Land Tenure Security and Peacebuilding in Aceh, Indonesia

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In this article, I address whether activities meant to improve land tenure security may have supported or undermined peace-building during the postwar stabilization and transition period of 2005–2008. In 2005, the population of Aceh began recovery from both a 29-year separatist war and the 2004 Indian Ocean Tsunami. Property and tenure systems were severely damaged by both the war and tsunami. The primary project designed to support land tenure security during this period was an internationally funded and state-administered project called the Reconstruction of Aceh Land Administration System (RALAS). RALAS successfully registered land in several areas of Aceh and rebuilt much of the technical capacity of the state land administration system. Yet, the linkage of RALAS primarily to post-disaster activities meant that connections between land tenure security and postwar dynamics were often missed. As a result, actors involved in RALAS did not clearly identify or take advantage of opportunities to link land tenure security to peace-building. In addition, a lack of understanding of fundamental legal problems typical of postwar scenarios caused several problems for the implementation of RALAS. This article concludes with lessons learned regarding the timing, location, institutional capacities, and methods of implementing land reform for peace building.

Keywords: Tenure security; Land registration; Aceh.

1. Introduction

The Indonesian province of Aceh encompasses the northern tip of the island of Sumatra. In 2005, the population of Aceh began recovery from both a 29-year separatist war and the 2004 Indian Ocean Tsunami. Property and tenure systems were severely damaged by both the war and tsunami. Many international donors, international non-governmental organizations (INGOs), and state actors perceived the lack of state-issued land titles in the region as a reflection of tenure insecurity and as a central obstacle to tsunami recovery and future political and economic development. As a response to this perceived tenure insecurity, donors offered technical resources and a budget of USD 28.5 million for a state-administered land registration program called the Reconstruction of Aceh Land Administration

System (RALAS). Partly as a result of an early emphasis on post-disaster property issues, examination of property rights in Aceh have continued to emphasize post-disaster dynamics and to judge the benefits and problems of RALAS in post-disaster terms.[1−4] This lack of identification of links between tenure security and postwar dynamics is in some ways symptomatic of a larger failure to link post-disaster and postwar dynamics within the design of development projects in Aceh.[5] In this article, I address whether activities meant to improve land tenure security in Aceh, Indonesia during the stabilization and transition period of 2005–2009 may have supported or undermined peace-building.

2. Background

From 1976–2005, Aceh was the site of a sporadically violent, separatist war between the Free Aceh Movement (*Gerakan Aceh Merdeka* or GAM) and the Government of Indonesia (GoI). Although the conflict in Aceh has sometimes been depicted as a war based on one or more main cleavages, in reality the conflict and violence are a result of a complex mix of contextual opportunities and issues that have changed over time. These issues include ethnonational territorial claims, local political autonomy, local distribution of hydrocarbon and resource revenues, recognition of Acehnese cultural identity, recognition of Islamic principles of governance, personal vendettas, and grievances involving justice and reparations for war crimes.[6−9] The signing of the Helsinki Memorandum of Understanding (MoU) in August 2005 marked the end of the most recent period of violence in Aceh and it is the starting point for this chapter's discussion of land tenure security and peace building. The Helsinki MoU was inextricably linked with the 2004 Indian Ocean Tsunami which, on the December 26, 2004, inundated the lowlands of Aceh. killing some 168,000 people and leaving 500,000 more homeless.[10,11] In addition to the human death toll, it is estimated that some 300,000 land parcels, 250,000 homes, 15% of agricultural lands, over 2,000 schools, and 10,000 km of roads were severely impacted or destroyed.[12−14] Yet, even as the tsunami changed short term-opportunities for pursuing political and personal violence, many authors recognized that the resulting peacemaking process did not address the grievances of all the different groups in Aceh.[8−11]

The importance of property rights in the escalation and duration of violent conflict in Aceh has changed over time. While individual and communal property rights were not central to the escalation of violent conflict in 1976, over time the disruption of informal and formal property systems caused by hydrocarbon resource exploitation, violence, and human rights abuses have led to property rights grievances against the state government.[2] The Indonesian legal framework for property rights poses additional problems for Aceh. For example, Indonesia's statutory legal framework regarding communal property rights is unclear when applied to community forests.[15] This lack of clarity means that in addition to

causing low income families to incur a number of new economic costs (registration fees, taxes, and transfer fees), the statutory system itself sometimes creates tenure insecurity as elites manipulate legal claims and undermine existing, 'informal' tenure systems.[16,17] The functional inadequacy of such a legal framework is especially problematic for the postwar legal landscape of Aceh where strong informal tenure systems exist and Indonesia's state legitimacy as a sovereign power is still questioned by local residents. Within Aceh there are several alternative working sets of laws, informal institutions, or normative traditions that define tenure security and govern the use and ownership of property. The three most commonly cited tenure systems include: *adat* (informal or customary institutions), statutory law (formal institutions), and Islamic jurisprudence and courts.[1,18] While these systems refer to unique practices regarding property and tenure security, in practice people draw from and mix rules and norms from these systems.

3. Land Tenure Security and Peace building

At first impression, postwar land tenure security in Aceh appeared to be better-off than other postwar regions because there were intact village-level customary institutions for land management and there were no significant secondary occupations of houses (less resettlement issues), no layered history of displacements and dispossessions (thus less competing claims between local groups), and no significant tourist commercial developments on the coasts (less competing claims between commercial and local groups).[12] On the other hand, the tsunami impact on property and land administration was massive. As a result, policy makers concentrated almost exclusively on post-disaster land tenure security issues rather than the ways in which postwar dynamics might link to land.

Despite the widespread use of *adat* and the postwar resonance of the cultural and political representation of land in separatist struggle, tenure security was largely equated to statutory, individual title. The main emphasis of international donors and national agencies was on expansion of the state cadastre through registration of land and issuance of titles. The main vehicle for implementing land registration was the disaster-focused RALAS project. RALAS rebuilt land administration offices, offered technical training, digitized cadastres and land records, and focused on restoring and expanding the land titles administered by the National Land Agency (*Badan Pertanahan Nasional* or BPN). RALAS experimented with community-driven adjudication (CDA), community mapping, and lowering registration costs to facilitate and legitimize the registration process. The RALAS project had several positive impacts including the training of nearly 700 non-governmental organization (NGO) facilitators and 500 BPN staff in participatory mapping methods, the establishment of new land offices, the clarification of property rights in urban areas, and the introduction of a digital cadastre.[4] Yet, in the field there were several critiques of the RALAS process from local

residents, activists, and official staff of UN organizations. These critiques revolved mainly around the targeting of communities, the exclusion of certain community segments, the irrelevance of the registration process to the cultural milieu, the ambiguity of the Indonesian legal framework concerning traditional and informal tenure, the over application of Hernando de Soto's theory of titling and mortgage-able capital to rural communities, and the corruption of BPN.

In addition to RALAS, several INGOs and NGOs were also involved in supporting property rights and community mapping. Work outside RALAS included the extensive property right studies performed by or on behalf of Oxfam and the International Development Law Organization (IDLO) and the development by UN Habitat of materials meant to inform the population of their rights and the steps needed to register property. Activists from the Aceh Legal Aid Institute (LBH-Aceh) played a significant role in distributing property rights materials and assisting victims of land expropriations that occurred during the conflict. Indeed, LBH-Aceh's work with communities who alleged that during the conflict they had been forced to sell their land at low prices to the plantation company PT Bumi Flora or be declared part of the separatist movement if they resisted the land purchase, led to the July 2007 arrest and August 2008 conviction of eight LBH-Aceh activists on charges of "orally or in writing committing a violent act against the government" and "disseminating hate against the government." As this case and prosecution reveal, such cases of property expropriation may be much more prevalent than currently known as they are rarely reported due to political dynamics in the region. Not only were many lingering disputes over property not resolved by RALAS, but several disputes were caused by errors of land measurement or recording of inadequate ownership information on the titles. While registration itself was problematic, there were other issues regarding the government's role in land management, the clarification of land transmission details, the mistreatment of women's title certificates, and the prospect of future transfer costs and taxes that remained unclear to a large portion of the residents of Aceh.[2–4]

Official recognition of the limited success of RALAS usually identified bureaucratic bottlenecks and limited logistical capacity as the main hurdles. Yet, there were other cultural, economic, and political disincentives to titling. While the RALAS emphasis on state-administered land registration for tenure security is understandable from the standpoint of disaster recovery and international investment, it ignored the postwar context, strong existing tenure systems, issues regarding the Indonesian state's local legitimacy, and a problematic legal framework. The assumption that instituting a state land cadastre in a postwar region simply requires community participation and lowering of economic disincentives seems naïve at best. The working concept of land tenure security and the goal of land registration itself needed to be reevaluated. The problems in Aceh were similar to land registration hurdles in other postwar scenarios. Taking them

into consideration may have altered the way in which land tenure security was conceived, the allocation of resources toward land registration, the design of the project, and the legal framework under which the project worked. Despite the above, RALAS was necessary for increasing tenure security in some urban and tsunami-impacted areas. As well, whether or not RALAS succeeded in increasing tenure security and issuing titles, the ways that property registration affected both land tenure security and peace building remains an open question.

Reintegration of GAM combatants was able to take place independent of the efforts to formally register land titles.[20] Most GAM combatants accessed land through their communal *adat* networks and did not need to be relocated onto land with formal title in order to gain tenure security. Where formal title could assist was is in the payment of property damages inflicted during the 29 year conflict or in resolving land disputes between communities and government agencies. Communities that were forced to move or sell their land under threat during the conflict are refugees or have been disenfranchised of their property rights. The publicized disputes over government claimed land with several communities, the local acknowledgement that lands had been taken but the feeling that the climate was not appropriate for pursuing these claims, the experience of LBH-Aceh, and the ongoing political and personal violence in the region indicate that there is a minefield of conflict-related property claims that still need to be addressed.

While GAM reintegration did not require formal land registration processes, the rebuilding of housing for many of the tsunami refugees depended on statutory titles. The tsunami impacted urban areas where land markets existed and where informal practices and agreements were not as clear as *adat* practices were to survivors in rural areas. As well, international organizations were not equipped to deal with local tenure systems. INGOs and donor agencies often required clear title in order to build new homes on land parcels. While RALAS was not oriented towards rebuilding conflict-damaged property, we need to look at what might have happened to the peace process if formalization of land holdings had not been performed in urban and tsunami-impacted areas. Would the peace process have progressed if RALAS did not exist? While there were problems, including riots in 2005 and 2006 directed at BPN and the agency of Rehabilitation and Reconstruction for Aceh and Nias (*Badan Rehabilitasi dan Rekonstruksi* or BRR) for not moving fast enough in provision of shelter and title, the RALAS work paved the path for tsunami refugee shelter. Evidence indicates that formalization of property rights, by assisting with basic needs in urban areas, helped avoid serious political backlash that could have derailed peace building.

The RALAS project and formal property rights were explicitly linked to the ability to invest in and to mortgage land. Indeed, BRR, politicians, and international organizations cited de Soto's problematic theory of land registration for empowering the poor as one of the main justifications for the RALAS project.[19] Yet, despite anecdotal evidence of people mortgaging their land, most of the people in Aceh use alternative means to access temporary financial assistance—for

example, social networks, or forward sales of crops harvests. These arrangements are typically preferable for most of the poor and rural areas where communities do not want to risk the main source of their livelihoods or well-being (their land) and cannot extract property embedded in social relations and obligations. Several bank representatives expressed hesitation at taking formally titled land as collateral because the social relations and legal framework surrounding the land may limit its use and because it was difficult to value rural lands where there was no land market. Deutsch (2009:43)[4] reported that "only about 2.5% of respondents reported accessing credit from commercial banks prior to receiving RALAS land titles, while nearly 7% took bank loans after the receipt of titles." While there are anecdotes about formal registration allowing investment in urban areas, there is no clear evidence that the process of registering land has allowed the poor to access more resources, develop sustainable livelihoods, or encouraged economic investment to benefit peace building.

Did RALAS contribute to reconciliation? Reconciliation with the government should at a minimum address the different experiences of former GAM and local communities. First, did RALAS provide an avenue for local grievance reconciliation? The community-driven adjudication process built confidence in the capacity of GoI to undertake projects with the locals' well-being in mind. Cynicism regarding the real reasons for land titling and the utility of the land titling process could be overcome where the process was meticulously followed and where local power dynamics were amenable. However, due to problems with implementation and local disincentives to register land, the ability of this process to provide reconciliation between local communities and the government was often lost. Second, did the land titling process engaged by RALAS bring GAM and GoI into a more cooperative relationship? Not directly, but the land registered will serve as a source of shared revenues between the GoI and the Aceh Party (former GAM) that now run local politics. So, in a sense land registration provides a payoff to former GAM that now can run on a non-violent political platform under the direction of GoI.

The land titling project in Aceh, by emphasizing participation, transparency, accountability, and monitoring, advanced some positive principles of good governance. It built capacities within communities to interact with the government, created digital systems less susceptible to corruption, decentralized powers to local political authorities, and provided alternative avenues for dispute resolution through BPN-appointed facilitators. RALAS and the regional focus on property administration could not change the substantive content of the law by clarifying the ambiguous national legal framework regarding communal tenure and transitions of legal rights between *adat* and statutory systems. Yet, promoting local capacity and principles of good governance helped the peace-building process by encouraging responsible governance.

4. Lessons Learned

RALAS indirectly supported peace building by supporting the delivery of basic needs and essential services and by providing opportunities for reconciliation and good governance. Yet, there was little real connection of land titling to economic development, sustainable livelihoods, or to reintegration of combatants and resettlement of conflict refugees. Ultimately the project missed several opportunities to support peace building and was itself limited by its lack of consideration of conflict dynamics on political, social, and economic relations surrounding land. While unique aspects of the Aceh conflict led experts to detach land titling from problems of violent conflict and to associate it more with tsunami damage, the success of the land titling project depended on the legitimacy of state institutions, adequate legal frameworks, understanding of local power dynamics, and accurate identification of incentives and disincentives to register. Lessons that might be generalized from Aceh to other postwar situations include:

(i) Never assume that land is free of cultural and political value or that all disputes between individuals and between institutions are visible in postwar scenarios.

(ii) Transparency, accountability, community participation, and monitoring can promote confidence in the process of adjudication and demarcation of property.

(iii) Community participation for land demarcation and adjudication should be preceded by a community-led assessment of needs.

(iv) Legal and financial accountability and remedies for mistakes made in the titling process should be established at the earliest possible date.

(v) Integration of INGOs and NGOs into government extension regarding property or provision of other essential services requires a clear legal framework.

(vi) There must be clarification of the legal status of informal practices regarding property rights before undertaking property registration programs.

(vii) Time-limited and renewable laws might be issued by executive order in order to give an immediate legal framework for activities.

(viii) Financial resources for land registration should be goal-oriented instead of time-oriented—no expiring budgets that must be immediately used.

In summary, where informal systems and/or deeds-based systems are functioning, the emphasis on immediate conversion of all land to a state-administered, centralized title system needs to be curtailed. Titling should be locally evaluated instead of broadly applied. The use of social tenure domain models or simple registers that do not specify legal boundaries of property but allow institutions to build records of community locations may be more flexible temporary arrangements and better-suited to the financial constraints and community needs in postwar areas. Such approaches, while not problem free, would be more in line with a gradual, less confrontational strategy of land titling and the sensitive postwar relations between individuals, communities, and the state.

References

1. E. Harper, Guardianship, Inheritance and Land Law in Post-tsunami Aceh. Rome, Italy: IDLO, (2006).
2. D. Fitzpatrick, Women's Rights to Land and Housing in Tsunami-Affected Aceh, Indonesia, in *Asia Research Institute Working Paper #3*, (eds). A. Reid, B. Nowak, P. Daly, and M. Feener, Asia Research Institute, Oxfam International, Singapore, (2008).
3. A., D. Jalil, Silalahi, G. J. Aditjondro, S. K. Tarigan, Jufriadi, and Darmawan. The World Bank-financed Reconstruction of the Aceh Land Administration System (RALAS), Medan, INFID, (2008).
4. R. Deutsch, Indonesia Reconstruction of Aceh Land Administration System (RALAS) Project: Project Implementation and Beneficiary Assessment, 2008, MDFTN, World Bank, Banda Aceh, (2009).
5. A. Burke, and Afnan, Reconstruction in a conflict environment: Views from civil society, donors, and NGOs, in *Indonesian Social Development*, (Eds.) P. Barron and L. Ashari, DFID, Jakarta, (2005).
6. A. Reid, *Verandah of violence: the background to the Aceh problem*. Singapore, Seattle: Singapore University Press; In Association with University of Washington Press (2006).
7. J. F. McCarthy, The demonstration effect: Natural resources, ethnonationalism and the Aceh conflict, *Singapore J. of Tropical Geography* **28**(3), 314–333 (2007).
8. K. Schulze, GAM: Indonesia, GAM, and the Acehnese population in a zero-sum trap, in *Terror, Insurgency, and the State: Ending Protracted Conflicts*, (Eds.) M. Heiberg, B. O'Leary and J. Tirman, 83–122, University of Pennsylvania Press, Philadelphia, (2007).
9. E. F. Drexler, *Aceh, Indonesia: securing the insecure state*, *Ethnography of political violence*, University of Pennsylvania Press, Philadelphia, (2008).
10. P. Le Billon, and A. Waizenegger, Peace in the wake of disaster? Secessionist conflicts and the 2004 Indian Ocean tsunami, *Transactions of the Institute of British Geographers*, **32**(3), 411–427, (2007).
11. J.-C. Gaillard, E. Clave, and I. Kelman, Wave of peace? Tsunami disaster diplomacy in Aceh, Indonesia, *Geoforum* **39**(1), 511, (2008).
12. D. Fitzpatrick, Restoring and Confirming Rights to Land in Tsunami-Affected Aceh: OXFAM, UNDP, (2005).
13. S. Kenny, L. Fan, and R. Palmer, The tsunami two years on: Land rights in Aceh, in *Oxfam Briefing Note*: Oxfam International, (2006).
14. H. Z. A. Benny, T. S. Haroen, and E. Heryani, Post-Tsunami Land Parcel Reconstruction in Aceh: Aspects, Status and Problems. Paper read at XXIII FIG Congress, October 8-13, 2006, at Munich, Germany, (2006).
15. T. Lindsey, *Indonesia, law and society*. 2nd ed. Leichhardt, N.S.W., Federation Press, Australia [Singapore], distributed by ISEAS in Asia, (2008).
16. J. F. McCarthy, The fourth circle: a political ecology of Sumatra's rainforest frontier, Stanford University Press, Stanford, (2006).
17. N. Peluso, Seeing Property in Land Use: Local Territorializations in West Kalimantan, Indonesia, *Geografisk Tidsskrift*, **105**(1), 1–15, (2005).
18. J. R. Bowen, *Islam, law, and equality in Indonesia an anthropology of public reasoning*, Cambridge University Press, Cambridge and New York, (2003).
19. BRR, Aceh and Nias one year after the tsunami, in *One Year Report Executing Agency of the Rehabilitation and Reconstruction Agency for Aceh and Nias*, The Aceh and Nias Rehabilitation and Reconstruction Agency, Banda Aceh, (2005).
20. WB, GAM Reintegration Needs Assessment. Enhancing Peace through Community-level Development Programming, World Bank, Washington, DC, (2006).