9.8	2,757	0.8	129,109	37.1	7,070	2.0
	All Females	74,796	44.8	15,843	9.5	1,223	0.7	55,701	33.4	3,303	2.0
	Widows	10,701	74.7	1,173	8.2	76	0.5	1,736	12.1	228	1.6
	Female KK	14,212	68.5	2,949	14.2	134	0.6	2,515	12.1	291	1.4

In Pidie and Bireun, there are notably high land ownership figures for widows (Bireun 80%; Pidie 74.2%) and female heads of households (Bireun 80%; Pidie 64.4%). These figures may reflect gender-friendly customary laws of inheritance in these districts (see Part IV below).

### **3 INTERNATIONAL AND COMPARATIVE STANDARDS ON WOMEN'S RIGHTS TO LAND**

This part briefly sets out relevant international and comparative material on women's rights to land.

#### **3.1 International Legal Standards**

The United Nations (UN) Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) includes the following articles that are relevant to women’s land rights in Aceh.<sup>6</sup> Indonesia signed up to CEDAW on 29 July 1980 and ratified the convention on 13 September 1984.<sup>7</sup>

##### **Article 15**

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights ... to administer property...

##### **Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - a) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property...

In 1998, the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities issued a resolution on women and the right to land, property and adequate housing (Resolution 15 (1998)).<sup>8</sup> The resolution notes that impact of discrimination on women's ability to access and secure land and housing is particularly acute for women who are internally displaced. It urges Governments:

to take all necessary measures in order to amend and/or repeal laws and policies pertaining to land, property and housing which deny women security of tenure and equal access and rights to land, property and housing, to

<sup>6</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 Dec. 1979, entered into force 3 Sept 1981), GA Res 34/180, UN Doc A/34/36.

<sup>7</sup> See Law No. 7 of 1984 concerning the Convention on the Elimination of Discrimination against Women.

<sup>8</sup> UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Res 15 (1998), ‘Women and the right to land, property and adequate housing’, UN doc E/CN.4/Sub.2/RES/1998/15.

encourage the transformation of customs and traditions which deny women security of tenure and equal access and rights to land, property and housing, and to adopt and enforce legislation which protects and promotes women's rights to own, inherit, lease or rent land, property and housing...

The *Report of the United Nations Conference on Human Settlements*<sup>9</sup> commits governments to:

Providing legal security of tenure and equal access to land to all people including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property.<sup>10</sup>

This report ("the Habitat Agenda") was adopted by all States (including Indonesia) who attended the United Nations Conference for Human Settlements.

The *United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons* contain the following principles that are relevant to women's rights to land in Aceh:<sup>11</sup>

Principle 4: The right to equality between men and women

States shall ensure the equal right of men and women ... to housing land and property restitution. States shall ensure the equal right of men and women ... *inter alia* to... legal security of tenure, property ownership, equal access to inheritance, as well as to use, control of and access to housing, land and property.

States should ensure that housing, land and property restitution programmes, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.

Principle 14: Adequate consultation and participation in decision-making ...

14.2 States and other involved international and national actors should, in particular, ensure that women ... are adequately represented and included in restitution decision-making processes ...

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<sup>9</sup> 'Report of the United Nations Conference on Human Settlements (Habitat II)' (Istanbul 3-14 June 1996) (7 August 1996) UN Doc A/CONF.165/14 (the Habitat Agenda).

<sup>10</sup> Para 40(b).

<sup>11</sup> United Nations Economic and Social Council (ECOSOC) 'Housing and property restitution in the context of the return of refugees and internally displaced persons, Final report of the Special Rapporteur, Paulo Sérgio Pinheiro, Principles on housing and property restitution for refugees and displaced persons' (28 June 2005) UN Doc E/CN.4/Sub.2/2005/17.

### 3.2 Women's Rights to Land after Disaster and Displacement

Comparative experience suggests that women suffer disproportionately from displacement and disaster. Of particular importance is the link between pre-displacement disadvantage, and women's access to land after displacement.<sup>12</sup> The literature suggests that pre-displacement disadvantage arises from the following circumstances.

- Custom, religion and local patriarchal structures often restrict women's rights to land notwithstanding protection of those rights in law.<sup>13</sup>
- Patriarchal political structures are linked to ownership and control of land. Restricting women's rights to land denies a political voice to women and perpetuates discriminatory systems of authority.<sup>14</sup>
- Laws, traditions and programs that allocate land rights to household heads often leave a woman's access to land dependent on her link to a husband or a male relative.<sup>15</sup>
- Laws to protect women's rights to land may be undermined by a lack of access to legal institutions or legal information.<sup>16</sup>
- Gender-sensitive laws may have little effect when national legal systems allow customary or religious law to prevail in matters of inheritance and divorce.<sup>17</sup>

<sup>12</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 12.

<sup>13</sup> For examples and discussion see United Nations Centre for Human Settlements (UNCHS (UN-Habitat)) 'Women in Human Settlements Development, Getting the Issues Right' (1994) iii; L Mehta and B Srinivasan 'Balancing Pains and Gains: a perspective paper on gender and large dams' (Report for the World Commission on Dams: Thematic Review 1.1(b), 2000) 9 (discussing interpretations of Islamic law and their effects on women); United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 18-19 (discussing the role of custom and tradition in the context of realizing women's rights to land, housing and property); Asteya M Santiago, 'Socio-Economic and Cultural Factors Affecting Women's Rights to Land and Property in the Asia-Pacific Region' in The United Nations Development Fund for Women (UNIFEM), 'Women's Land and Property Rights in Situations of Conflict and Reconstruction' (2001) 25 (providing examples from Bhutan, India, and Nepal).

<sup>14</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 13-14.

<sup>15</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 12.

<sup>16</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 18 (discussing need for legal information and socialisation programs); Asteya M Santiago, 'Socio-Economic and Cultural Factors Affecting Women's Rights to Land and Property in the Asia-Pacific Region' in The United Nations Development Fund for Women (UNIFEM) 'Women's Land and Property Rights in Situations of Conflict and Reconstruction' (2001) 29 (discussing obstacles to gendered land access created by overly technical or fragmented regulations and legal institutions).

<sup>17</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 16-17 (noting that this type of legal pluralism is dominant in sub-Saharan Africa and Pacific Island nations).

- Access to land in a market economy requires money that women may lack because of unequal division of household resources, and disproportionate time on unpaid childcare and household chores.<sup>18</sup>
- Women are disproportionately poor around the world, and poverty is a key obstacle to accessing land. The link between land access and poverty creates a vicious cycle. Access to land is necessary to overcome poverty, but money is needed to access land.<sup>19</sup>

### 3.2.1 *The Effect of Displacement on Women*

Displacement and disaster exacerbate these systemic biases against women's access to land. Displacement itself removes women from kinship structures that provide basic forms of social insurance against poverty and violence. Displacement also removes women from location-specific income, including access to common property resources. Location-specific incomes tend to be disproportionate sources of women's livelihoods in less-developed economic systems. After displacement, women who return home are at risk from male relatives or neighbours who take advantage of social turmoil and government weakness to deny their claims to land.<sup>20</sup> In some cases, women who return home will lose their land altogether because prevailing social or legal norms mediate their entitlement to land through a deceased or missing husband or relative. This is particularly the case for women who are widows, or who stand to inherit land from deceased relatives.

Women often face pre-existing constraints on rights to land. They are at risk of losing rights and access to land after disasters. Yet, the aftermath of disaster is the time when women most need land for recovery. They require land for a range of needs: housing and physical security, sustenance, livelihoods and access to credit, and social status in times of renegotiated social arrangements. Women who lacked land before a disaster, or who mediated rights to land through a deceased husband or relative, will need specific programs to support their rights to land. A failure to adopt gender-sensitive land programming will not only tend to restore the status quo, including pre-displacement constraints on women's land rights, it will also fail to mitigate post-displacement risks of dispossession.

<sup>18</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 13-15.

<sup>19</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 14 (comparing poverty rates between landed and landless groups in South India). See also Bina Agarwal 'Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market' (2003) 3 *Journal of Agrarian Change* 184, 187; Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge, Cambridge University Press 2004) 31-32.

<sup>20</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), 'Woman's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview' (1999) 2-3.

### 3.2.2 Formalising Land Titles after Disasters

Comparative experience suggests that new institutions and opportunities for women can emerge as a result of targeted humanitarian efforts.<sup>21</sup> Programs to formalise land rights are often touted as a means to enhance access to law, institutions and justice for women. A formalisation program is the primary mechanism for restoring land rights certainty after the tsunami in Aceh. While formalisation programs can enhance women's access to land, they can also have substantial discriminatory and dispossessory effects. In designing and implementing a formalisation program, it is necessary to avoid the following gender traps.

#### 3.2.2.1 Inappropriate recording of titles in the name of “household heads” only

Genderless categorization of the “community” or “household” tends to conceal the complexities of power relationships that militate against the interests of women.<sup>22</sup> Humanitarian projects should not assume that a family is “an undifferentiated unit with convergent interests”.<sup>23</sup> This assumption confirms existing social inequalities within a family or community, and creates new forms of inequality as household heads receive land titles and other forms of assistance.<sup>24</sup> Historical experience is that a number of land rights formalisation programs have inappropriately titled land to household heads only.<sup>25</sup> Where this occurs, women are left without access to credit and without forms of social insurance in the event of divorce or death of their husband.<sup>26</sup>

<sup>21</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), ‘Woman’s Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview’ (1999) 3, 58 (discussing the emergence of women’s organizations that are focused on women’s livelihoods issues including women’s rights to land, housing and property); L Mehta and B Srinivasan ‘Balancing Pains and Gains: a perspective paper on gender and large dams’ (Report for the World Commission on Dams: Thematic Review 1.1(b), 2000) 8.

<sup>22</sup> William Adams ‘The Social Impact of Large Dams: Equity and Distributional Issues (Report Prepared Has been done for the World Commission on Dams: Thematic Review 1.1 2000) 4.

<sup>23</sup> L Mehta and B Srinivasan ‘Balancing Pains and Gains: a perspective paper on gender and large dams’ (Report for the World Commission on Dams: Thematic Review 1.1(b), 2000) 2, citing Amartya Sen, ‘Gender and Co-operative Conflicts’ in I Tiner (ed), *Persistent Inequalities* (Oxford University Press: Oxford 1990); E Thukral, ‘Development, Displacement and Rehabilitation: Locating Gender’ (1996) *Economic and Political Weekly* 31, 1500 and D Indra, ‘Not a Room of One’s Own’ in D Indra (ed), *Engendering Forced Migration: Theory and Practice* (Refugees Studies Program, Oxford 1999) 1-21.

<sup>24</sup> L Mehta and B Srinivasan ‘Balancing Pains and Gains: a perspective paper on gender and large dams’ (Report for the World Commission on Dams: Thematic Review 1.1(b), 2000) 6-7; Bina Agarwal, *A Field of One’s Own: Gender and Land Rights in South Asia* (Cambridge University Press, Cambridge 2004) 7.

<sup>25</sup> Ingunn Ik Dahl et al ‘Human Rights, formalisation and women’s land rights in southern and eastern Africa: Studies in Women’s Law No. 57’ (report) (July 2005) 2.

<sup>26</sup> United Nations Centre for Human Settlements (UNCHS (UN-Habitat)), ‘Woman’s Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview’ (1999), 17; Susana Lastarria-Cornhiel, ‘Impact of Privatization on Gender and Property Rights in Africa’ (1997) 25(8) *World Development* 1317, 1320.

### 3.2.2.2 Loss of usufructuary rights and other social protections under customary law.

In systems of customary land tenure, women are less likely to own land and are more likely to hold usufructuary and access rights. These use and access rights are complex affairs that include rights to graze livestock and access common property resources.<sup>27</sup> Often they overlay ownership rights that are held by an individual or family. Land rights formalisation programs can deprive women of traditional usufructuary and access rights when they elevate a land owner's ability to exclude outsiders without establishing legal rights of access (easements) that reflect traditional use and access rights.<sup>28</sup>

## 4 WOMEN'S RIGHTS TO LAND IN TSUNAMI-AFFECTED ACEH: INHERITANCE

The following parts set out detailed findings and recommendations relating to the inheritance of land, and the documentation of land rights, in tsunami-affected Aceh. This material is based on extensive field interviews of:

- Women in Aceh Besar, Banda Aceh, and Aceh Jaya.
- Village heads and village leaders in Aceh Besar, Banda Aceh, Simeulue, Aceh Barat and Aceh Jaya.
- NGOs active in community land mapping and women's land rights.
- Members of the National Land Agency's titling adjudication teams
- Judges of the Syariah Court in Banda Aceh and Jantho.

We have also drawn on field material kindly provided by the International Development Law Organisation (IDLO). This field material dates from early 2006, and in some cases we have re-interviewed IDLO informants to update developments.

### 4.1 Inheritance and Syariah Law

More than 150,000 people died or are missing in Aceh and Nias as a result of the tsunami disaster. The inheritance of land by women will be a major determinant of recovery and rehabilitation. It will provide shelter, livelihoods and social insurance, and also act as an independent resource for women in new post-tsunami social arrangements.

<sup>27</sup> L Mehta and B Srinivasan 'Balancing Pains and Gains: a perspective paper on gender and large dams' (Report for the World Commission on Dams: Thematic Review 1.1(b), 2000) 23, explaining that this is particularly true in bilateral or matrilineal communities.

<sup>28</sup> L Mehta and B Srinivasan 'Balancing Pains and Gains: a perspective paper on gender and large dams' (Report for the World Commission on Dams: Thematic Review 1.1(b), 2000) 18-19 citing UNCHS 'Towards a Strategy for the Full Participation of Women in all Phases of the UN Global Strategy for Shelter to the Year 2000' (1990) 12.



The application of Syariah law to Aceh is a product of special autonomy. Law No 44 of 1999 allowed the application of Syariah law in Aceh, and Law No 18/2001 allowed the establishment (or re-establishment) of Syariah Courts. Under Qanun 10/2002, the Syariah Court has jurisdiction *inter alia* over inheritance, guardianship, and the legal status of missing persons. While it does not have jurisdiction over land rights (see Law No 7/1989, article 50), it may make land ownership determinations when they form part of a larger inheritance dispute (see Law 3/2006 amending Law 7/1989 on Religious Courts). Further extension of the Syariah Courts authority over land matters may occur pursuant to regulations promulgated by the provincial Parliament (DPRD).<sup>29</sup>

#### 4.2 Family Consensus but Emerging Conflict

The inheritance of land in Aceh is determined primarily at the local level. Most cases are resolved consensually among family survivors. According to our field evidence, even village heads are unaware of many inheritance-based land transfers. While this reflects the social resilience that has characterised much of the land rights recovery process, the sheer number of deaths means land-related inheritance cases still constitute the predominant form of land-related conflict after the tsunami. Indeed, the number of disputes that cannot be resolved at the local level appear to be increasing, and most interviewees - including the Chief Justice of the Syariah Court in Banda Aceh - expect that large numbers of tsunami-caused inheritance cases will make their way to the Syariah Court in the foreseeable future.

#### 4.3 Village Leaders

Village leaders are the most significant actors in post-tsunami inheritance disputes. The village head (*keucik*) is the key decision-maker. He or she will be assisted by village elders (*tuha peut*), and the *imam*.<sup>30</sup> The *keucik* is charged with applying custom (*adat*) to resolve village-level disputes, including inheritance disputes. Regional Regulation (*Perda*) 7/2000 states that Syariah law is the benchmark for determining and applying *adat* in Aceh.

In our field interviews, a number of village heads and priests admitted to uncertainty concerning the proper application of Syariah law to more complex cases. Complex cases are relatively widespread because the tsunami created every conceivable kind of inheritance possibility. These complex cases often remain unresolved, or at least uneasily settled and susceptible to future conflict, because (1) village leaders may not be willing or able to give an authoritative determination, (2) the claimants refuse to accept a decision by the village head, or (3) the claimants may not be willing or able to bring the case to the Syariah Court. Village heads cannot refer cases to the Syariah Court: hence a significant number of disputes may remain stuck at the village level without effective long-term resolution.<sup>31</sup>

<sup>29</sup> By Decision KMA/070/SK/X/2004 the Chief Justice of the Indonesian Supreme Court endorsed increased jurisdiction for the Syariah Court over civil matters (*muamalat*), so long as this jurisdiction was authorised by provincial regulations. The new 1997 Law on Governing Aceh (art. 128 (4)) also contemplates provincial regulations to expand the jurisdiction of the Syariah Court. For a discussion see UNDP, *Making the Transition to Sustainable Peace and Development in Aceh* 36.

<sup>30</sup> The *imam* (known as *imeum meunasah* in Acehense) is responsible for leading village prayers, religious and *adat* (cultural) ceremonies. In addition to this, the *imam* will also hold a respected role and take part in village level decision-making, as well as carrying out duties such as performing village-level dispute resolution, including over family matters. See Harper et al, *Land, Inheritance and Guardianship Law in Aceh*, International Development Law Organisation 2006, 7.

<sup>31</sup> This possibility is subject to the use of the mobile Syariah Court in the RALAS project (as discussed below).

In our field interviews, some village leaders and priests expressed uncertainty as to the applicable law in the following types of cases:

- The rights of female orphans.
- Distinctions between joint and independent property.
- The rights of residual heirs when an entire family had died.
- The relative rights of daughters and uncles.
- The rights of widows, particularly as against brothers of their deceased husband.
- The relative rights of granddaughters and sons.
- The status of marital property after divorce when there has been no divorce settlement.

#### **The Relative Rights of Nieces and Brothers<sup>32</sup>**

Numeri did not survive the tsunami. Three survivors laid claim to his estate – two brothers and a niece whose father (Numeri's brother) also died in the tsunami. The issue that emerged was whether the niece was entitled to inherit. Numeri's surviving brothers contested her claim. In their opinion the niece was disentitled to a share of the estate when her father passed away. The case was reported to the *keucik* who was not sure how to resolve it.<sup>33</sup>

All our field cases of village-level uncertainty as to the proper application of Syaria law involve claims by women. In theory, all inheritance cases will be resolved through the mobile Syaria Court that accompanies the RALAS process (see further Part V below). In practice, there are concerns as to the very slow pace of RALAS and the possibility that it may not uncover all cases. The RALAS mobile Syaria Court requires supplementation to ensure that women's rights to inherit land receive adequate protection. This paper makes the following recommendations.

- Village heads should be granted legal authority to refer cases to the Syaria Court. Impoverished claimants should receive legal aid for Syaria Court litigation arising from a village head referral.
- Specialist NGOs should be granted legal standing to bring representative inheritance cases before the Syaria Court on behalf of vulnerable clients. This would allow the establishment of precedents for complex cases.
- Claimants that refuse to accept an inheritance determination by the village head must bring the case to the Syaria Court within a three-year period, or else lose their rights to claim the land in question.
- The Syaria Court should be assisted to provide information and training programs in Syaria inheritance law for village leaders.

Further recommendations concerning legal information programs are set out below.

<sup>32</sup> All names in our field examples have been changed in order to protect identities.

<sup>33</sup> Anonymous village head interview in Aceh Besar, Kantor Desa, 10 May 2006.

#### 4.4 Denial of Women's Claims: Village Leaders and Social Pressure

There is anecdotal evidence of local leaders determining inheritance matters in a manner that is not consistent with Syariah law. These anecdotal accounts include pressure on widows to remarry in order to claim their land. Our research did not reveal any direct evidence of dispossession of women's rights to land by local officials that was outside the framework of Syariah law. This research included meetings with leading women's NGOs in Aceh, as well as a large number of interviews with women in Banda Aceh and Aceh Besar.

Our research did reveal a number of cases where village leaders were unable or unwilling to prevent relatives from denying legitimate claims by widows or daughters. These dispossessory acts by relatives build on the social powerlessness felt by many women. They took the form of:

- Implicit threats of violence by male relatives.
- Arguments that female claimants could not obtain land unless they married (or remarried).
- Arguments that widows could not claim land because the land had been independently owned by their husband (i.e. it was not marital land).

While village heads have legal authority to resolve these village-level disputes under Regional Regulation 7/2000, a number appeared to be unwilling or unable to resolve family conflicts that involve the denial of claims by women.

##### **A Violent Brother-in-Law**

Witni works as an official for an Indonesian company that distributes mobile phones. Prior to the tsunami Witni's husband was unwell for a long period of time and Witni's wages were the sole family income. Witni is now a widow – she survived the tsunami but her husband and children did not. Witni is extremely traumatised by the disaster and, worse still, she is now being deprived of her inheritance by her husband's four siblings who survived the tsunami. Despite Witni's legal entitlements, her husband's siblings have claimed one hundred percent of her husband's estate. Witni has been left with nothing and has no confidence to protest her husband's eldest brother about the inheritance as he has a reputation for violent behaviour. Witni feels alone and without support.<sup>34</sup>

##### **Does a Granddaughter Need to Marry in order to Obtain Land?**

Salwa passed away three months prior to the tsunami leaving four sons and three daughters (Salwa's wife had predeceased him). Salwa's estate consisted of 1 ha of land. Only one son of Salwa's (Kautsar) survived the tsunami. A sister in law named Lily also survived. While Lily's husband died in the tsunami, her daughter Jeni survived. According to Indonesia's Compilation of Islamic Law, Jeni should receive a portion of Salwa's (her grandfather's) estate even though her father passed away in the tsunami. However, Kautsar does not want

<sup>34</sup> Interview with Geuchik Lampuuk, Kantor Desa, 10 May 2006.

Jeni to receive the inheritance now. Kautsar claims that Jeni is only entitled to rights in her father's land upon marriage. The matter remains unresolved.<sup>35</sup>

### **Marital Land or Husband's Land?**

A women named Rasmiah survived the tsunami but her husband Zulfan did not. Prior to the tsunami Rasmiah and Zulfan had jointly owned land. Rasmiah had a house built on this land by an NGO after the tsunami, however, following the construction of the house Zulfan's family attempted to claim ownership of it on the basis that Rasmiah was not entitled to the land. It is not clear whether this matter has been settled.<sup>36</sup>

### **Children's or brother's land?**

In Peukan Bada, Aceh Besar, two orphans were denied the right to inherit their mother's land and have a house built on it by an aid agency. The mother's land originally belonged to the orphans' grandmother, who had passed it to their mother prior to her death without a letter of bequest. After the tsunami the land was taken over by the orphans' uncle (the mother's younger brother). Community leaders considered the orphans ineligible to inherit the land and supported the Uncle's takeover, notwithstanding that the children are legally entitled to receive that land and have a house built on it.<sup>37</sup>

### **Wife and mother, or brother?**

Yusnita is from Aceh Besar. Yusnita lost her husband and children in the tsunami. Despite having a legal right to the large amount of inheritance left by her family (including land), Yusnita received nothing – the estate is now controlled by Yusnita's husband's elder brother. When Yusnita reported the case to the *keucik*, she was ignored. When she asked her husband's brother, she was threatened.<sup>38</sup>

### **Granddaughters denied their right to inherit**

Tiramah passed away in the tsunami. Village authorities (the *keucik* and the village secretary), insisted that Tiramah's granddaughter Ayusnita is not eligible to inherit Tiramah's land because Ayusnita's mother had passed away before the tsunami (*patah titi*). The *tengku* (religious leader) stated that Ayusnita was eligible. The village secretary argues that *patah titi* was still valid, and that the opposite view and its clarification. Another one of Tiramah's granddaughters was killed by the tsunami and was not allowed to be buried in the family graveyard because the child was no longer considered the grandmother's

<sup>35</sup> Interview with T. Chairul Amir (Geuchik Lambada Lhok) and Bukhari (Teungku Gampong), Kantor Geuchik Gampong Lambada Lhok, Aceh Besar, 9 May 2006 (the interviewer attempted to contact Salwa's wife, however, the Geuchik would not allow this due to the sensitive nature of the case).

<sup>36</sup> Interview with Marlianita (Lawyer for MISPI (Mitra Sejati Perempuan Indonesia – Indonesian Women's Partnership)), MISPI Offices, Banda Aceh, 1 December 2006.

<sup>37</sup> Summary of Land Disputes, Ernita Dewi, Legal Officer, IDLO, September 2007. The name of the village concerned has been withheld due to the sensitivity of this case.

<sup>38</sup> Summary of Land Disputes, Ernita Dewi, Legal Officer, IDLO, September 2007. The name of the village concerned has been withheld due to the sensitivity of this case.

<sup>39</sup> Summary of Land Disputes, Ernita Dewi, Legal Officer, IDLO, September 2007. The name of the village concerned has been withheld due to the sensitivity of this case.

descendant.<sup>39</sup>

The Syariah Court does not have the outreach capacity to resolve all of these cases. Some village-level arbitral authority is necessary to protect female claimants from illegitimate pressure from relatives. Village heads need greater powers to resolve these cases over the objections of family claimants. At the same time, the exercise of village arbitral authority requires close monitoring by civil society and the Syariah Court; and female claimants themselves need more information and options to seek redress for inappropriate village head decisions. It is recommended that:

- The arbitral authority of village heads be clarified, strengthened and made accountable through implementing guidelines to Regional Regulation 7/2000.
- Village heads be given authority to refer unresolved cases directly to the Syariah Court, with or without the consent of the claimants themselves.
- NGO legal assistance and information programs for women be greatly expanded. These programs should include a major media component.

#### 4.5 Documentary Systems: Independent or Marital Land?

The inheritance rights of widows depend on whether land is independently owned by the widow, independently owned by her husband, or jointly owned as marital land. The following passages from the International Development Law Organisation explain the difference.

##### *Independently Owned Property (Harta Bawaan)*

*Harta bawaan* consists of assets acquired by either a man or a woman prior to marriage, plus any gifts, bequests or inheritance received from a third party during marriage. Unless displaced by a prenuptial agreement, *harta bawaan* remains the property of the individual and under their control throughout the marriage. Indonesian law provides that ‘in principle, there is no mix of wealth between husband and wife that happens because of marriage’, and further that, ‘the wife’s wealth will stay as her right and is under her full management and so does the husband’s wealth’. *Harta bawaan* (*hareuta tuha* in Acehnese) is recognized under customary law and is defined as property obtained by either a man or a woman prior to marriage, in the form of inheritance, gift, or property which is purchased or created.<sup>40</sup>

##### *Joint Matrimonial Property (Harta Bersama)*

Indonesian law recognises the concept of joint matrimonial property, or ‘wealth acquired during marriage’. *Harta bersama* may consist of tangible assets or entitlements. Indonesian law prevents such property from being sold, transferred or used as collateral without the consent of both husband and wife. *Harta bersama* is also recognised under customary law. If a couple wishes to sell, trade

<sup>40</sup> See Harper et al, *Land, Inheritance and Guardianship Law in Aceh*, International Development Law Organisation 2006, pp. 55-56.

or gift *harta bersama*, the consent of both parties is required. In the absence of a pre-nuptial agreement, Indonesian law requires that *harta bersama* be divided equally between husband and wife, whether they separate through divorce or death. Where one spouse dies 50% of the joint matrimonial property will be transferred to the surviving spouse, and the remaining 50% will be added to the deceased's *harta bawaan* and will be distributed among that spouse's heirs (including the surviving spouse).<sup>41</sup>

A key feature of disputes involving widows' claims is uncertainty over the status of land as jointly or independently owned. Generally speaking, all land acquired in the course of a marriage is marital land. Uncertainties arise when the original status of land is poorly documented, or when relevant documents were destroyed by the tsunami. Without a husband to confirm the history of the land, a number of widows face claims from relatives of the husband that the land was independently owned by the husband. These claims highlight the need for resilient documentation systems that identify whether land is marital or independent. Recommendations relating to documentation are set out in Part V below.

#### 4.6 Locally Negotiated Solutions

While there are cases of family abuses, it is also true that family groups and village leaders often shape solutions for inheritance cases that are more beneficial to women than the strict provisions of Syariah law. Many of our interviewees noted that the Syariah inheritance rules prescribe 2:1 in favour of sons over daughters,<sup>42</sup> but that in practice it is very common for families to agree on a more equitable division.

<sup>41</sup> See Harper et al, *Land, Inheritance and Guardianship Law in Aceh*, International Development Law Organisation 2006, pp. 56-57.

<sup>42</sup> Interview with Zaenabun (from Meunasah Tuha Village, Kecamatan Pekan Bada, 28 November 2006, Interview with Sudirman Arif (from Kade Gelumpang Teungoh, Desa Surien, Kecamatan Meuraxa Banda Aceh), 27 November 2006, Group discussion with Maemunah, Salmah, Aminah and Rifky (women from Meunasah Tuha, Kecamatan Pekan Bada), 28 November 2006, Group Discussion with 18 women and one male village facilitator from LOGICA, Kajhu barrack, Darussalam, Aceh Besar, 30 September 2006; Interview with Zaenabun (from Meunasah Tuha Village), Kecamatan Pekan Bada, 28 November 2006; Interview with Sudirman Arif (from Kades Gelumpang Teungoh, Desa Surien, Kecamatan Meuraxa Banda Aceh), Uplink's Offices, 27 November 2006; Group discussion with Maemunah, Salmah, Aminah and Rifky (women from Meunasah Tuha), Kecamatan Pekan Bada, 28 November 2006.

### **Grant of Land to Widows**

Wardiah and her husband Meka did not own land prior to the tsunami. Instead, they worked for someone in the village who owned fishing ponds and they eventually built a house on that land. That house was destroyed by the tsunami. Meka and all of their children also passed away. Wardiah was thus a landless widow with no children. Uplink, an NGO, offered Wardiah housing assistance. A villager granted Wardiah a piece of land which Uplink has now built a house on.<sup>43</sup>

### **Inheritance of Land by Female Orphans**

Lia was orphaned by the tsunami. Generally, a female orphan will inherit half of their parent's estate with the balance going to a wali (guardian) from the orphan's paternal lineage. In a breakthrough decision, the Geuchik of Kahju granted Lia her parent's entire estate. The decision to allow the daughter to inherit the entire estate was based on the deliberations of public figures in Kahju. Relevant factors included the fact that the girl was 17 years old and still at school, and that no other persons contested the decision. The estate was also being managed entirely by the orphan as no guardianship arrangement was in place.<sup>44</sup>

Barniah was orphaned by the tsunami. According to Islamic law as practiced in Barnia's community, as a single daughter Barniah is only entitled to half of her parent's inheritance. The balance is given to her guardian who in this case is Barniah's uncle, Zulhamsyah. Through his own benevolence, Zulhamsyah chose not to receive inheritance despite his entitlement and Barniah inherited the entire estate.<sup>45</sup>

These locally negotiated solutions need sufficient space in order not to be excluded by over-zealous application of Syariah rules. The result is a difficult balancing act. On the one hand, there is a need for effective oversight of village determinations by civil society and the Syariah Court. On the other hand, there needs to be sufficient authorisation and support for village decisions that are accepted by all parties, but not necessarily consistent with Syariah rules. This balancing exercise is reflected in the recommendations on mediation and village authority set out in the following paragraph.

#### **4.7 Distinction between Custom and Syariah Law**

The relationship between village determinations and Syariah rules also raises the question of custom. Our fieldwork confirmed evidence in the literature that differences exist between custom (adat) and Syariah inheritance rules in certain parts of Aceh. This custom/law distinction may be divided into three parts:

<sup>43</sup> Group discussion with Maemunah, Salmah, Aminah and Rifky (women from Meunasah Tuha, Kecamatan Pekan Bada), 28 November 2006.

<sup>44</sup> Interview with Usman AR (Keuchik Kahju) and Nazaruddin (Sekretaris Desa Kahju), Kantor Desa Kahju, 7 May 2006.

<sup>45</sup> Interview with Arliadi (Keuchik Lampaseh Kota) and Ibrahim AR (Tgk Imum Kelurahan), Kantor Lurah Lampaseh Kota, 3 May 2006.

*The uxorilocal tradition.* The custom in some Acehnese districts (including Pidie and parts of Aceh Besar) is that daughters receive land (and perhaps a house) from their parents at the time of their marriage. Traditionally, this land will be in the same compound as the parents' house. The daughter (wife) is recognized as the sole owner of the land (and house).

#### **Pekanbada, Aceh Besar**

Women interviewees in Pekanbada, Aceh Besar, stated that the uxorilocal tradition operates in their village. Usually the wife's parents provide their daughter and son-in-law with land and a house. Some will only provide land. In cases where parents cannot provide land or housing the daughter and son-in-law will live in the wife's family home until such time as sufficient funds can be raised for the husband and wife to build a new house.<sup>46</sup> One women respondent said that when she was married her mother granted her land that her husband and her consequently built a house on. Prior to the tsunami there was a land certificate over this piece of land in her mother's name. Her mother died in the tsunami and during the land adjudication processes BPN registered the land in the women's name.<sup>47</sup>

*The inheriting daughters tradition.* In parts of Pidie, Aceh Besar and even Banda Aceh itself, daughters will inherit their parents' house and surrounding residential land. Their brothers will inherit non-residential land. In some places, the youngest daughter only will inherit her parent's residential land and house. In return, the daughters (or youngest daughter) are expected to care for her parents up until their deaths.

#### **Inheriting daughters in Banda Aceh**

Gampong Teungoh, Kec. Meuraxa, Banda Aceh applies a mix of adat (custom) and Islamic law in determining inheritance. Adat prescribes that sons are entitled to agricultural land while daughters inherit residential land and housing. The youngest daughter, who has responsibility for caring for her parents' health, has priority to inheritance residential land and housing. Once inherited the daughter has full ownership of the land and can bequeath, gift or sell the land, however any proposed sale must be discussed with relatives who have a right of first refusal.<sup>48</sup>

*Surviving spouses.* Syahrizal, an expert on Acehnese custom, suggests that Acehnese custom in certain areas may recognize the inheritance entitlement of surviving spouses to a greater extent than Syariah law.<sup>49</sup>

<sup>46</sup> Group discussion with Maemunah, Salmah, Aminah and Rifky (women from Meunasah Tuha), Kecamatan Pekan Bada, 28 November 2006.

<sup>47</sup> Group discussion with Maemunah, Salmah, Aminah and Rifky (women from Meunasah Tuha), Kecamatan Pekan Bada, 28 November 2006.

<sup>48</sup> Interview with Sudirman Arif (from Kadus Gelumpang Teungoh, Desa Surien, Kecamatan Meuraxa Banda Aceh), Uplink's Offices, 27 November 2006.

<sup>49</sup> See Harper et al, *Land, Inheritance and Guardianship Law in Aceh*, International Development Law Organisation 2006, pp. 54-5.



What should be the proper relationship between custom and Syariah law in Acehnese inheritance matters? While custom has a certain status in the laws of Aceh, the law of inheritance applicable to Moslems remains Syariah law. This paper does not recommend major restructuring of Acehnese law to prefer custom over Syariah. Such restructuring is a matter for the Acehnese to decide in the context of its special autonomy status in Indonesia. However, it does recommend that more space and certainty be given to local custom in two ways:

- Provide legal authority and institutional support for village-level determinations that are accepted by all parties (but not necessarily consistent with Syariah law). As noted, this legal space for village decisions could be set out in implementing guidelines for Regional Regulation 7/2000.
- Introduce and support a mediation function in the Syariah Court to assist consensual agreements without necessarily applying Syariah law.

These recommendations must be balanced with other recommendations made in this paper for increased monitoring and supervision of village governments, and increased information programs for women. It is acknowledged that women are often denied a voice in village-level decision-making, and that clarifying the legal status of village determinations may lead some women more susceptible to patriarchal local elites. But the fact remains that some village-level decisions provide greater access and rights to land than Syariah law, particularly when they involve the application of local custom. Custom and local solutions cannot be ignored or legislated away. Provided checks and balances are in place, locally negotiated solutions that favour women deserve greater legal support and certainty. This legal certainty could be provided through implementing guidelines for Regional Regulation 7/2000.

This paper also recommends support for a workshop on custom and Syariah law in Aceh, which would involve the Syariah Court, Dinas Syariah and the Council of Adat Studies.

#### 4.8 Information Issues for Women

Our fieldwork involved a large number of group and individual interviews with women in Banda Aceh, Aceh Besar and Aceh Jaya. In these interviews women expressed a degree of confusion and a desire for further information concerning:

- The rights of widows to both independent and jointly acquired property.
- The right of orphaned grandchildren to inherit from their grandparents (patah titi).

For example, women respondents from Lhok Seude were not aware of the formula used to divide property for widows.<sup>50</sup> Women respondents from Kahju barracks were aware that widows have the right to inherit marital property, but were not sure whether widows have the right to inherit their husband's independent property.<sup>51</sup> The Kajhu women also had differing

<sup>50</sup> Group Discussion with four women (one aged widow, two middle aged ladies and one young lady), Lhok Seude, Leupung, Aceh Besar, date unknown.

<sup>51</sup> Group Discussion with 18 women and one male village facilitator from LOGICA, Kajhu barrack, Darussalam, Aceh Besar, 30 September 2006.

opinions on how marital property would be divided upon divorce or death. Some respondents stated that property would be halved between husband and wife while others stated it would be divided into three between husband, wife, and their children.<sup>52</sup> In Ulee Lheue, women respondents had mixed understandings of their rights over their husband's independent property. One stated that if there is no child from the marriage a wife is not entitled to inherit her husband's independent property. Another said that she is not entitled to inherit her deceased husband's independent property as her husband has children from a prior marriage. A third said that she could inherit her husband's independent property on the basis that all of his property would be divided into two.<sup>53</sup>

A number of interviewees argued that access to information is the best mechanism to ensure women's rights and access to land.<sup>54</sup> Both the Syariah Court, with the assistance of Oxfam, and IDLO have undertaken information campaigns that include these and other inheritance issues. This paper recommends further support and extension of these information programs, with development and distribution inputs by local gender NGOs. One local NGO recommended film making, training Camats and judges of Mahkamah Syariah and using the mobile Syariah court program as a vehicle to disseminate information.<sup>55</sup>

Information and socialisation campaigns should be targeted at the village level. It is not sufficient to hand out information brochures or attach notices in public areas.<sup>56</sup> Community meetings attended by both men and women from the village are the best way to inform the community of their rights.<sup>57</sup>

#### 4.9 Social Constraints on Access to Land Rights by Women

Quite apart from information constraints, certain socioeconomic obstacles stand in the way of women obtaining sufficient rights and access to land. In the first instance, these obstacles arise from the "domestic" sphere in which Acehnese women traditionally operate. For example, many interviewees noted that male members of their family were recorded on documents of title.<sup>58</sup> Second, there are issues of trauma - both from the conflict and the tsunami - that prevent or hinder some women from making public claims for rights to land.<sup>59</sup>

<sup>52</sup> Group Discussion with 18 women and one male village facilitator from LOGICA, Kajhu barrack, Darussalam, Aceh Besar, 30 September 2006.

<sup>53</sup> Group discussion with women from Dusun Tenggiri, Desa Ulhe Lhe, Meuraxa Banda Aceh, 28 November 2006.

<sup>54</sup> Interview with Yatrin (LOGICA Gender Specialist) and Sofyan (LOGICA Community Land Mapping Specialist), LOGICA Offices, 29 September 2006.

<sup>55</sup> Interview with Mehrak Mehrvar, Unifem Representative, BRR Offices, 29 September 2006.

<sup>56</sup> Interview with Hannah Derwent, Legal Officer, IDLO, IDLO Offices, 6 July 2007.

<sup>57</sup> Interview with Hannah Derwent, Legal Officer, IDLO, IDLO Offices, 6 July 2007.

<sup>58</sup> Group Discussion with 18 women and one male village facilitator from LOGICA, Kajhu barrack, Darussalam, Aceh Besar, 30 September 2006.

<sup>59</sup> Interview with Yatrin (LOGICA Gender Specialist) and Sofyan (LOGICA Community Land Mapping Specialist), LOGICA Offices, 29 September 2006. Yatrin and Sofyan stated that the trauma has two principal effects. First, the disproportionate number of female deaths affected the numbers and capacities of women leaders in the village. There is a cultural handicap when women are positioned in the second layer in the family or community. Second, more than thirty years of conflict in Aceh has contributed to the reduction of social power for women in their community. Many women have withdrawn from public affairs due to trauma arising from witnessing or experiencing the death of a son or husband.

Finally, women often have less time, as primary caregivers and disproportionate bearers of household duties, to mobilise resources to assert claims for rights to land. These socio-economic constraints on gendered land rights are compounded for widows and female orphans. Because they are embedded in local structures, they are also particularly difficult when patriarchal decisions are made by relatives or local village leaders.

There are no easy solutions to socio-economic constraints on women's rights and access to land. Nevertheless, this paper recommends

- Support for a decentralised land and housing resource centre that has a particular focus on claims by women.
- Assistance to legal aid organisations to provide special support for women's land claims.
- Reactivation of a local NGO land rights network (see below). The network should have a particular focus on the land rights of women.

These recommendations will operate in combination with other recommendations made in this paper.

#### 4.10 Limited Activity by NGOs

Our NGO informants noted that an NGO network did exist to monitor land rights recovery in post-tsunami Aceh. However, it became inactive as a result of other pressing commitments, and a degree of disillusionment among NGOs with transparency in the RALAS program.

Land rights issues remain important in Aceh and Nias. Land conflicts appear to be increasing not decreasing. Significant numbers of women hold rights that have not been addressed or resolved at the local level. There are substantial socio-economic barriers to bringing these claims before the Syaria Court. Active civil society monitoring and advocacy is an important supplement to programs targeted at women and formal institutions. This paper recommends:

- Support for reactivation of a local NGO land rights monitoring network.
- Training, information and funding support for this NGO network.

#### 4.11 A Research Program

Perhaps the biggest challenge facing land rights recovery in Aceh and Nias is the lack of systematic and transparent data collection from the field. This paper recommends support for a research program, involving local staff and organisations, to generate greater knowledge of issues and cases at the local level. This research program should act in conjunction with the release of greater information from the RALAS project.

## 5 RESTORING AND CONFIRMING LAND RIGHTS: THE RALAS PROJECT

In Aceh, the primary formal mechanism for confirming land rights is the RALAS (Reconstruction of Aceh Land Administration System) project.<sup>60</sup> RALAS involves a process of community mapping and land titling with the aim of registering up to 600,000 land parcels in tsunami-affected and adjacent communities.<sup>61</sup> RALAS also works with a mobile Syariah Court to endorse inheritance divisions and appoint guardians for orphans. As at 21 June 2006, 2,083 land titles had been distributed to landowners; a further 7,025 titles had been signed and are waiting to be distributed; and 46,740 land parcels had been surveyed by the National Land Agency (BPN).<sup>62</sup> As at May 2007, approximately 20,000 land title certificates had been distributed to landowners. There is no chance at all that the planned completion date of 2008 will be met by BPN.

The initial proposal for the RALAS project was designed by a World Bank team that visited Aceh in April 2005. Funding has been provided by the Multi-Donor Task Fund. Implementation is undertaken by BPN. National World Bank staff helped draft the RALAS operating manual, which is set out in BPN Decree 114-II/2005 on the Land Registration Manual for Post-Tsunami Areas. While the RALAS Manual contains a number of gender-sensitive elements, this paper concludes that amendment and reform is necessary if RALAS is to comply with international standards - including the World Bank's own guidelines on gender and land administration projects ("the World Bank gender guidelines").

### 5.1 Community Mapping

RALAS involves a 3-stage process of community mapping, boundary surveying and land titling. Community mapping involves agreement by survivors as to land ownership and boundaries. Boundary surveying and land titling is undertaken by BPN. Our field evidence suggests that female participation in community mapping is greater than in the land titling stage undertaken by BPN.<sup>63</sup>

<sup>60</sup> The term "formal" is designed to distinguish the myriad processes that took place at the village level to confirm land rights. The RALAS project itself works within the formal structure of Indonesian law relating to land rights.

<sup>61</sup> BPN Decree No. 114-II.2005 *On the Land Registration Manual in Post Tsunami Areas*, 1.

<sup>62</sup> 'Multi Donor Fund for Aceh and Nias Project Update June 2006' Multi Donor Fund Secretariat (30 June 2006), 3.

<sup>63</sup> Group discussion with women from Dusun Tenggara, Desa Ulhe Lheue, Meuraxa Banda Aceh, 28 November 2006 (clarifying that women participated extensively in all stages of community mapping and that BPN "did not care" whether owners or neighbours witnessed the mapping process), Interview with Yatrin (Logica Gender Specialist) and Sofyan (Community Land Mapping Specialist), Logica Offices, 29 September 2006 (stating that Acehnese women's participation is enhanced by the role of NGOs in community mapping but remains "very limited" as a result of underlying socio-economic issues), Interview with Nawir, Community Organizer from UPLINK, UPLINK Offices, 29 September 2006 (about community demonstrations and women's complaints over the delays, inefficiencies and unnecessary bureaucracy caused associated with BPN).

## 5.2 Joint Titling of Marital Property

The RALAS manual states that land which is the joint property of a husband and wife can be registered “jointly in the names of both persons, and not just the husband”.<sup>64</sup> This is a permissive rather than mandatory statement.

Partial data obtained from community mapping and land titling teams suggests that less than 5% of land parcels has been recorded in the joint names of husbands and wives. This low rate of joint titling is confirmed by IDLO field interviews. Most land parcels are recorded in the name of men. In Banda Aceh and Aceh Besar, around 20-25% is recorded in the name of women. Very few are recorded in the names of both husbands and wives.

The following data sets illustrate these findings. We begin with preliminary RALAS data for Banda Aceh and Aceh Besar, and then turn to 2 villages in Banda Aceh (Lambung and Ulee Lheue). These data sets were obtained between July and November 2006.

### 5.1.1 Preliminary RALAS Data for Banda Aceh and Aceh Besar

<b>Distribution of Land Title Certificates by Gender in Banda Aceh and Aceh Besar</b>						
<b>Type of Certificate</b>	<b>Banda Aceh</b>	<b>% of District Total</b>	<b>Aceh Besar</b>	<b>% of District Total</b>	<b>Total</b>	<b>% of Total</b>
Male Name Only	4,163	68.2	1,425	69.2	5,588	68.4
Female Name Only	1,699	27.8	561	27.3	2,260	27.7
Male and Female Names	246	4.0	72	3.5	318	3.9
Total	6,108	100.0	2,058	100.0	8,166	100.0

### 5.1.2 Desa Lambung RALAS Analysis

<b>Distribution of Land Titles by Gender in Desa Lambung</b>		
<b>Gender Breakdown of Certificate</b>	<b>Number of Land Parcels</b>	<b>% of Total</b>
Male Name	215	60.7
Female Name	72	20.3
Co-Owned including Female	28	7.9
Co-Owned Males only	39	11.0
Total	354	100.0

### 5.1.3 Ulee Lheue RALAS Analysis

<b>Distribution of Land Titles by Gender in Ulee Lheue</b>		
<b>Type of Certificate</b>	<b>Number of Land Parcels</b>	<b>% of Total</b>
Male Name	275	81.8
Female Name	48	14.3
Co-Owned including Female	8	2.4
Co-Owned Males only	5	1.5
Total	336	100.0

<sup>64</sup> id.

These are important results that have not yet been published elsewhere. They were obtained from RALAS staff. RALAS itself has not issued gender disaggregated data of its own. While the relatively low figures for women only certification is a cause for concern, the most notable results concern the relative lack of joint titling of marital land.

The Aceh Institute has published a breakdown of RALAS data for the districts of Pidie, Bireun and Banda Aceh.<sup>65</sup> These data simply record the total number of men and women in the registration lists for each sampled sub-district. They do not identify the number of co-owned land parcels, or the proportions held by women in a co-owned parcel. In the municipality of Sigli, Pidie District, there were 448 women (52%) and 414 men (48%) in the registration lists. These figures reflect the uxori-local and daughter inheritance traditions of Pidie. In 2 villages in Bireun, there were 347 women (40%) and 510 men (60%) recorded in the registration lists. In 4 sampled villagers in Banda Aceh, there were 686 women (32%) and 1443 men (68%) in the registration lists. The Aceh Institute noted that joint titling of marital land is "extremely rare".<sup>66</sup>

In the BPDE survey, 44.8% of all displaced women stated that they owned land. While this figure may be reflected in the RALAS data for Pidie and Bireun, it is not reflected in the preliminary RALAS data for Banda Aceh and Aceh Besar. This paper recommends release of comprehensive and-to-date data from the RALAS project on the number of land title certificates issued in the name of women only. These data should be correlated with female responses to the question of land status in the BPDE survey. Where major discrepancies exist, particularly across certain districts, special BPN teams - or preferably a local NGO - should follow up the reason for lack of registration in RALAS.

The current lack of information from RALAS does a disservice both to BPN and to the public interest. One RALAS informant estimated that only around 4% of all land title certificates in Banda Aceh prior to the tsunami had been issued in the name of women only. This figure may reflect the fact that almost all land titling prior to the tsunami was applicant-driven (sporadic) rather than systematic in nature. Nevertheless, if the estimate is accurate, the RALAS project may claim some success in improving the rights of women through its formalisation program. To do so, RALAS needs to publish up-to-date data and compare it to surviving records from before the tsunami.

Most land in Aceh is acquired independently through inheritance rather than jointly in the course of a marriage. While one would expect more marital land in urban than rural areas, due to higher rates of labour mobility, it is possible that the very small proportions of marital land recorded through joint titling in the RALAS project reflects the actual amount of marital land in tsunami-affected areas. There needs to be greater research, and disclosure by BPN, on this important point. Without further research and disclosure, preliminary indications that less than 5% of land parcels have been jointly titled raise legitimate concerns that the permissive nature of joint titling under RALAS - combined with other obstacles to women's formal access to land highlighted in this paper - is not reflecting the social and legal reality of women's rights to marital land in Aceh. In other words, even where the land rights of married women are recognized in custom and Syariah law, the transition to land title certificates may

<sup>65</sup> Kadriah et al, *Perlindungan Terhadap Perempuan Korban Tsunami Dalam Mendapatkan Hak Kepemilikan Atas Tanah* ["The Protection of Female Victims of the Tsunami in the Context of Land Ownership"], University of Syiah Kuala Darussalam Law School, Banda Aceh, December 2006, pp. 17-17.

<sup>66</sup> Ibid, at p. 21.

have an unforeseen dispossessionary impact in the longer run.

In Indonesian law, marital land is by definition co-owned land.<sup>67</sup> All marital property - property jointly acquired in the course of a marriage - should be registered in the names of husbands and wives. There is no reason why joint titling of marital land should not take place under the RALAS project. Once a land parcel is described as marital, it should be recorded in the name of husbands and wives. To do otherwise is to contradict the basic principle of land titling that it should only reflect rights to land, not create or transform them.

It is often noted that safeguards exist in Indonesian law to protect co-owners who are not recorded on the land title certificates. Registration does not of itself establish title in Indonesia. It only operates as evidence of title. A rights-holder may enforce rights even though those rights are not recognized on the land title certificate. Thus, for example, Indonesia's Marriage Law 1974 provides for the equal division of marital land on divorce between spouses notwithstanding recorded ownership in a land title certificate. Similarly, land notaries in Indonesia must investigate and ensure that spouses have agreed to the sale of marital property (including forced sales by mortgagees where one spouse has defaulted on a loan).

For all these safeguards, joint titling remains important for two reasons. First, a significant number of land transfers take place in Indonesia without the involvement of land notaries. Joint titling may provide important protection for women in this informal land market. Second, joint titling confirms the status of land as marital property, thereby reducing the potential for fraudulent or incorrect claims of its status as independent property. This evidentiary function is not only important in the context of disasters, it provides clarity that may prevent conflict among future generations.

This paper recommends the issue of land title certificates in the names of husbands and wives for all land identified as marital property. Joint titling of marital property would reflect the joint titling requirements developed for land in resettlement areas by BRR (see below). A disproportionate recording of marital land in the name of husbands only does not give freedom to applicants to determine the manner of registration. It engineers a discriminatory transformation in land rights through a donor-funded program, and denies women a primary means of recovery after a major disaster. While joint titling is not of itself an answer to gendered obstacles to accessing land after the tsunami, it is an important measure to ensure that formalisation programs do not unwittingly produce gender-discriminatory effects.

### **Joint Titling in Resettlement Locations**

In September 2006, the Aceh-Nias Rehabilitation and Reconstruction Agency (BRR) and the National Land Agency (BPN) established a joint land titling (JLT) policy for locations acquired by the government for resettlement of tsunami victims. JLT is a program that applies to families (husband and wife or siblings) and guarantees equality of land ownership between men and women. With JLT, a husband and wife who are legally married under Indonesian law, or siblings who lost their parents, will be given land certificates naming

<sup>67</sup> See the 1974 Marriage Law.

<sup>68</sup> BRR and BPN, Guideline for Joint-Land Titling, December 2006.

both the husband and wife or the brother and sister as owners where they have been resettled on land acquired by BRR or local governments. The ownership shares shall be equal.<sup>68</sup>

How can BPN and international donors ensure that marital land is subject to joint titling? BPN's adjudication documents should include two simple questions: (1) Is this land owned by a husband and wife; and (2) Is this land co-owned by persons other than a husband and wife? If the answer to either question is "yes", then the adjudicating officer must ensure that more than one name has been recorded in the list of owners. NGOs and donors that have undertaken community land mapping, or assisted with land rights documentation, should also ensure joint recording of marital property in the names of husbands and wives.

It might be argued that ensuring joint titling of marital land in tsunami-affected Aceh will set a precedent for all of Indonesia. The answer is that joint titling of marital land is already "mandatory" in the sense that it is an existing legal requirement in Indonesia. Under the 1974 Marriage Law, if land is marital in nature then by definition it is co-owned by husband and wife. BPN's mandate is to record existing land rights. It has no legal authority to adjudicate land rights contrary to the legal status of those rights. In other words, the recommendations in this paper do not set a new legal precedent. Instead, they involve a change to titling documentation in order to reflect existing law.

This documentary approach to determining marital land needs to be supplemented by information campaigns relating to the core difference between independent and marital property (see further below). Where the parties are unsure as to whether property is independent or marital in nature, the RALAS manual should include provisions for advice from the *keucik* and *imam*. Ultimately, the parties themselves must decide on the status of the property, and will have an incentive to so decide in order to receive a land title certificate. In making this decision, it is essential that the parties be assisted by the information programs discussed below.

BPN is under considerable pressure to issue land titles certificates quickly, in order to support reconstruction in Aceh. BPN will require further support, including training and capacity-building programs, if it is to ensure joint titling of marital land in tsunami-affected Aceh. Specific recommendations as to the role and future of BPN are made in a separate paper in this series.<sup>69</sup> Where BPN lacks the capacity or willingness to implement the recommendations in this paper - and other papers in this series - it is recommended that international actors, including in particular Oxfam International, advocate and support equivalent information awareness, claims processing and data collection programs by civil society organisations.

#### 5.1.4 *The Importance of Information Campaigns on Joint Titling*

Without adequate information and training programs, there is a risk that joint titling of marital land will have an unintended dispossessionary impact on married women who have independent ownership of land. In other words, married women may agree to joint titling of independently owned land as a result of uncertainty over the proper application of a joint

<sup>69</sup> See Oxfam International Policy Paper, Strengthening Land Administration and Managing Conflict in Tsunami-Affected Aceh.



titling policy. Hence it is vital that (1) BPN's socialisation program for joint titling, and (2) donors or NGOs engaged in documenting land rights, include comprehensive training and information programs relating to the difference between independent and marital property.

A number of women interviewees told us that they were not aware of the possibility of joint titling of marital land.<sup>70</sup> They expressed strong interest in further information concerning the possibility of joint titling. This paper recommends a public information and media campaign on joint land titling to accompany roll-out of the RALAS project. People trained in Syariah law should lead information campaigns about the difference between independent and marital property.<sup>71</sup>

Information campaigns must be sensitive to the inadvertent impacts they can have on community perceptions. There might be a risk, for example, that socialising the importance of joint titling to a community results in that community (mistakenly) believing that if there is no certificate of title, the land must be individually owned (i.e., the certificate of title is the new standard of proof for jointly owned land). This could lead to further denial of women's land rights.<sup>72</sup>

### **The Importance of Information on Joint Titling**

In an interview with 18 women from Kajhu barracks, not one was aware of the possibility of having joint titles to land. The women mentioned that there was no person or organization to inform them about the possibility. When asked whether they would like their land to be in their husband's name, their own name, or registered jointly, a number of women commented that it would depend on their own assessment of the character of their husband's families. If they thought that their husband's family was benevolent it would not matter to them if their land certificate only in their husband's name. However, if they felt that their husband's family had a tendency to want to control the property, it would be better for the land to be certified jointly or in the names of their children.<sup>73</sup>

### **5.3 Female Participation in Land Adjudication**

The RALAS manual states on the question of women's participation:

Women land owners are expected to be present in the village meeting to discuss the plan for the villagers land adjudication because it also concerns their interests.

The RALAS manual also provides that women should be present at the time of boundary marking and distribution of certificates.

<sup>70</sup> Group Discussion with four women (one aged widow, two middle aged ladies and one young lady), Lhok Seude, Leupung, Aceh Besar, date unknown.

<sup>71</sup> Hannah Derwent, Legal Officer, IDLO, 6 July 2007, IDLO Offices, Banda Aceh.

<sup>72</sup> Hannah Derwent, Legal Officer, IDLO, 6 July 2007, IDLO Offices, Banda Aceh.

<sup>73</sup> Group Discussion with 18 women and one male village facilitator from LOGICA, Kajhu barrack, Darussalam, Aceh Besar, 30 September 2006.

It is recommended that the RALAS manual add that the scheduling and location of public meetings and site adjudication should consider such limitations as household duties and transportation costs. Such an addition to the manual would be consistent with the World Bank's own report on gender guidelines for land administration projects (the "World Bank gender guidelines").<sup>74</sup>

Improving female participation in land adjudication is by no means a matter of meeting scheduling alone. The recommendations in this paper are directed at short-term actions by international agents. In the long term, improving female participation in land adjudication generally will involve basic structures and processes in Acehnese society that are beyond the scope of this paper.

#### 5.4 Gender Mapping and Community Facilitators

The RALAS manual states that:

BPN appoints facilitators that will work together with the community in developing community agreements if the villagers concerned do not receive assistance from other programs related to community agreements or participatory mapping. It is expected that there will be a balanced composition of male and female facilitators.

In practice, there does not appear to have been a balanced composition of male and female facilitators in most facilitation and adjudication teams. This paper recommends that:

- Every effort be made to include female representation in facilitation and adjudication teams.
- Training programs be instituted to ensure qualified female representation in facilitation and adjudication teams.
- BPN ensure that community facilitators work with its adjudication teams whether or not the area has been subject to community land mapping. These community facilitators should include a balanced composition of men and women.

A number of interviewees, including BPN staff members themselves, identified a lack of community facilitators as a key obstacle to successful land titling under RALAS.<sup>75</sup> This paper recommends greater use of community facilitators by the RALAS project. Well-trained facilitators could be seconded from the World Bank's Kecamatan Development Program (KDP). This paper recommends greater coordination between RALAS and KDP in Aceh.

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<sup>74</sup> See the World Bank gender guidelines, Xi.

<sup>75</sup> Interview with Nasrul (from Aceh Development Fund (ADF)), ADF Offices, 1 December 2006.

## 5.5 Gender Sensitive Training

The RALAS manual states that:

BPN provides training for all facilitators of community agreements both those appointed by BPN and those by other programs.

This RALAS training requirement is consistent with the World Bank gender guidelines, which stipulate that: "the training of implementers is one of the keys to ensuring the gender equity in any land administration project". What is missing from the RALAS manual is a lack of guidance as to what the training should entail. This paper adopts the following training recommendations from the World Bank gender guidelines.

- Develop a plan for communicating the importance of gender issues among stakeholders.
- Design that plan to address different levels of target audiences (for example, senior administrators, technical assistants, project implementers) with appropriate messages and formats.
- Include both men and women in any training, education or study visit opportunities.
- Provide project managers and implementers with guidelines and best practices that may be adapted to suit specific country experience. Involve men and women as role models and mentors throughout the project. (44)

## 5.6 Gender Disaggregated Data

There is provision in the RALAS data base for manual entry of details relating to land title certificates issued in the names of co-owners. Some NGOs and BPN adjudication teams have collected gender disaggregated data on recorded land ownership. Unfortunately, however, a systematic process of collecting and publishing gender disaggregated data was not incorporated into the initial design of RALAS. The RALAS manual is also silent on the need to collect such data. While this omission may be explained by the urgent post-disaster circumstances attending the design and inception of RALAS, there is no reason why a comprehensive and transparent data collection component could not be added to the ongoing implementation of RALAS. It appears that gender disaggregated data has been collected by many RALAS teams. These data should be made public.

The failure of RALAS to collect and publish comprehensive gender disaggregated data is not consistent with the World Bank's own gender guidelines. The case studies in the guidelines show that a lack of baseline data, and a failure to collect gender-relevant data during and after a titling project, prevents rigorous assessment of project impacts on women. This data collection should not simply count how many titles are in women's names or the number of women involved. There is a need for more extensive data on registration effects, subsequent transactions (formal and informal), inheritance processes and access to credit. This information is essential not just for midstream adjustments to correct flaws in design, but also for longer-term monitoring of the effects of land titling projects.

This paper recommends that:

- Where adjudication by BPN has not yet commenced, BPN or RALAS-associated staff conduct a baseline study in accordance with the detailed templates set out in the World Bank gender guidelines.
- BPN or RALAS-associated staff collect and analyse gender-disaggregated data throughout the life of RALAS in accordance with the detailed templates set out in the World Bank gender guidelines.

Should BPN not be willing to collect and publish data of this kind, it is recommended that support be given for data collection by an experienced NGO or civil society organisation.

### 5.7 Monitoring

Initially, NGOs were included in a committee to assist the monitoring of RALAS. However, a number of NGOs expressed frustration at a perceived lack of transparency in the RALAS project.<sup>76</sup> Systematic civil society monitoring of RALAS is now inactive. While consultants have been engaged from Jakarta to undertake internal monitoring and evaluation of RALAS, it is recommended that NGO monitoring be re-activated through appropriate technical and financial support programs.

### 5.8 Advocacy

It is recommended that Oxfam mobilise advocacy strategies to persuade BPN to amend and reform the RALAS project in accordance with this paper's recommendation. This advocacy strategy should focus on persuading the multi-donor trust fund - the funder of RALAS - to pressure BPN to reform the RALAS project.

## 6 CONCLUDING REMARKS

As noted, the recommendations in this paper are directed primarily towards short-term actions by international agents. They are designed to ensure (1) that the disproportionate land rights and access burdens placed on female victims of the tsunami are recognized in reconstruction programming; and (2) that reconstruction programming does not of itself produce unintended gender-discriminatory effects. It is acknowledged that more work is required in order to prioritise the recommendations, to identify appropriate implementing agencies (where, for example, BPN is not willing or able to implement them), and to develop suitable criteria to measure progress as the recommendations are implemented. This work will be undertaken in the course of 2008 by the Oxfam Policy and Advocacy Unit in Aceh.

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<sup>76</sup> Interview with Nasrul (from Aceh Development Fund (ADF)), ADF Offices, 1 December 2006; Interview with Ardi from Kata Hati, Kata Hati Offices Banda Aceh, 28 November 2006; Interview with Marlianita (Lawyer for MISPI (Mitra Sejati Perempuan Indonesia – Indonesian Women's Partnership)), MISPI Offices, Banda Aceh, 1 December 2006; Interview with Nasrul (from Aceh Development Fund (ADF)), ADF Offices, 1 December 2006; Interview with Tasmia Emsa (Executive Secretary of KKTGA (Kelompok Kerja Transformasi Gender Aceh - Group Working to Transform Gender in Aceh)), KKTGA Offices, 29 September 2006.