A GEOGRAPHY OF PEACE:

AN INVESTIGATION OF POST-CONFLICT PROPERTY AND LAND ADMINISTRATION IN ACEH

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There is no image, no painting, no visible trait, which can express the relation that constitutes property. It is not material, it is metaphysical; it is a mere conception of the mind.

~Jeremy Bentham

Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it.

~US Supreme Court Justice Benjamin N. Cardozo

ABSTRACT

This dissertation contributes to the understanding of how the social embeddedness of property impacts post-conflict natural resource management and peacebuilding. While the idea of property as rights is naturalized in many current discourses, working with this idea that property is merely rights can cause unanticipated problems. This is especially the case in post-conflict scenarios, where rights-focused approaches to property do not recognize how property is deeply linked to social identity, livelihoods, and political authority. In fact, in failing to understand the complexity of property, rights-focused approaches may also fail to grasp how post-conflict natural resource management can contribute to peacebuilding opportunities. The dissertation argues that failure to design policies that reflect the complex ways in which natural resources, property, social identity, livelihoods, and violent conflict are interlinked can undermine post-conflict natural resource management and lead to missed opportunities to support peacebuilding. Using an analytical framework that draws key ideas from literature on property, post-conflict natural resource management, legal geography, legal pluralism, and social identity, this dissertation critically examines experiences and debates regarding property in post-disaster/post-conflict Aceh, Indonesia, from 2005 through 2009. Research for this dissertation included semi-structured interviews, focus groups, archival research, and observations from four field visits (totaling five months) between August 2006 and June 2008 to the city of Banda Aceh and the regencies of Aceh Jaya, Pidie, and Aceh Barat.

The central theoretical contributions of this research include: (1) insights into how narratives surrounding property impact post-conflict natural resource management policy and project design; (2) a reconceptualization of the multi-scalar nature of property; and (3) development of a policy tool that identifies ways in which social identity interacts with natural resources and violent conflict in post-conflict scenarios. The primary practical contribution of this research is the analysis of lessons learned from the land titling project undertaken in post-disaster/post-conflict Aceh, Indonesia and the distribution of this analysis to fieldworkers and policymakers.

RÉSUMÉ

Cette étude a pour but de comprendre comment les facettes sociales de la propriété affectent la gestion de ressources naturelles ainsi que la consolidation et le maintien de la paix en milieux post-conflits. Bien que le concept de la propriété défini en tant que droits soit commun dans de nombreux discours intellectuels, simplifier la propriété à des droits entraîne de nombreux problèmes. Cela s'avère à être particulièrement le cas dans des zones post-conflits où des approches axées sur les droits légaux ne reconnaissent pas comment les régimes fonciers peuvent être associés à une identité sociale, à des moyens de subsistance, ou à une autorité politique. En ignorant les dimensions sociales de la propriété, une approche centrée sur les droits juridiques sous-estime le potentiel de la gestion de ressources naturelles comme outil stratégique pour favoriser le maintien et la consolidation de la paix. En effet, la thèse centrale de cette étude souligne l'importance d'étudier les interrelations entre la propriété, les ressources naturelles, les identités sociales et les moyens de subsistance en présence de conflits. Ignorer ces liens peut non seulement miner une gestion des ressources naturelles de manière durable, mais sous-estime l'opportunité de créer et consolider le maintien de la paix. Le cadre conceptuel de cette recherche s'appuie sur plusieurs outils théoriques tels que la littérature sur les dimensions philosophiques de la propriété, les théories en matière de gestion des ressources naturelles, la géographie et le pluralisme juridique, ainsi que la théorie de l'identité sociale. Cette étude examine les expériences et les débats concernant la propriété dans une région post-désastre/post-conflit en Indonésie (la province de Banda Aceh), de 2005 à 2009. Cette étude qualitative a été réalisée à travers des entretiens semi-directifs, des groupes de discussion participatifs en zones rurales et péri-urbaines, de la recherche en archives, ainsi que de l'observation directe à travers quatre visites de terrain (totalisant cinq mois) entre août 2006 et juin 2008 dans á Banda Aceh et les régions Aceh Jaya, Pidie et Aceh Barat.

Cette recherche apporte plusieurs contributions théoriques, notamment : (1) une étude sur les discours et récits conceptualisant la propriété et son impact sur la gestion de régimes fonciers; (2) une conceptualisation géographique de la dimension multi-scalaire de la propriété; et finalement, (3) le développement d'un outil stratégique identifiant les types de liens entre identité sociale et ressources naturelles en contexte de conflits. Finalement, cette étude apporte une contribution pratique à travers une analyse approfondie des leçons tirées du projet de restructuration des régimes fonciers entrepris par le gouvernement indonésien suite au tsunami de 2004.

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I deeply appreciate the time that the people of Aceh gave to my research and work. I hope that this dissertation provides a window into their world and voice for their struggles.

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CHAPTER ONE: INTRODUCTION

The purpose of this dissertation is to advance understanding of how the social embeddedness of property impacts post-conflict natural resource management and peacebuilding. Using an analytical framework that draws key ideas from literature on property, post-conflict natural resource management (PCNRM) and peacebuilding, legal geography, and social identity, this dissertation critically examines experiences and debates regarding property in post-disaster, post-conflict Aceh, Indonesia, during the period of 2005–2009. Research for this dissertation included semi-structured interviews, focus groups, archival research, and observations from four field visits (totaling five months) between August 2006 and June 2008 to the city of Banda Aceh and the regencies of Aceh Jaya, Pidie, and Aceh Barat.

1.1 PROBLEM STATEMENT

While post-conflict scenarios pose unique opportunities and problems for research, property is a difficult subject to research under any circumstances (Unruh 2003, 2006; Benda-Beckmann *et al.* 2006). One reason for this difficulty is that the concepts and practices surrounding property are dynamic (Benda-Beckmann *et al.* 2006). Property has many diverse, contextually dependent meanings for different cultures, ideologies, legal systems, social groups, and individuals. Indeed, there is a rich body of academic literature that examines how humans understand and enact property (see, for example, Becker 1977; Macpherson 1978; Benda-Beckmann 1979; Bromley 1991; Radin 1993; Demsetz 1967; Blomley 2003a, 2010; Peluso 2005; Benda-Beckmann and Benda-Beckmann 2006; Davies 2007; Mansfield 2007; Berry 2009; Gray and Gray 2009; Sikor and Lund 2009). Yet, despite the richness of both theory and practice regarding property, modern discussion about property in academia, policy documents, and public discourse is "saturated by talk of rights" (Verdery 2004, 139). In fact, property is often defined as a 'bundle of rights' and discussion limited to the variety of rights that are included in the bundle (Johnson 2007; Singer 2000). While the idea of property as rights is naturalized in many current discourses, working with the idea that property is merely rights can cause unanticipated problems. This is especially the case in post-conflict scenarios, where rights-focused approaches to property do not recognize how property is deeply linked to social identity, livelihoods, and political authority. Recent work on post-conflict housing, land, and property (HLP) issues has emphasized using rights-based

approaches (Leckie 2005; UN-HABITAT 2007). However, in failing to understand the complexity of property, rights-focused approaches may also fail to recognize how PCNRM can contribute to peacebuilding.

The central contention of this dissertation is that thinking of property as merely rights is an inadequate analytical approach for research in post-conflict scenarios. Such thinking creates blindness to the full nature of property—in particular, to the complexity of narratives; physical incarnations; material practices; and jural, emotional, political, geographic, and social relations that constitute property in people's daily lives. Broadening analytical approaches to property requires examining how property is defined and enacted. Moving beyond rights-focused approaches to property is necessary to advance geographic research on property and to design post-conflict policies that reflect the complexity of property dynamics.

To move beyond inherent problems with rights-focused approaches to property, I propose an analytical framework that identifies three alternative approaches to property. These three approaches are narratives, jural relations, and personhood. Although these three approaches are not exhaustive of ways to understand property, this framework provides a platform designed to challenge and advance theory and post-conflict policies concerning property and natural resource management. The three approaches are developed and examined through a case study of post-disaster, post-conflict property issues (with a focus on land management) in Aceh, Indonesia where the 2004 Indian Ocean earthquake and tsunami struck (see Figures 1.1 and 1.2). The results of this research include three manuscripts that challenge rights-focused policy approaches and reveal unique ways in which property can be theorized in studies of imbricated subjects such as political authority, PCNRM, legal geography, and social identity. The three manuscripts show that broadening of analytical frameworks regarding property is critical for enhancing property theory and for understanding why specific post-conflict projects experience limited success in performing activities like issuing land titles.

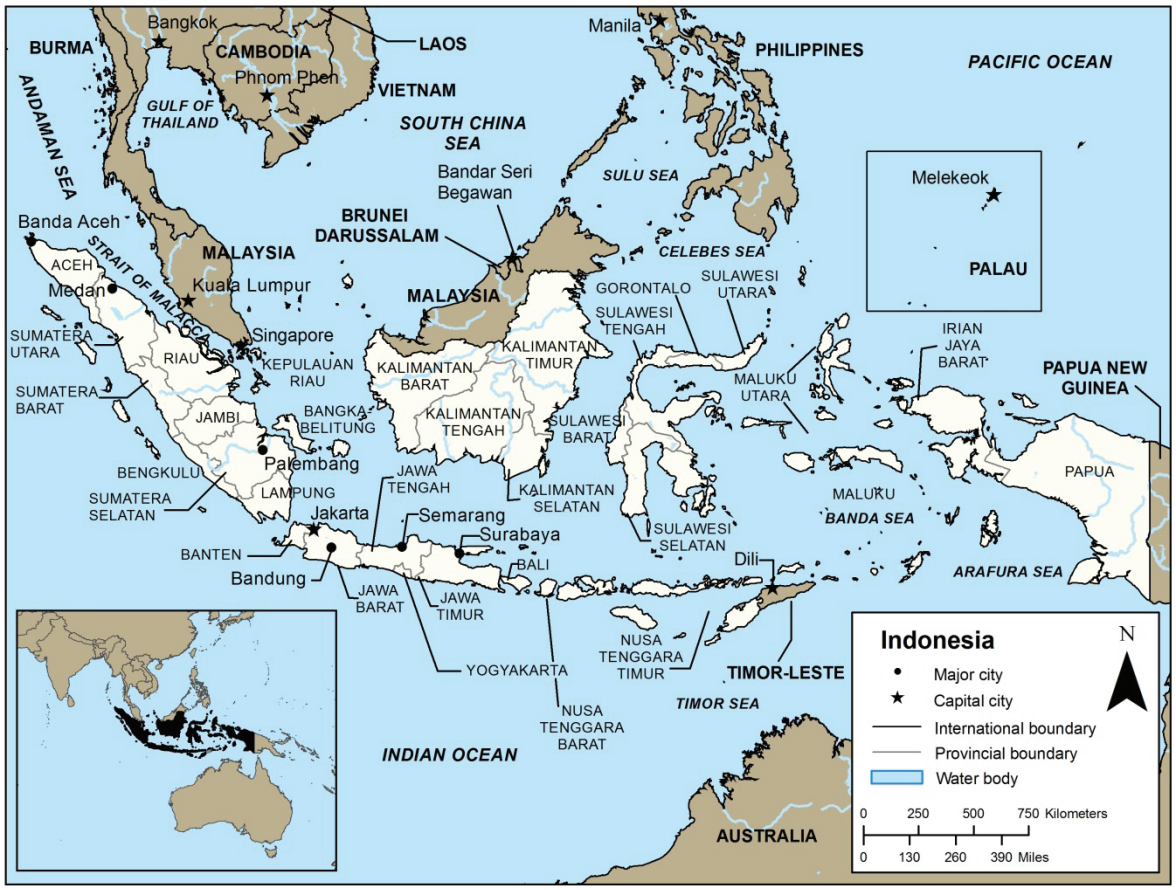


Figure 1.1 Indonesia and Aceh. Source: author publication (prepared by M. Pritchard).

Figure 1.2 Indian Ocean earthquake and tsunami. Source: USGS.

This dissertation makes theoretical contributions to two bodies of literature: (1) an emergent literature on the theoretical foundations of PCNRM and peacebuilding policies and (2) a growing body of legal geography literature that addresses theories of property. The dissertation also makes a practical contribution to PCNRM policy by using the proposed analytical framework to outline and analyze lessons learned from the implementation of a controversial, post-conflict/post-disaster land titling project called the Reconstruction of Aceh Land Administration System (RALAS).

1.2 RESEARCH CONTEXT

The Indonesian province of Aceh, also known as *Nanggroe Aceh Darussalam*, encompasses the northern tip of the island of Sumatra. From 1976 to 2005, this region was the site of a sporadic secessionist conflict between the Free Aceh Movement (*Gerakan Aceh Merdeka*, or GAM) (see Figure 1.3) and the government of Indonesia (GOI). Cyclical outbreaks of violence—combined with long-term intimidation, torture, and material dispossession of civilians—have claimed some 15,000 to 33,000 lives, paralyzed regional development, and polarized much of the population (Reid 2006; Schulze 2007).

Although the conflict in Aceh has sometimes been depicted as being based on one or more main cleavages, the violence is actually a result of a complex mix of contextual opportunities and issues. These issues include ethnonational territorial claims, a desire for local political autonomy, disputes over local distribution of hydrocarbon and resource revenues, and even personal vendettas (Reid 2006; Aspinall 2007; McCarthy 2007; Schulze 2007; Drexler 2008). Adding further complexity are the issues of Acehnese cultural identity, recognition of Islamic principles of governance, and grievances involving justice and reparations for conflict-related crimes. The issues and the conditions that escalated and supported violent resistance in Aceh have changed over time according to the strategic agendas of changing participants (Reid 2006; McCarthy 2007; Schulze 2007; Drexler 2008). GAM demands for amnesty and a special reintegration fund for former combatants, for example, contributed to the failure of the 2003 peace negotiations. Working toward a sustainable peace in Aceh has required confronting the complex overlap of elite and grassroots grievances; dealing with changing participants and changing conditions that encourage violent resistance; and acknowledging the special needs of parties involved in the violence.

Figure 1.3 GAM women soldiers approximately 1998-1999.
Source: Ministry of Defense of the Republic of Indonesia.

Figure 1.4 Mass grave revealing human rights abuses in Aceh.
Source: Shearn & Townsend 2012, online (Jacqueline Koch, epa/Corbis).

Even though previous peace processes have treated GAM and the GOI as monolithic representatives of the Acehnese people and the Indonesian state, victims of violence are indicative of the internal fissures within and between GAM, Acehnese civil society, the Indonesian military, and the GOI (Drexler 2008). These fissures, which often escape conflict analyses, contributed to failed peace negotiations and continue to pose obstacles to a sustainable peace. As Drexler (2008, 20) notes, "observations of the Aceh conflict over the last ten years show that oversimplified analyses of conflicts extend and even intensify violence".

Disregard of the internal complexities supports politicized narratives of group identities—narratives that have been used to undermine certain players and legitimize others in the conflict in Aceh. For example, while some narratives find the roots of the conflict and of GAM in a nearly unbroken history of armed resistance to colonial Dutch, Japanese, and Indonesian forces since 1873, others identify GAM as a criminal organization whose goals have little connection to this historical resistance (Reid 2006; Nessen 2006; Drexler 2008). However, the conflict in Aceh is complex and cannot be reduced to a conflict based on any single issue between two monolithic parties. Analyses of the conflict and progress in peacebuilding must recognize that the actors involved in and the reasons for continued violence in Aceh have evolved during the 29-year conflict. Likewise, analysis of property issues requires recognizing that these changing political narratives have influenced approaches to property and land management. As of 2013, the human rights abuses that occurred throughout much of Aceh have still not been adequately investigated, despite clear evidence of massacres (see Figure 1.4) and atrocities committed on civilians by the Indonesian military (TNI), GAM, and other smaller separatists groups (AI 2013). In addition to the above, widespread dispossession and destruction of property occurred during the 29-year conflict (Wong *et al.* 2007). The way in which conflict-related damage to property has been treated has been influenced by these narratives.

The signing of the Memorandum of Understanding (Helsinki MOU) between the Government of the Republic of Indonesia and the Free Aceh Movement in Finland, in August 2005 marked the end of the most recent period of violence in Aceh, and it is the starting point for this study's investigation

of property, land tenure security and peacebuilding.[1] The Helsinki MOU signing was inextricably linked with the 2004 Indian Ocean tsunami. Although the tsunami was only one of many factors leading to the end of violence, its massive destruction set the stage for the peace process by changing immediate political and military strategies and the region's economic, social, and ecological landscape (Le Billon and Waizenegger 2007; Gaillard *et al.* 2008).
On 26 December 2004, a massive earthquake and tsunami struck lowland communities in Aceh. A tragedy of inconceivable proportions emerged in the following days, with reports of some 167,000 people killed or missing and 500,000 more displaced and homeless in the Aceh region alone (BRR 2005; USAID 2005). In response to the tragedy, international aid and development workers poured into Aceh to provide immediate assistance for the recovery and to 'reconstruct' what they believed were the infrastructural hallmarks of a developed economy and civil society. In response to the tragedy, an estimated USD 7.2-7.7 billion was pledged to Aceh by international donors and the GOI (Masyrafah and McKeon 2008; BRR 2009).

Yet there were many difficulties—both anticipated and unanticipated—that challenged disaster recovery and reconstruction. Progress was most obviously hampered by the magnitude of devastation, including the substantial loss of human capacity and the difficulty of allocating material resources for the reconstruction of both basic legal documentation and physical infrastructure such as roads and buildings. Rendering this situation even more difficult was that Aceh was both a post-disaster and post-conflict scenario, wherein conflicting development and political agendas competed at multiple scales.

At the time of the tsunami, few international aid and development workers could have understood how the complexities of a natural disaster and violent conflict in Aceh might be interlinked. Many international aid and development workers had little specific knowledge of regional politics and the cultural context of Aceh (Burke and Afnan 2005). This lack of context-specific knowledge was understandable. At the time the tsunami struck, Aceh was almost completely closed to development agencies and was known in the outside world for primarily three things: substantial offshore hydrocarbon reserves, a strong Islamic heritage, and a nearly thirty-year separatist war between the Government of Indonesia (GOI) and the Free Aceh Movement (GAM, Gerakan Aceh Merdeka)

[1] For the complete text of the Helsinki MOU, see www.aceh-mm.org/download/english/Helsinki%20MoU.pdf

(Ross 2005; Reid 2006). While a working understanding of the region and conflict could be established via local sources and existing academic publications on the regional history, understanding how to logistically approach and frame the simultaneous natural disaster and ongoing violent conflict proved to be more difficult. In 2005, there were no best practice guides for situations wherein natural disasters and peacebuilding efforts occur simultaneously. As well, there was little academic and policy work that recognized the complexity of cases in which natural disasters influenced violent conflicts and peacebuilding (Comfort 2000). The lack of local knowledge, the lack of theoretical and policy frameworks for understanding the simultaneous natural disaster and violent conflict, and the lack of crossover technical skills among aid workers led to separate streams of post-conflict and post-disaster projects that rarely called for coordinated activities or project designs (Burke and Afnan 2008; Waizenegger and Hyndman 2010; Hyndman 2011; Phelps *et al.* 2011).

Of course, some of the situational linkages between the tsunami and conflict in Aceh were immediately pointed out. News media, development workers, researchers, and government officials spoke of 'disaster diplomacy' as they argued that the tsunami impacts created conditions that facilitated the eventual ceasefire and the Memorandum of Understanding (MoU) that ended the separatist war in August 2005 (Le Billon and Waizenegger 2007; Gaillard *et al.* 2008). Yet the complex ways in which different post-conflict and post-disaster projects would interact with each other and with the social, cultural, and political landscape were far from clear in 2005 and are still being studied several years after the disaster (Waizenegger and Hyndman 2010; Hyndman 2011; Phelps *et al.* 2011). This dissertation critically examines how property issues were dealt with in this complex situation.

The tsunami adversely impacted property management in Aceh in numerous ways. According to estimates, some 300,000 land parcels, 250,000 homes, over 2,000 schools, 10,000 kilometers of roads, and 15 percent of agricultural lands were severely damaged or destroyed by the earthquake and tsunami (Fitzpatrick 2005; Kenny *et al.* 2006; Abidin *et al.* 2006). The deaths of those who had local knowledge of property holdings and of forty-one government employees who had managed the state property records, as well as the loss of traditional property markers, the destruction of state property records, and the unclear status of the property rights of orphans and women, led many organizations involved in Aceh to see land tenure insecurity as a central threat to the

sustainable recovery and future development of the region. There was consensus among international development organizations, the government of Indonesian (GOI), and non-governmental organizations (NGOs) that identifying property owners, adjudicating disaster-related property disputes, and demarcating and registering land with the state were critical logistical hurdles – both for immediate recovery and for the future establishment of a functioning economy in Aceh (WB 2006). As a result, international development organizations, the GOI, and many NGOs framed property issues primarily as post-disaster challenges and did not make substantial connections between property issues and post-conflict dynamics. The narrative that developed, on the basis of these early impressions, was that there were very few post-conflict property issues (Fitzpatrick 2005). However, given that rebel strongholds were spatially distributed throughout the highlands and lowlands, and that the tsunami primarily impacted the lowlands, this post-disaster narrative regarding property issues would prove to be too simplistic.

In addition to the narrative that framed property issues exclusively as post-disaster challenges, problems arose from a specific conceptualization of property that became prevalent in Aceh during the recovery and reconstruction period. The World Bank, the GOI, and international organizations promulgated a vision of property that was drawn directly from and followed the policy prescriptions of Hernando de Soto's approach to property, land management, and capitalism (de Soto 2000) (see Figure 1.5). De Soto argues that the state must help people realize the potential of their informal material assets by issuing them statutory titles for such assets (de Soto 2000). De Soto takes a rights-focused approach to property that emphasizes the economic value of material assets, the right to transfer those assets, and the role of the state as primary guarantor of individuals' property rights. It is an extension of what Joseph Singer calls a "misleading and morally deficient" ownership model of property, wherein property is extracted from its social relations and defined simply as a bundle of rights (Singer 2000, 6). Indeed, because de Soto reduces property to a single right (its ability to be transferred in capital markets) and simply labels all non-statutory property relations and practices as 'dead capital', one could argue that this theory does not truly recognize property outside of statutory property entitlements. While statutory recognition of property rights and the possession of statutory title can be liberating for many individuals and may open up the ability to transfer property, de Soto's theory has been criticized as being inappropriate

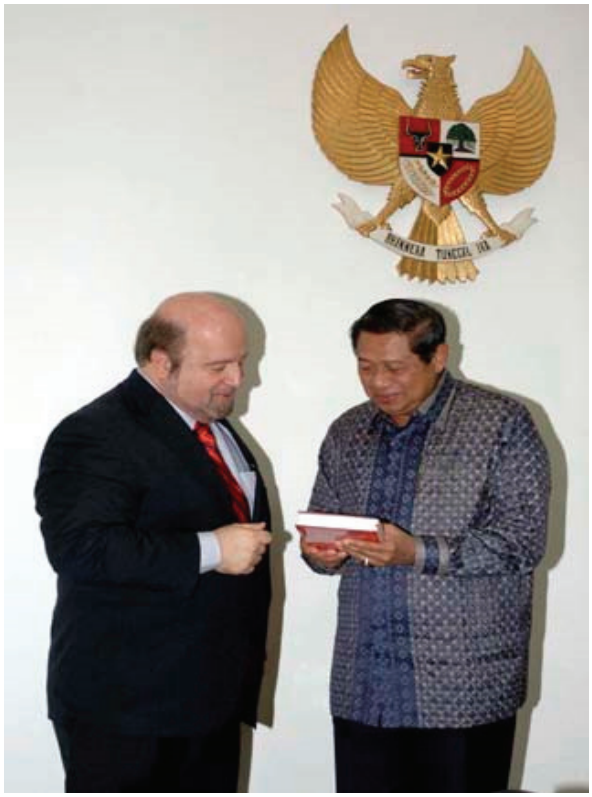


Figure 1.5 Hernando de Soto and Indonesian President Susilo Bambang Yudhoyono. In the immediate aftermath of the tsunami, de Soto's approach to property was cited as the basis for work in Aceh. Here he is handing his book "The Mystery of Capital" to the president.
Source: The Age.

for post-conflict and rural areas, where land transfers are not the primary function of property, and property rights are not best guaranteed by corrupt, illegitimate, or ineffective state institutions. Underlying these criticisms is the awareness that this theory is more concerned with the blanket recognition of legal rights of transfer than with recognizing the complex social embeddedness of property (Home and Lim 2004; Otto 2009). In fact, scholars argue that it is the very logic of de Soto's approach that underlies many approaches to land titling that have dispossessed some marginalized communities of the property rights that statutory land titling is supposed to guarantee (Elyachar 2005; Davis 2006).

In the case of Aceh, de Soto's logic was realized in the design and implementation of the Reconstruction of Aceh Land Administration System (RALAS) project. In response to the perceived

urgency of resolving the broad array of property issues that were often simply labeled as 'land tenure insecurity', the Multi Donor Trust Fund for Aceh and Nias (MDTF) focused the first of their 23 projects in the region on supporting the registration and titling of land parcels.[2] In June 2005, the fund established a budget of US$28.5 million for RALAS, a state-administered land titling project. Although RALAS was funded through the pooled contributions of many international donors, it was directly administered through the National Land Agency (*Badan Peranahan Nasional* or BPN), was subject to Indonesian national property laws regarding land and natural resources, and was linked to activities of the national agency meant to preside over the tsunami recovery known as the Agency for Rehabilitation and Reconstruction (*Badan Rehabilitasi dan Rekonstruksi* or BRR). As property issues were framed as post-disaster issues, RALAS was created to deal with natural disaster impacts on property. The RALAS project began in August 2005 with the goal of issuing 600,000 titles while encouraging community participation in the titling and dispute adjudication process and guaranteeing protection of the property rights of orphans and women. The RALAS project was the equivalent of a poster child for the recovery, reconstruction, development efforts in Aceh. Even former US President Bill Clinton, serving as the UN Special Envoy to Aceh, extolled this project and recognized the influence of de Soto's theory in creating the RALAS project not just for Aceh but as a prototype for land titling projects around the world:

> Those of you familiar with the work of Mr. (Hernando) de Soto around the world and similar projects know that the world's poor people have roughly 5 trillion dollars in assets that are totally unusable for economic growth because they don't have title to them so they can't get credit using what they own as collateral. This is going to be done through the World Bank grant in Aceh. It is very forward thinking on both the part of the World Bank and Indonesia but I hope that the other countries affected will do that and in its pursuit of the Millennium Development Goals, I hope that you, Mr. President and ECOSOC, can have an influence in urging this sort of project to be done in other countries outside the tsunami affected areas. ~Bill Clinton July 2005 (Bell 2006)

Despite the above support, RALAS experienced only limited success in issuing land titles. By 2009 when RALAS closed, fewer than 223,000 of the intended 600,000 land titles had been issues - the

[2] The World Bank served as trustee of the Multi Donor Trust Fund for Aceh and Nias (MDTF) - a partnership of the Indonesian government and the international community to support the recovery following the tsunami. The fund coordinated contributions from 15 donors: the European Commission, the Netherlands, United Kingdom, World Bank, Sweden, Denmark, Norway, Germany, Canada, Belgium, Finland, Asia Development Bank (ADB), United States, New Zealand and Ireland.

majority of which were concentrated in urban areas (WB 2010). Nearly 50 percent of the recipients of title certificates who were interviewed in a large-scale project assessment of RALAS did not feel that the certificate had improved their tenure security (Deutsch 2009). Likewise, half of these respondents also recognized that the community demarcation and adjudication activities had not been fair, especially with regard to women's rights, due to the internal power dynamics that dominated such sessions. Not only did RALAS fail to resolve many of the lingering disputes over property, several disputes were caused by errors of land measurement or inadequate recording of ownership information on the titles. In addition, a plethora of other issues began to undermine the idea that statutory land titles guaranteed tenure security, such as the government's role in land management, the clarification of land transmission details, the mistreatment of women's claims to property rights even after issue of the title certificates, and the prospect of future transfer costs and taxes that remained unclear to a large portion of the residents of Aceh (Fitzpatrick 2008a; Jalil *et al.* 2008; Deutsch 2009).

The experiences surrounding property and land management in Aceh during 2005-2009 point to problems in the way that property was managed in this particular post-disaster, post-conflict scenario. However, these experiences also indicate broader issues regarding how we conceptualize property and whether post-conflict policy makers or researchers have adequate analytical tools to confront the complexity of the social embeddedness of property in ways that encourage peacebuilding efforts. Viewed through a narrow, rights-focused approach to property, the inability of RALAS to meet its land titling goal can simply be blamed on bureaucratic failures. Yet, the research in this dissertation reveals that during 2005-2009, many people in Aceh questioned why statutory land titles were prioritized by international institutions as the only route to tenure security in a separatist region where distrust of Government of Indonesia (GOI) representatives was still palpable and widespread. As well, the region has at least three strong legal traditions that complement each other (Islamic law, *adat*, and statutory law) and are commonly used to manage property and provide tenure security in local communities. As a result, people questioned why statutory titles should overrule all other traditions. Indeed, some NGO and international development workers openly questioned whether the RALAS land titling project was simply a government land and tax grab meant to bring the territory of the separatist region under the administrative control of the GOI. The research in this dissertation reveals that manipulating

property in post-conflict regions is a potent strategy for organizing and consolidating political authority. Using the land titling case of Aceh, I develop an analytical framework to explore how property was defined and enacted, provide alternative ways of approaching post-conflict property policy and PCNRM, and contribute to research approaches to property in legal geography.

1.3 RESEARCH OBJECTIVES

This dissertation has three objectives that each link to the dissertation aim and draw from one or more of the three approaches of property outlined in the analytical framework. Each of the objectives is also directly linked to one of the three manuscripts that constitute Chapter Four, Chapter Five, and Chapter Six of this dissertation. The three objectives are:

1. **Identify how the framing of property issues by individuals and organizations active in post-disaster/post-conflict recovery and reconstruction impacted the design, implementation, and outcomes of the land-titling project *Reconstruction of Aceh Land Administration System* (RALAS) (Chapter Four).** To achieve this objective, I use the 'narrative' approach to property question why property issues were framed as post-disaster rather than post-conflict issues.

2. **Examine how political authority interacts with property through scalar politics (Chapter Five).** To achieve this objective, I use the 'jural relations' approach to property to examine how property and land management are linked to the dynamics of authority through scalar politics in post-conflict scenarios.

3. **Develop a policy tool integrating the complexity of the social embeddedness of property into the design of practical, post-conflict natural resource management and peacebuilding policy options (Chapter Six).** To achieve this objective, I apply the 'personhood' approach to property to an examination of the nexus of social identity, property (land and other natural resources), and peacebuilding.

1.4 OUTLINE OF DISSERTATION

This dissertation contains seven chapters, three of which are standalone manuscripts that have been or will be published in peer-reviewed outlets (Chapters Three, Four, and Five). As outlined above, each of the objectives is linked to one of three manuscripts. At the time of presentation of this dissertation, both Chapter Four and Chapter Six have been published as chapters in peer-reviewed, edited books. A modified and shortened version of Chapter Four was also published in a peer-reviewed journal. Chapter Four has been submitted for publication as a journal article. Details about publications are included at the beginning of each chapter. The manuscripts have been kept as close as possible to their published format, so some elements of the literature review found in Chapter Two reappear in each of the manuscripts. In addition, there is some replication in the coverage of methods in each manuscript. The structure of the dissertation and content of each chapter is summarized below.

In **Chapter Two,** I review literature that provides the foundation of the dissertation's analytical framework and situate the dissertation's research questions within ongoing legal geography and post-conflict research regarding property.

In **Chapter Three,** I provide an overview of the methods used to gather and analyze data in the dissertation as well as some of the issues encountered in the field that are unique to post-conflict and post-disaster research.

Chapter Four consists of the first manuscript and corresponds to the dissertation's first objective. This chapter provides geographic and historical context on the case study used in the dissertation. I overview the post-disaster and post-conflict scenario in Aceh, outline property systems in Aceh, and provide a description of RALAS. While this manuscript provides detailed background information for the dissertation, it also includes a critical examination of the impacts that resulted from framing property as only a post-disaster and not as a post-conflict issue. In investigating how property issues were framed, this chapter engages with the 'narrative' approach to property that draws from Carol Rose's (1994) work on property. The concepts of propertied landscapes and evidence landscapes are explored as ways to operationalize property narratives. I argue that the narratives framing of property issues as a post-disaster problem were linked to both logistical

efficacy and political authority dynamics; led to policies that failed to consider the nexus of property, land, social identity, and political authority in a separatist region; impacted the success of RALAS in issuing land titles; and led to missed opportunities for post-conflict land management to contribute to peacebuilding in the region.

Chapter Five consists of the second manuscript and corresponds to the dissertation's second objective. In this chapter, I overview geographic literature linking property, political authority, and scalar politics. I use the 'jural relations' approach to property. Drawing from Wesley Newcomb Hohfeld's (1913) framework of jural relations and Joseph Singer's (2000) work on obligations, I examine how the formalization of property rights (entitlements) in statutory systems fundamentally changes the ways in which property is defined and enacted. Using this framework, I examine how property and political authority interact through scalar politics through two case studies of land titling experiences that occurred between 2005-2009 in a rural village and an urban neighborhood in Aceh, Indonesia. I argue that that the interaction of property and scalar politics is important to the consolidation of authority. I outline how recognition of scalar politics and jural relations of property provide policy makers insight into appropriate timing, locations, and procedures for land titling in post-conflict scenarios.

Chapter Six consists of the third manuscript and corresponds to the dissertation's third objective. In this final manuscript, I apply the 'personhood' approach to property to an examination of the nexus of social identity, property, and peacebuilding. This approach to property draws from Margaret Jane Radin's (1993) theory on personhood to emphasize the mutually constitutive connections between property and social identity. This chapter includes an overview of social identity literature in relation to violent conflict and natural resources. I argue against models that rely primarily on the economic value of natural resources to design and implement PCNRM plans and leverage peacebuilding efforts. Drawing on insights from this dissertation's research on property in Aceh as well as case studies on several other post-conflict scenarios involving social identity and natural resource management, I argue that social identities are flexible frames with complex and mutually transformative linkages to property and conflict dynamics. I propose a policy tool with related policy options for appropriate natural resource management and peacebuilding

policies that recognize the social embeddedness of property—particularly the complex linkages between social identity, property, and conflict dynamics.

Chapter Seven concludes the dissertation with an outline of the practical and theoretical contributions of the research undertaken. The central theoretical contributions of this research include: (1) insights into how narratives surrounding property impact PCNRM policy and project design; (2) a reconceptualization of the multi-scalar nature of property; and (3) development of a policy tool that identifies ways in which social identity interacts with natural resources and violent conflict in post-conflict scenarios.[3] The primary practical contributions of this research include the recommendations (located at the end of each manuscript) for post-conflict land title project planning and PCNRM policy. To conclude, I review limitations of the dissertation and make recommendations for future research.

[3] This latter contribution on social identity is a policy tool that is an outcome of the research undertaken in this dissertation, it is not the analytical framework used for framing the actual dissertation research.

CHAPTER TWO: LITERATURE REVIEW AND ANALYTICAL FRAMEWORK

2.1 INTRODUCTION

In this chapter, I introduce and critique literature that provides the foundation of the dissertation's analytical framework and situates the dissertation within current post-conflict natural resource management (PCNRM) and legal geography research. I argue that conceptualizing property as merely rights is an inadequate approach for research and property management in post-conflict environments. Alternatives to rights-focused approaches to property are necessary to appreciate the social-embeddedness of property, advance geographic research on property, and design post-conflict policies that reflect the complexity of property dynamics.

The analytical framework is informed by four bodies of literature: PCNRM, property, legal geography, and social identity. Figure 2.1 provides a road map identifying key themes from each body of literature. As previously discussed, the purpose of this dissertation is to advance understanding of how the social-embeddedness of property impacts PCNRM and peacebuilding. Figure 2.2 outlines the analytical framework and illustrates how concepts drawn from the literature relate to the three objectives of the dissertation. The three objectives outline three alternative approaches to property, each explored within the context of PCNRM and, more specifically, land management issues in Aceh.

In the next section, I introduce the emerging field of PCNRM literature (Section 2.2). Throughout the dissertation, PCNRM literature provides the context through which I explore the links between peacebuilding and property issues. Of the many resources that are impacted by conflicts, I focus on land. Land management is one of the primary avenues through which problematic property issues arise in post-conflict settings and it is the window through which this research on property takes place. In Section 2.3, I explain the intellectual evolution of the notion of property as a 'bundle of rights' and outline three alternative approaches to property: jural relations, personhood, and narrative. As noted in Figure 2.1, the theoretical and practical implications of each of these three approaches are explored in three respective results chapters. For example, in Chapter Four, the narrative approach is used to explore how post-disaster and post-conflict narratives regarding property impacted peacebuilding. In Section 2.4, I overview approaches to property in geography

and outline how legal geography understandings of propertied landscapes, evidence landscapes, and scalar politics can be used to operationalize alternative approaches to property in post-conflict scenarios. In Section 2.5, I define how this dissertation approaches social identity as a framing process and I overview literature that on the interactions of social identity, armed conflict, natural resources, and property.

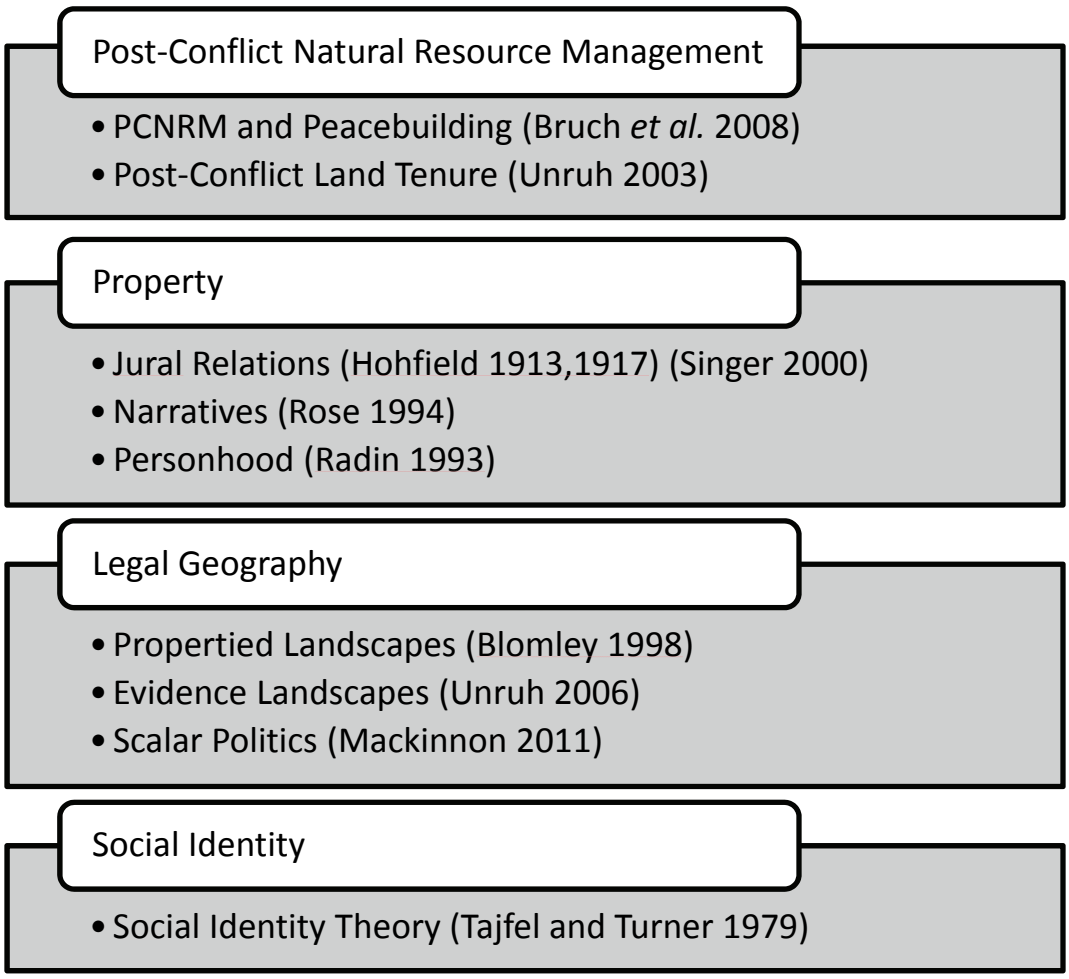
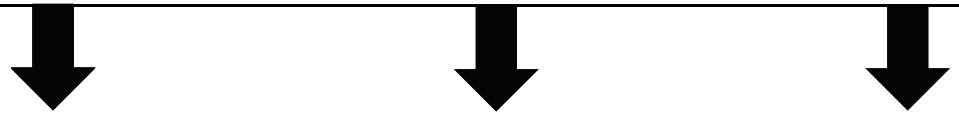


Figure 2.1 Literature Review

Body of Literature	Chapter 4	Chapter 4	Chapter 6
PCNRM	Peacebuilding and NRM Post-Conflict Land Tenure	Peacebuilding and NRM Post-Conflict Land Tenure	Peacebuilding and NRM Post-Conflict Land Tenure
Property	Narratives	Jural Relations	Personhood
Legal Geography	Propertied Landscape Evidence Landscape	Scalar Politics	
Social Identity			Social Identity Theory



Objective 1	**Objective 2**	**Objective 3**
Identify how the framing of property issues by individuals and organizations active in post-disaster/post-conflict recovery and reconstruction impacted the design, implementation, and outcomes of the land-titling project RALAS.	Examine how political authority interacts with property through scalar politics.	Develop a policy tool integrating the complexity of the social embeddedness of property into the design of practical PCNRM and peacebuilding policy options.

Figure 2.2 Analytical Framework Guiding the Dissertation

2.2 POST-CONFLICT NATURAL RESOURCE MANAGEMENT (PCNRM)

Emerging publications on post-conflict natural resource management (PCNRM) and peacebuilding has created a corpus of literature that draws insights from several disciplines including economics, anthropology, peace studies, law, political science, and geography (Jensen and Lonergan 2011; Lujala and Rustad 2011). This dissertation contributes to this growing corpus of literature by using geographic approaches to concepts such as landscape and scale to examine how conflicting approaches to property influence PCNRM.

The importance of natural resources and environmental factors in armed conflict has long been recognized. The environment as the location of conflict poses logistical challenges; conflict groups may strategically destroy or damage natural resource stocks; and natural resources are critical for financing, recruitment, and military strategy (Galeano 1973; Dyer 2005; Yergin 1991; Etten *et al.* 2008). Yet, academic debate over topics in environmental security, resource wars, and environmental conflict reveal that links between natural resources and armed conflict are deeper than simply logistics and military strategy (Gleditsch 1998; Ross 2004; Dalby 2007; O'Lear and Diehl 2007). The social contexts that establish the value and definition of 'resources' and the characteristics of those resources themselves may contribute to the onset and escalation of armed conflict, sustain and finance conflict, and impact peacebuilding efforts (Le Billon 2001a; UNEP 2009; Bruch *et al.* 2008). Disputes and grievances over natural resources are rarely the unique cause of armed conflict, though they "contribute to armed conflict when they overlap with other factors, such as ethnic polarization, high levels of inequity, poverty, injustice and poor governance" (UNEP 2012, 8). As well, the complexity of the linkages between armed conflict and natural resources pose challenges to framing the research field. As Gleditsch (1998) points out, posing appropriate research questions for different scales of analysis and for different methodological approaches is an ongoing challenge. Since the 1990s, scholars working on these issues have generated a rich literature outlining the multi-dimensional ways in which natural resources and conflict interact (Ross 2004). For example, there are debates over ways in which environmental stress and resource scarcity (Homer-Dixon 1994; Gleditsch 1998), the abundance of high value resources (Collier and Hoefller 1998; Watts and Peluso 2001; Fearon 2005; Brunnschweiler and Bulte 2009), spatial and temporal characteristics

of resources (Le Billon 2001), and grievances over perceived inequities of rents from resource exploitation (Collier and Hoefller 1998; Aspinall 2007) impact the onset, duration, and strategies and tactics used in armed conflicts. These theoretical debates have led to applied policy interventions that, for instance, have attempted to limit rebel financing for armed conflict by stopping trade in diamonds (Le Billon 2008). In fact, the UN Security Council has explicitly recognized the role of natural resources in conflicts and post-conflict scenarios.[4]

In contrast, the ways in which natural resources can play a role in peacebuilding efforts have received less attention. (Bruch *et al.* 2008). Yet, as the UNEP (2009, 5) observes, "the recognition that environmental and natural resources can contribute to armed conflict only underscores their potential significance as a pathway for cooperation and confidence-building in war-torn societies". The realization that natural resource management plays "a pivotal role in the transition of post-conflict societies towards lasting peace" has led to calls for theoretically informed research to generate applied policy recommendations (Bruch *et al.* 2008, 58). In fact, Bruch *et al.* (2008, 58) argue that "there is no effective conceptual framework (or frameworks) for analyzing, explaining, or understanding the role of natural resources in post-conflict peacebuilding." Building effective frameworks for PCNRM requires identifying common challenges and themes while also developing detailed approaches for specific resource sectors and resource types (Jensen and Lonergan 2011; Lujala and Rustad 2011; UNEP 2012).

[4] *S/PRST/2007/22:89 Maintenance of international peace and security: natural resources and conflict*. "The Security Council recalls the principles of the Charter of the United Nations and in particular the Security Council's primary responsibility for the maintenance of international peace and security. In this respect, the Security Council recognizes the role that natural resources can play in armed conflict and post-conflict situations […] Moreover, the Security Council notes that, in specific armed conflict situations, the exploitation, trafficking, and illicit trade of natural resources have played a role in areas where they have contributed to the outbreak, escalation or continuation of armed conflict. The Security Council, through its various resolutions, has taken measures on this issue, more specifically to prevent illegal exploitation of natural resources, especially diamonds and timber, from fuelling armed conflicts and to encourage transparent and lawful management of natural resources, including the clarification of the responsibility of management of natural resources"

Conceptual clarity is required for developing effective analytical frameworks. Kalyvas (2006) recognizes that violence, conflict, and war are often confounded in popular and scholarly accounts even though they express concepts that are analytically different. There is also considerable confusion over terminology in the field of conflict and peace studies with well over a hundred different ways of classifying types of conflict (Ramsbostham *et al.* 2005) and several different definitions of peacebuilding among not only different scholars, but also different branches of the United Nations (Barnett *et al.* 2007). This dissertation considers 'post-conflict' to refer to periods after armed conflict that entailed direct, physical violence between political groups. Institutionally, this moment is often correlated with a ceasefire or formal peace agreement. Below, I outline how this dissertation conceptualizes peace and peacebuilding in post-conflict contexts.

2.2.1 PCNRM AND PEACEBUILDING

Geographers have recently struggled with defining "peace" and operationalizing peacebuilding research in the context of the discipline's history and current research themes. Inwood and Tyner (2011) argue that the discipline of geography – a discipline that has historically been implicated in the making and mapping of armed conflict. – has an unfinished pro-peace agenda. They argue that one of the first steps of engaging a pro-peace agenda is in conceptualizing peace as more than the opposite of war – more than the absence of direct (physical) violence. Several authors have recently argue that geographers have been much better at studying war and have not been able to build peace because geographic work is thus far too ambiguous in in defining peace (Megoran 2011; Williams and McConnell 2011).

Drawing from Johan Galtung's work on negative and positive peace, Megoran (2011) attempts to reorient geographers towards the work of positive peace. Wusten also draws from Galtung's (1976, 1996) distinction between negative peace (the absence of direct violence) and positive peace (absence of direct, structural, and cultural violence). Galtung's distinction is a conceptual cornerstone of many approaches to peacebuilding that have continued to extend the idea of positive peace. For Lederach (1997) and Miall (2007) who draw from Galtung, positive peace signifies the presence of means to achieve social justice - the presence of the means to prevent violence in all forms. Wusten (2005, 62) argues that

geographers who explore different types of violence and development may consider peace as the absence of violence only if they recognize that “as violence becomes multidimensional, so does peace: not only the absence of direct, physical violence, but possibly of also the absence of mental and/or structural violence”. Yet, Ross (2011) argues that the above calls for a reorientation of research towards peace are actually problems with epistemological approaches to the war/peace divide. That if we understand peace with an expansive positive peace approach, then much of the recent geographic work on (for example) war, terrorism, and justice are pro-peace. Koopman (2011) argues in a similar vein that geographers are already working on peacebuilding research on the ground - that they are doing work that recognizes the socio-spatial relations and context dependency of peace and attempting to bring these "peace(s)" back into a coherent whole.

Taking a post-conflict intervention point of view, peacebuilding entails an expansive focus on the root causes of all forms of violence and it moves beyond peacekeeping (conflict management) and peacemaking (conflict resolution) that narrowly focus on the instance of direct violence (Lederach 1997; Miall 2007). The discussion in geography over peace and peacebuilding reflects the broader theoretical difficulties of moving from the clear logistical tasks and mileposts of peacekeeping and peacemaking to the expansive concepts of peacebuilding and positive peace - concepts which attempt to encapsulate the flexible idea of social justice in a rapidly changing world.

While Galtung (1976) coined the term ‘peacebuilding’ in the 1970s, it is widely recognized that peacebuilding was not a major feature of international politics until the 1992 publication of *An Agenda for Peace* by UN Secretary-General Boutros Boutros-Ghali. Indeed, post-conflict peacebuilding processes driven by the United Nations were not even consolidated until the 2005 establishment of the United Nations Peacebuilding Commission (UNPBC). While many organizations contribute to post-conflict peacebuilding, the UNPBC now has the mandate to coordinate post-conflict peacebuilding in war torn countries. Despite this mandate, there is much debate surrounding the emphases and approaches of peacebuilding as an institutional practice. Since the 1990s institutional activities under the rubric of peacebuilding have changed to conform to political and economic developments

(Paris 2004; Tschirgi 2004; Biersteker 2007). Biersteker (2007, 39) argues that operationalization of peacebuilding is made difficult because there is "no consensus on the definition of and the best practices for achieving peacebuilding, it is in practice a liberal project." Tschirgi (2004) notes that peacebuilding discourse changed from an ethical obligation to intervene in war torn societies in the 1990s to a post-9/11 United States discourse of nation-building, regime change, and stabilization and reconstruction. Moreover, the emphasis on supporting internal peacebuilding actors and initiatives is now replaced by external prescription of a set of policies for post-conflict transitions. These policies have clear political and economic goals that conform to neoliberal approaches to state-building and emphasize rule of law, private property, democratization, and free markets (Paris 2004). Paris (2004) outlines how current peacebuilding policy prescriptions influenced by economic and political ideology of liberalization and marketization are applied indiscriminately to all post-conflict scenarios. Rather than focus on the temporal phasing of stabilization, transition, and consolidation (Kievelitz *et al.* 2004; Dobbins *et al.* 2007)[5], establishing the 'market democracy' is more often strongly emphasized in the early stages of peacebuilding.[6] Democratization and neoliberal market policies may be goals, but introducing them immediately can have unintended, negative consequences and clearly opens up some of the more vulnerable parts of society to political and economic predation (Klein 2007). Such policies have often been "counterproductive in post-conflict peacebuilding since they promote economic and political competition at a difficult and fragile phase" (Tschirgi 2004, 15). Such policies may also undermine the stewardship of natural resources that when appropriately managed could provide support for peacebuilding.

[5] Another framing of this progression is post-conflict recovery, reconstruction, and development. While slightly different, they can be summarized together: recovery/stabilization is aimed at the short term goals of restoring the capacity of internal actors to rebuild and recover from crisis and to prevent relapse; reconstruction/transition is a process with mid to long term goals of rebuilding political, security, social and economic dimensions; and development/stabilization includes programs and projects aimed at solving long term goals of human and community flourishing. Another common approach identifies

[6] It is interesting to note that critiques of peacebuilding and post-conflict work more often emphasize temporal phasing (see Paris 2004) than spatial phasing and targeting. This becomes critical when considering the geography of armed conflicts and how competing authorities use territorial control. This is especially important for understanding the temporal and spatial needs of post-conflict natural resource management as resources require spatially aware management (Giordano 2003).

Mismanagement of natural resources with economic, symbolic, and ecological value increases the risk of conflict relapse in many ways – e.g., unequal distribution of rents, destruction of livelihoods, violation of property, and violation of principles of good governance. On the contrary, theoretically informed PCNRM can contribute to peacebuilding by:

1. Supporting humanitarian operations by providing basic needs and essential services;
2. Supporting economic development and sustainable livelihoods by providing employment and financing of recovery and reconstruction activities;
3. Assisting with reintegration of combatants and return of displaced persons and refugees by providing jobs;
4. Contributing to reconciliation through dialogue and confidence building by functioning as an effective platform or catalyst for exploiting shared interests and broadening cooperation between divided groups; and,
5. Promoting good governance by rebuilding legitimate, transparent, accountable, and participatory social and political systems with principles coherent to local practices (Bruch *et al.* 2008; OECD 2012).

While there is potential for PCNRM to make the above contributions, it is necessary to disseminate lessons learned and develop best practices for practitioners through a broad, overarching dialogue that can "examine, compare, and contrast the experiences of various institutions" (Bruch *et al.* 2008, 62). Lessons learned from experiences in PCNRM have only recently been analyzed in any comprehensive format (UNEP 2009; Jensen and Lonergan 2011; Lujala and Rustad 2011). As would be expected, lessons learned need to be linked to different resource sectors (Jensen and Lonergan 2011; Lujala and Rustad 2011; UNEP 2012; Unruh and Williams 2013). However, key lessons can be outlined as follows. First, peacebuilding guidance and doctrine do not effectively account for natural resource management (NRM) (Bruch *et al.* 2008). Second, phasing and incremental approaches to policy design and implementation over time and space may be more successful and adaptive to evolving situations than sweeping laws (Bruch *et al.* 2008). Third, time frames between peacebuilding and post-conflict needs often conflict. Indeed, while post-conflict practitioners are focused on immediate recovery and reconstruction needs, environmentalists and resource managers may see longer term environmental impacts as

the temporal priority (Bruch *et al.* 2008). Fourth, there is often a disconnection between articulated policies and concrete action. For example, the 2007 logging moratorium in Aceh was ignored by much of the population (Hotli and Afrizal 2009). Fifth, community engagement is critical. The importance of natural resources in armed conflicts and to local livelihoods and social identities means that any PCNRM needs to be aware of the local practices, power differentials, and politics (Unruh 2003). Sixth, third-party monitoring and oversight is critical in PCNRM as state authority is often weakened, not considered legitimate, or in need of reform (Bruch *et al.* 2008). Finally, many NRM approaches assume a legitimate and strong state that can support property systems. PCNRM is different than normal NRM due to weakened capacity of the state and ambiguity over property law (Unruh 2003; Unruh and Williams 2013).

As shown above, PCNRM requires different approaches than NRM. One of the most challenging issues for PCNRM across all resource sectors involves establishing legitimate and responsive property systems. In the next section, I overview post-conflict property issues, with particular emphasis on land.

2.2.2 Post-conflict Property Issues

Establishing effective and legitimate property management systems for land is one of the most important and complicated components of post-conflict reconstruction and peace processes (Unruh 2003; Leckie 2005; UN-HABITAT 2007; Unruh and Williams 2013). Managing housing, land, and property (HLP) issues is important to avoiding relapse into violence (Leckie 2005; UN-HABITAT 2007). For example, land might be implicated in the cause of conflict and investments in land destroyed during conflict might be ongoing grievances, and new disputes involving land claims might reignite violence (Unruh 2005). Land and property claims are important to restitution and compensation processes (Reimann 1997; Das 2004). Land as connected to homelands and places plays an important role in the formation of identity – as a result conflicts wherein land is implicated and poorly managed may become protracted conflicts of value over symbolic identity resources (Azar 1990; Unruh 1998; Miall 2007). Land is logistically important for establishing where humanitarian aid and personnel will be located and in determining where to permanently resettle and temporarily house refugees and displaced persons (Fitzpatrick 2002). Sorting

out land disputes is critical to encouraging sustainable livelihoods and increasing food security (FAO 2002; Unruh 2005). Establishing a formal system of land ownership (typically, the Torrens title system) is thought to be critical in encouraging rule of law and immediate and long term investment in a region (de Soto 2000; Deininger 2003; Otto 2009). Because land is often considered the primary spatial representation of property, land claims serve as proxy for a number of other natural resource claims (e.g., access to water, forests, grasslands, and revenue from carbon credits) (FAO 2002). Land management can lead to peacebuilding opportunities like increasing capacity for good governance, increasing trust in the government, and providing new livelihood opportunities (Bruch *et al.* 2008). Socially-just and co-adaptive land management might help eliminate power differentials in land access, aim at the roots of political and economic marginalization, rethink existing social relations (property and land management systems are often inherited), and avoid land grabs by elites (Bruce and Migot-Adholla 1994; Unruh 2006).

Land provides a powerful and illuminative window into post-conflict property issues and the sociospatial aspects of conflicts. In fact, land is so prevalent as the spatial representation of property that the terms land and property are often used interchangeably (Cotula *et al.* 2004; Herrera and da Passano 2006; Sikor 2004; Otto 2009). 'Land tenure security' is also frequently identified as a problem in post-conflict situations (Unruh 2003; Cotula *et al.*2004; Otto 2009). In this dissertation, I examine how approaches to property impact post-conflict land management, so it therefore is important to briefly elucidate some of the language surrounding these issues.

In academic research and property law, property is commonly defined as a 'bundle of rights' in order to reflect the ability of multiple parties to simultaneously have legal interests (Penner 1996).[7] Rights are defined as socially-enforced claims (Bromley 1991). Tenure refers to the social relations and rules among people with respect to a resource. These

[7] In *Section 2.3 Property*, I critique this definition. More on the evolution of specific approaches to property in development can be found in *Section 2.4.2.3 Evidence Landscape.* If property is taken to be rights, many of the references to 'property rights' in the literature are either redundant, premised on the more common non-academic perception that property signifies a material thing, or see property as more than rights. I differentiate between land as material entity and property. When it is necessary for clarification that I am speaking of property in reference to land, I refer to *land property*.

relations and rules can be formal or informal. They can be based in local practices or state law. The relations and rules of land tenure define the rights to use, control, and transfer land; how access is granted to these rights; and the obligations associated with ownership. The relations and rules of land tenure define how property rights in land are to be allocated within societies. Put simply, land tenure determines who can use which resources for how long and under what conditions (FAO 2002). Tenure is representative of human society; thus, changes to tenure systems change wider social relations and understandings of property (Olwig 2002). Likewise, armed conflicts that disrupt society can cause severe disruptions in the social relations regarding property – severe enough that alternative tenure or property systems evolve (Unruh 2003).

The terms regime, tenure, and property system are often used as synonyms throughout the academic literature regarding property and land, though some differentiation can be made (Bromley 1991; FAO 2002; Ciparisse 2003; Cotula *et al.* 2006).[8] Most tenure systems have the capacity of recognizing different forms of property and property regimes. Authors note that there are four common tenure regimes or property regimes – open access, common property, state property, and private property (Ostrom 1990; Bromley 1991). These regimes are ideal types that are descriptive of a wide array of social relations and rules applicable to any number of material objects or ideas (e.g., intellectual property). These regimes can be found coexisting in many tenure systems. These regimes may overlap in time and space when competing approaches to property or competing tenure systems are present. As property takes shape from tenure systems and regimes, I argue that both tenure systems and regimes are components of property and that property is more than a 'bundle of rights.'

Land tenure security may be undermined in cases where there are different approaches to property, conflicting tenure systems or regimes, and individual disputes. Land tenure

[8] Some of the confusion in terminology between tenure, regimes, and property systems might be due to the etymology of tenure which often traced back to the Latin *tenēre* (to hold), but it is more interesting to note that the modern use of the term is directly inherited from medieval, Anglo-Saxon feudal land relations wherein tenants owed obligations to lords for the right to stay on and use land (Abels 1988).

security is simply the perception of the strength of an individual's claim to land and the ability of an authority or group to enforce that claim. Land tenure – like property itself – is reinforced and constituted by authority or normative orders that recognize and enforce claims. There are many challenges to land tenure in post-conflict and other situations wherein competing property systems based on different authorities are available (Cotula *et al* 2003; Benda-Beckmann 2001). These situations are characterized by normative pluralism (Bowen 2003). Normative pluralism is the social fact of having multiple normative orders in a social field. Moore (1973, 720) operationalizes normative orders as Semi-Autonomous Social Fields (SASF) – a community of practice that (1) can generate rules, customs, and symbols internally; (2) has "the means to induce or coerce compliance"; (3) "is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded… set in a larger social matrix which can… affect and invade it…" Following Moore's conceptualization of normative orders as SASF, Unruh (2003) identifies competition over resource management as guided by different SASF. Unruh argues that untangling the normative pluralism surrounding postwar land regimes is an important part of post-conflict recovery and development.

In fact, in surveying 20 case studies of post-conflict land management, Unruh and Williams (2013) find that four broad categories of problems commonly undermine land management for peacebuilding – legal ambiguity, legal pluralism, disputes, and land recovery. Three of these four are directly related to normative pluralism. Legal ambiguity results from normative pluralism, normative hybridity, and poorly conceived and enforced laws; land disputes implicate authority and often involve 'forum shopping' wherein claimants can choose from normative forums reflecting competing normative orders; and legal pluralism is a critical term politically deployed to describe normative pluralism in situations wherein the state centralizes power by marginalizing alternative normative orders.[9] What legal

[9] Even while the academic and political utility of legal pluralism is in no doubt in colonial studies where law was considered to be the sole dominium of the state (Kidder 1998) and Moore's concept has led to some consensus as to what constitutes normative pluralism (Griffiths 1986; Moore 2001), there is still very little agreement on what differentiates legal pluralism from normative pluralism (Tamanaha 2007b). Merry (1988, 878) posed this question early on, "Where do we stop speaking of law and find ourselves simply describing social life?" An agreement on what 'law' describes or

pluralists have consistently argued for – and is plainly revealed in post-conflict land management – is that laws and norms can come from authorities other than the state, that there is hybridity in normative heterogeneity, and that justice comes from this recognition (Kidder 1998). In Chapter Five, I argue that rather than thinking of the modern state as an overwhelming force of 'centralization,' one might conceive of the movement in modern states as one of equilibrium and coordination through scalar politics of property among several authorities.[10] Tamanaha (2007) argues that developing a typology of normative orders facilitates examination of heterogeneity and hybridity. He argues that six ideal types of normative orders are often found in the normative pluralism literature: official-legal, customary-cultural, capitalist-economic, community-cultural, religious-cultural, and functional normative. These are useful heuristics for recognizing different logics and types of authority that constitute normative orders. These different groups may help us understand different approaches to property. Tamanaha's work is especially useful in Aceh, where there has been a static assumption by scholars, practitioners, and even locals that only three normative orders exist (the flexible *adat* category, Islamic law, and state law).[11] This despite the clear influence of capitalist approaches to property through non-government organizations (NGOs), multi-lateral agencies, investment firms, and foreign governments' influence of post-conflict, post-disaster reconstruction and development priorities – particularly land management.

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constitutes is fundamental to understanding the bounds of legal pluralism as a theoretical and analytical concept, thus some scholars have adopted normative pluralism as a more appropriate and analytically useful term for our modern world (Tamanaha 2000, 2007; Bowen 2000, 2003).

[10] This is more in line with what Santos (2002) describes as 'interlegality.' There is no doubt that centralizing law impacts social relations (Elyachar 2005) and begins a process of disciplinary control (Blomley 2003), but it never totally overcomes the centrifugal force of social conditions (Ehrlich 1936). In fact, it is here that Foucault's disciplinary subject is too pessimistic (Lukes 2005) and that other theories like Giddens' (1986) structuration theory offer a way out of the structuring grid of property (Blomley 2003). The state and its disciplinary techniques are powerful and transformative, but not all-colonizing and not always hegemonic.

[11] In Indonesia between 1909-1926 the Dutch scholar C. van Vollenhoven and the school affiliated with his understanding of 'customary law' (the Leiden School) not only recognized the realm of 'customary law' but were central in theorizing how colonial and customary law should integrate. Indeed, they eventually played a large role in defining what constitutes the customary law now known as adat, but they are rarely mentioned as legal pluralists (Burns 2004).

Space, political power, and law interact in multifaceted ways (Holder and Harrison 2003; Blomley 2008a). While authors have focused on how land tenure regimes constitute and are constituted over the landscape (Olwig 2002: Mohr 2006; Unruh 2006; Maandi 2009) and how normative orders constitute several geographic or political scales (Berman 2007), there has been less attention on post-conflict normative orders in regard to property (Benda-Beckmann, Benda-Beckmann, and Griffiths 2009). In Chapter Five, I explore how a different approach to property (jural relations) illuminates authority and scalar politics in the context of post-conflict land titling projects, specifically RALAS. In the next section, I outline and critique several approaches to property, approaches that form the scaffold of the analytical framework (Figure 2.2) of this dissertation.

2.3 PROPERTY

2.3.1 APPROACHING PROPERTY

While the common understanding of property is of a material thing (e.g., a land parcel, building, or car), academic definitions of property emphasize that property consists of relations "between persons with respect to the use or benefit of valued things" (Blomley 2009, 593). Yet, there are numerous ways of defining property that challenge both of the above versions of property. As Macpherson points out the "meaning of property is not constant. The actual institution and the way people see it, and hence the meaning they give to the word, all change over time" (1978, 1). Societies, specifically the dominant classes, constantly reshape the forms and functions of property (Macpherson 1978). The ways in which property is defined influence the ways in which we interact as human beings, how we create and maintain power relations, and even how we question and pursue scholarly research regarding property. Yet, land law experts Gray and Gray (2009, 87) write that "our everyday references to property are unreflective, naïve and relatively meaningless." Bromley (1991, 1) recognizes this deficiency in academia, writing that there are few concepts "that are more central – yet more confused – than those of property, rights, and property rights." Bromley's observation is shared by a diverse group of social scientists, policymakers and practitioners that seek to bring more focus on how we think about property (Guy and Henneberry 2000; Benda-Beckmann *et al.* 2006).

Benda-Beckmann *et al.* (2006) suggest that the numerous definitions of property across cultures, political ideologies, and academic disciplines can be classified as either descriptive or normative. The descriptive definitions of property are attempts to describe how property is understood and practiced within different social contexts. While descriptive definitions are often influenced by observers' pre-existing understandings of property, these definitions do not ultimately attempt to define what property should and can be. On the other hand, normative definitions set limits to the concept of property and thus attempt to control or change how property is conceived and practiced in different social contexts – they outline what property should and can be (Benda-Beckmann *et al.* 2006). Normative definitions are often deeply interwoven into particular ideologies, discourses, and political and legal systems. As normative definitions influence changing concepts and practices surrounding property, they simultaneously function as subtle but powerful ways of framing power relations.

There is currently one normative definition that influences a large portion of academic and legal work on property (Verdery 2004). When pressed for a definition of property, most jurists will offer the didactic metaphor that 'property is a bundle of rights' or 'sticks' (Rose 1994; Penner 1996; Krier 2006; Johnson 2007). Indeed, since the early 20th century, many of the institutions of Western society have defined and conceptualized property through this metaphor of a 'bundle of rights' (Johnson 2007). This definition tends to view property as statutory rights (entitlements guaranteed through state law) and thus relies on a particular understanding of law, legality, authority, and the proper relation of individuals to society and to each other (Singer 2000). However, this definition also allows flexibility within property – different rights, like sticks, might be taken out of and reinserted into the property bundle. In fact, the flexibility of the concept of property reflected in this definition is said to be not just a 'legal curiosity', but a central component of modern life and capitalist economies as it allows us to divide up complex interests in property and create multiple ownership types. Indeed, it functions like an "engine that generates new possibilities for gains from trade in the rights over a single asset" (Epstein 2010, 109-110).

The bundle of rights metaphor is compelling and effective in conveying the modern legal understanding of property as separable rights (Munzer 1990; Johnson 2007). It is a powerful metaphor that often serves as the default definition of property for legal scholarship (Munzer 1990; Johnson 2007), for scholars in the social sciences (Demsetz 1967; Bromley 1991; Schlager and Ostrom 1992), and for policymakers and practitioners focused on formalizing property rights within the revived 'law and development' movement (Feder and Feeny 1991; de Soto 2000; McAuslan 2003) or working at the interface of natural resources, property law, and development (ILRI 1995; Sunderlin *et al.* 2008). Yet, as useful as this metaphor can be, it is also dangerous. Dangerous in that it limits the ways we think about property and, in so doing, restricts how we conceptualize, research, and perform property (Penner 1996). It limits our understanding of property to statutory, legal rights. It leads talk about property to be 'saturated by talk of rights' despite a rich literature of alternative approaches to property (Verdery 2004, 139). As U.S. Supreme Court Justice Benjamin Cardozo wrote in 1927, "Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it."[12]

Many legal scholars critique the bundle of rights metaphor as an inadequate image that limits thinking about property. Rose (1994, 281) notes that even though diverse types of rights overlap and have different legal and social value, the bundle of rights metaphor "is in large part a device for separating the various facets of property and for giving an intuitive grasp of their separateness and movability rather than their interrelatedness and porosity". The metaphor presents all the constituent property rights of the bundle of rights as even, separable, and not 'interconnected and interdependent' (Rose 1994). She proposes alternative metaphors for property – like a toy chest (like rights, not all toys are equal) or a horse (like rights, not all parts are separable). Penner (1996) also critiques the bundle of rights for the way the concept influences judicial thinking about property and he recommends alternative metaphors – like a cake (rights are not predefined entities that are compiled into a bundle, but pieces of a whole that are carved off to serve social functions). Schroeder (1994) furthers these figurative critiques on feminist and psychoanalytic

[12] *Berkey v. Third Avenue Railway Co 244 N.Y. 602 (1927).*

grounds, arguing that the bundle of rights is nothing more than one example of a long line of phallic metaphors within property theory. Grey (1980) finds that the metaphor signals the disintegration of the concept of property and means that 'property' is no longer coherent enough to be a relevant concept for policy or academia.

Macpherson (1978) questions the capitalist understanding of property as the right to alienate and the right to exclude. He returns to the idea that property must be another type of right and recasts property not as the right to alienate or exclude, but as the right to not be excluded from the product of society or the resources necessary to enable human life. In reflecting on Macpherson's work, Blomley (2010, 305) writes, "If human flourishing is the end of a liberal democracy, it cannot be sustained by capitalist property relations." Likewise, I argue that the concept of property as a bundle of rights – the concept that underlies modern, capitalist relations and that now predominates in neoliberal policy and academic thought – is too simplistic. I question whether, in geographic research, property is simply an extension of what law and capitalist relations define as property. If property is more than rights, what is property? How does property intermingle with landscapes, scalar processes, and authority? What kind of analytical framework could provide insight into the nature of property?

The notion that property is equivalent to a bundle of statutory, legal rights is particularly inadequate for policy makers in post-conflict scenarios and for social scientists trying to understand and describe the social relations, material practices, narratives, and emotive connections of humans in relation to property. The impoverished definition and the ideological, political nature of much of property theory have left geographers, like other social scientists, without an adequate analytical framework for studying property (Benda-Beckmann *et al.* 2006). In fact, even though several generations of geographers have dealt with property rights and resource tenure, geographers have recently been called upon to take property *seriously* (Blomley 2005). Indeed, several recent publications in geographic literature attempt to do just that. They challenge the settling and naturalization of definitions of property in both everyday life and academic thought by exploring how property is constituted through narrative discourses, modes of capitalist production, human

emotions, ecological dynamics, and sociospatial relations (Delaney 2001; Unruh 2003; Whatmore 2003; Blomley 2004; Sikor 2004, 2006; Unruh 2006; Blomley 2007; Brown 2007b; Flemsæter and Setten 2009). Thus, a broader view of property as a field of inquiry is needed in order to improve analytical frameworks and to critically engage with ideological approaches to property.

In the next section, I outline more radical critiques of the idea that property can be limited to rights alone. These critiques take issue with the idea of rights and attempt to either place rights within a broader context of social relations or to move entirely beyond rights-based approaches to understanding property. In the following subsections, these arguments are sorted into three approaches that address: (1) the jural relations of property; (2) narratives; and (3) personhood.

2.3.2 JURAL RELATIONS

This subsection introduces Wesley Newcomb Hohfeld's (1913) framework of jural relations and Joseph Singer's (2000) ideas regarding rights and obligations in property. Developing an understanding of jural relations is central to understanding the nature of property – they must be considered in order to understand not only the property rights in question but 'property' itself (Hohfeld 1913; Munzer 1990). Using jural relations to analyze post-conflict property issues allows us to sharpen the definition of property rights and to expand analysis of property issues beyond rights into the complicated power relations within which property evolves.

In two papers in 1913 and 1917, Hohfeld argues that the abuse of the term 'rights' and confusion over 'property' in legal and political discourses must be clarified to facilitate clear judicial reasoning and decisions. As Hohfeld (1913, 21) points out about property, "Both with lawyers and with laymen this term has no definite or stable connotation. Sometimes it is employed to indicate the physical object to which various legal rights, privileges, etc., relate; then again-with far greater discrimination and accuracy-the word is used to denote the legal interest…" Hohfeld sets out to correct the ambiguity of property and rights by defining the term 'rights' and contextualizing the idea of rights within eight fundamental legal concepts and four jural relations. Before delving more into these legal concepts and

jural relations, his critique raises three interesting questions: What are rights? Can 'legal' rights refer to both statutory and non-statutory normative orders or is legality the sole purview of the state? Finally, how can we understand rights within the context of jural relations?

The bundle of rights metaphor does not specify whether the rights in question are natural, legal, or other types of rights (Clark 1982). Whereas natural rights are actually justifications for claims, legal rights are socially-enforced claims. Hohfeld (1913) argues that 'property rights' (whether involving access, usufruct, exclusion, or other actions) usually refer to legal rights in the sense that property rights are not just justifications for claims, they reflect entitlements and impose duties on others. Thus, property rights (as legal rights) reflect social enforcement of a specific type of relation. Penner (1996) points out that the term 'bundle of rights' is actually a widespread misnomer and that properly understood "'property as a bundle of rights' expresses the thesis that property constitutes a legal complex, of various normative relations, not simply rights" (Penner 1996, 713). While one might be tempted to say that this tension can be resolved by simply adjusting the metaphor to say that 'property is a bundle of relations,' we must be more precise about these relations for this new rephrasing to have any analytical value; and, in any case, property might be more than a bundle of relations.

One deep linguistic problem with recognizing property rights as legal rights is that legality is taken by some scholars to refer to only statutory law and not to the wide array of informal and customary institutions that function much like statutory legal systems (Moore 1973; Merry 1988; Kidder 1998). While approaches to property have long recognized that ownership of property is conditional on societal recognition of human relations regarding things of value (Macpherson 1978), many economists and legal scholars assume that state legal institutions are the best mirror of the societal recognition of property in 'modern' societies (Demsetz 1967; Bromley 1991). Such overly statist framings of rights are critiqued in legal scholarship, legal anthropology, and literature on non-state normative orders (Benda-Beckmann 1979; Rose 1994). Applied to contexts like post-conflict scenarios and informal urban settlements, the assumption that these property relations described as

'legal rights' are always equivalent to or should be made equivalent to *statutory* rights can lead to serious problems (Home and Lim 2004). Where *de facto*, socially-embedded property relations are translated into *de jure* statutory property rights, the focus on statutory rights alone sometimes negates pre-existing property relations in translation while elevating the claims of political elites that are supported by state law (Home and Lim 2004; Sowerwine 2004a; Elyachar 2005). Yet, as Bromley (1991, 16) writes, "societal recognition of a specific set of ordered relations among individuals is a legal relation." Following literature in legal pluralism, the idea of legality can be broadly applied to non-statutory normative orders (like 'traditional' or 'customary' law) especially in post-conflict scenarios (Unruh 2003). The key points here are that: (1) property rights signify social enforcement of particular claims and normative relations regarding property; (2) legality can be interpreted in both statutory and non-statutory normative relations, and (3) a failure to recognize the unique status of rights within numerous property relations and the correlative legal concepts can lead to impoverished analytical frameworks.

Hohfeld's framework of jural relations and Singer's ideas concerning rights and obligations can be employed to provide a rich understanding of property dynamics in post-conflict scenarios like Aceh. Hohfeld (1913) outlines eight legal concepts including rights, duties, privileges, no-rights, disabilities, liabilities, immunities, and power. In Table 2.1, these eight legal concepts are categorized as either 'Elements' or 'Correlatives'. The relations between the terms in these two columns capture the four jural relations. The four jural relations can be understood by substituting the terms from the respective columns for the underlined words in the following sentence: 'if A has an element, then B has a correlative'. If A has a right, then B has a duty to respect that right. Indeed, A's right does not exist without B's correlated duty. In the case of land property, A may have the right to exclude B, and B has a duty to not enter A's property. Hohfeld argues that in common usage, the term 'right' (which should be limited to this narrow correlation with duty) is different from but often mistakenly used to refer to what are actually privileges (liberties), powers, and immunities.

Table 2.1 Hohfeld's Jural Correlatives (adapted from Hohfeld 1913, 710)[13]

Elements	Correlatives
Right (Claim)	Duty
Privilege (Liberty)[14]	No-Right
Power	Liability
Immunity	Disability

In the first jural relation, *rights* refer to socially-enforced claims. Hohfeld (1913) conceives of rights as what can be called legal rights or 'claim-rights.' According to Hohfeld all rights involve claims and only by differentiating rights as socially-enforced claims from other legal concepts can we facilitate clear judicial reasoning and decisions. Hohfeld argues that recognition of a right for a right-holder entails the enforcement of a duty on others – that rights require duties (Hohfeld 1913, 1917; Bromley 1991; Singer 2000). "*Duties* refer to the absence of permission to act in a certain manner" (Singer 2000, 132). Thus, legal rights – whether enforced through state institutions or non-state normative orders – are products of communities and they are at a minimum dyadic with right-holders and duty-holders (Rose 1994).[15] One of the greatest hindrances to understanding and solving legal problems "frequently arises from the express or tacit assumption that all legal relations may be reduced to 'rights' and 'duties,' and that these latter categories are therefore adequate for the purpose of analyzing even the most complex legal interest" (Hohfeld 1913, 28).

In the second jural relation, a *privilege* is a liberty that correlates with a situation of *no-rights* (Munzer 1991). For example, if there are no laws that govern the catch of whales in

[13] Hohfeld's framework also stipulates a set of "Jural Opposites" which are two legal concepts or positions that cannot exist together. While useful for understanding Hohfeld's framework , the jural opposites prove of less interest for analytical purposes in this dissertation so they are not presented here.

[14] Legal scholars sometimes call privilege a 'liberty-right' and Hohfeld's right a 'claim-right,' yet such changes to the wording dilute the clarity and analytical value of Hohfeld's framework and his argument concerning rights.

[15] Bromley (2006, 55) argues that property rights are necessarily triadic – involving right holders ('owners'), duty holders ('all other persons in the polity'), and the object of property ('object or circumstance of value to the owners as well as to others'). The bundle of rights metaphor neglects these other necessary components of legal rights – the duties, objects of property, authorities, and physical and social contexts.

global fisheries, A and B both have the privilege of capture – there are no rights and no duties implicated on either party. There are no limitations except the natural limits of whale populations. A situation wherein everyone has liberties, but no one has defined rights or duties might be defined as an open access regime. If property is defined only as a bundle of rights, then we might follow Bromley (1991) and label such open access regimes as 'non-property' regimes.[16] Or, we could recognize that even in the absence of legal rights, there is a property relationship.

If we use the third jural relation (*power* and *liability*) to understand an open access regime, we move beyond rights, privileges, and duties to explore who may have the ability to create new legal rules or promote social enforcement of different property rights, duties, and privileges. *Power*, for Hohfeld (1913), is the ability of one party to change legal relations. If A has power, B has a liability in that B's property relation may be changed. A could create new or destroy old property relations (like a lease, easement, or privilege in an open access regime).[17] To return to the example of the open access regime of whaling, A may have the power to institute new institutional regulations that apply scientific limits to the number and types of whales captured by all parties involved in whaling. B's liability is revealed as A

[16] Bromley uses the concept of a 'non-property' regime to contrast the management involved in common property regimes. He argues against the historically false and misleading 'tragedy of the commons' metaphor by showing that Garret Hardin was not talking about 'commons' at all, but rather about open access regimes (Hardin 1968; Bromley 1991). While it is true that the 'tragedy of the commons' is actually the 'tragedy of open access regimes' , labeling open access regimes as 'non-property' regimes is to limit property to property rights alone. Advocates of access theory note that social relations of access exist in 'open access' situations, but they too limit property relations to property rights in this situation and find that there is no property here (Mansfield 2001). Such a limit omits how other legal concepts and jural relations describe property in this situation and it devalues how other approaches to property (for example, property as narratives, as political relations, or in regard to problems with the dynamic characteristics of the objects of property in comparison to relatively static cultural notions of property) continue to provide rich insights into the social relations of property. Here you can see a direct impact of limiting property to rights in Bromley's analytical attack on 'the tragedy of the commons.'

[17] In this respect, Hohfeld's legal idea of power is similar to what Lukes (2005) calls two dimensional power, a type of power that is exercised to change institutional structures and not the same as one dimensional power that is measured by institutional outcomes. Hohfeld's idea of power is not a sophisticated social theory of power like Lukes' idea that a third dimension of power exists wherein the modalities and techniques of power are integrated into the behavior and preferences of subjects (much like Foucault's version of power). Hohfeld's power is simply about a legal power to change legal relations, but if social theory on power can be used to expand Hohfeld's framework there would certainly be fruitful outcomes.

exercises a power to influence changes to institutional rules and regulations in order to end an open access regime and create a new whaling property rights regime. Property as privilege, power, and liability functions even within an open access regime that does not have rights or duties.

The fourth jural relation of *immunity* and *disability* can also be applied to this open access regime. If B has immunity, then A has a disability and A has no power with regard to B's property relations. In the whaling example, B might have immunity from institutional regulations that limit whaling because such regulations that stop B's harvest of whales would irreparably damage the cultural fabric of B's society. In other words, A may have power to change the institutional structure and end the open access regime for all parties except for B who has immunity. In relation to B then, A has no power, A has a disability and cannot change the institutional structure. B continues to have the privilege of harvesting whales without limits. However, as mentioned above, since B has only a privilege and not a right, A is under no duty and A may use their own privileges to make B's attempts to harvest whales impossible – running whales away from B's ships, blocking B's ability to detect whales, blocking B's ability to get whales on ships, etc. On the other hand, if B has a right to harvest whales, then A has a duty to not interfere with B through such behaviors.

In summary, Hohfeld's four jural relations and eight legal concepts show how property exists beyond merely rights. However, there is one final addition to this section – it could be considered a fifth jural relation. This fifth relation occurs between rights and obligations (Singer 2000; Verdery 2004). Right-holders always have obligations to the social community and authority that guarantee entitlement of their claim. These obligations are different from Hohfeld's duties in that, rather than a duty-holder respecting a right, the right-holders themselves are encumbered by these obligations. The term 'obligation' is used differently from duties and is largely synonymous with what Munzer (1990) calls 'disadvantages':

> The idea of property rights is narrower than that of property. Property rights involve only advantageous incidents. Property involves disadvantageous incidents as well. Meant here is advantage or disadvantage to the right-holder or owner.

> Although property obviously involves disadvantages to persons other than the right-holder, it is important to see that there can be disadvantages to the right-holder as well. (Munzer 1990, 24)

These disadvantages might be outlined in statutory law as obligations to authority (like taxes) or obligations to other property holders (as limits in nuisance law). As well, they may be framed or statutorily-defined as risks and financial obligations such as debts and liabilities (Verdery 2004). Yet, these obligations also come from non-statutory legal systems (normative orders) in the form of social norms and institutions concerning property (Singer 2000).

Singer (2000) outlines the obligations of property entitlements in a convincing argument against using the 'ownership model' of property for policy and legal decisions. He argues that there are "multiple models of property" within any one society or single legal system and that these models are deployed in different social and legal contexts (Singer 2000, 86). By building from a 'nuisance' model of property (wherein property rights are limited by nuisance laws), Singer derives an 'entitlement model' of property that is opposed to the dominant political imagination of an ownership model.[18] While the ownership model focuses on the relation between owners and things and owners and the state, the entitlement model refocuses attention on the "interrelations between the state and its citizens, among owners and between owners and non-owners" (Singer 2000, 92).

In brief, complex sets of obligations to an authoritative entity and members of one's social community are inherent to property itself. The above jural relations represent one approach to property. In Chapter Five, these jural relations are used to examine how property related to scalar process and authority in the post-conflict, post-disaster land titling project in Aceh. The narrative approach to property outlined in the next section

[18] His entitlement model is based on the observation that there are (1) multiple owners with disaggregated rights, (2) conflicting rights and the need for judgment, (3) changing conditions that warrant changes in rights over time, (4) boundaries that are relevant but not determinative or rights, (5) property rights are limited by other legitimate rights (one cannot commit harm to others under the excuse of property rights), (6) relationships between owners and between owners and non-owners matter, and (7) attention to the tension at the core of property – between harmful but legitimate uses of property and conflicting social interests.

examines how humans tell stories that provide an ethical and political framing of property. It helps us understand how different understandings of property (and thus property itself) can be naturalized, illuminated, created, or effaced.

2.3.3 NARRATIVES

While the jural relations described in the previous section are recognized as critical for scientific analysis of capitalist relations, this analysis "squeezes all the moral and intuitive sense out of the concept of property" (Rose 1994, 2). For Rose (1994) property is persuasion. She focuses on narratives, rhetorical devices, and the textuality of property and finds that the narratives used in struggles over the meaning of property, property rights, and property regimes are themselves integral parts of property and not just a way to get to rights. Rose (1994) argues that property always involves some sort of persuasion and that narrative discourses provide that persuasive vehicle. She examines narratives in everything from 'first possession' to 'neo-utilitarian private property,' communitarian property, story-telling in game theory, and the process of Eastern Europe at the end of the Cold War 'quite consciously' talking itself into property. In brief, all property concepts and institutions are based on some sort of moral framework and justificatory narratives (Rose 1994). As property functions as a tool for social outcomes, it is inevitable that individuals and groups in society use narratives to justify particular property claims as well as particular forms and functions of property within society.

> Here is where narrative matters: stories, allegories, and metaphors can change minds. Through narratives… people can create a kind of narrative community in which the storyteller can suggest the possibility that things could be different and perhaps better (or, alternatively, worse). (Rose 1994, 6)

Rights-talk as a narrative

When Rose's narrative approach is applied to the bundle of rights metaphor, it shows that the notion that property is rights alone limits legitimate political discourse about property to 'rights-talk' (Glendon 1991). Rights-talk can put subaltern or marginal communities' property interests at a disadvantage by limiting the types of property rights available, the methods used for making claims, and the types of claims that can be made (Tushnet 1983; Razzaz 1993; Meinzen-Dick and Pradhan 2002; Blomley 2004).

Limiting property to property rights, limits our political imagination and discourses to 'rights-talk' – it serves as a political tool to frame all political currency as 'rights' and all 'legitimate' political arguments as 'rights-based claims' (Tushnet 1983, 1989; Glendon 1991). Rights-talk mumbles through important issues regarding the instability and performativity of rights in social and spatial contexts (Tushnet 1983). Taking a geographic perspective, Delaney (1998) reveals how different sets of rights legislated for protecting minorities, defining public/private spaces, and protecting private property come into conflict as rights must sometimes navigate the nebulous region of judiciary reasoning. Blomley (1994) also shows the instability of rights in a study of mobility rights in Canada. If property is defined as rights, then property is limited to an unstable terrain of interpretation and social context. Rights are unstable in social contexts, so while rights-talk can be a powerful political motivator for uniting diverse subaltern groups or making claims to property, rights-talk also functions as a tool to limit subaltern claims in judicial contexts (Blomley 1994). In limiting discourse and imagination of property to rights-talk, we limit our political argumentation to unsteady ground and pauperize analytical frameworks for research on property.

> Rights claims are limited, not only because they are often tied to notions of possessive individualism, but because of the geographies written into liberalism, notably the line between public and private space. When rights claims are contested, spatial tropes are often deployed to weaken others' claims: in the Downtown Eastside, property owners have utilized images of transience and empty space to devalue longer term residents' rights to place: in the case of domestic workers, images of the sanctity of the home as a private space have been called upon to deny rights as employees. (Blomley and Pratt 2001, 163)

Classic property theories as narratives

Roses' approach also reveals that classic property theories consists of narratives that serve as justifications for types of property, property rights, and property regimes. For example, Rose critiques two groups of narratives that drive approaches to property and possession in literature on the origins of property. The first group draws from natural rights thought and is linked to John Locke's (1821) labor theory of property. The second group emphasizes the role of social recognition in creating property and includes philosophers like Kant and Bentham. Locke's famous account of the origins of property is based on the assumption that humans own their labor and that humans' have a natural, divinely given right to procure the necessities of life – or as he put it, to appropriate the "acorns he picked up under an oak, or the apples he gathered from trees in the wood" (Locke 1821, 210). In this account, property precedes the polity – *private* property rights are natural rights. *Private* property evolves from the rights established through first possession of and through mixing labor with natural entities – that God gave land to humans in common but especially to the "industrious and rational" on the condition that "labor was to be his title" (Locke 1821, 214). Of course, this theory of labor and first possession as the origins of property has numerous inadequacies – What exactly is possession? Is enclosure the same as possession? How much labor must be mixed with an entity to claim it? Might personal labor be lost in mixing it with entities? For example, Nozick (1974, 175) famously asks of mixing labor with entities, "If I own a can of tomato juice and spill it in the sea so that its molecules mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?" Despite the logical fallacies and moral hazard of Locke's narrative of property (specifically *private* property), his justification continues to be a powerful narrative that underlies diverse modern legal ideas like the rule of capture, adverse possession, and *terra nullius*. While, the role of law in Locke's narrative is to protect pre-existing property rights obtained through labor and first possession, in the second approach property and law arise together. Bentham succinctly summarizes the second approach, "Property and law are born together, and die together. Before laws were made there was no property; take away laws, and property ceases" (Bentham 1914, 113). Kant also argued that Locke "confused empirical possession with *de jure* intelligible possession" and "that a social convention – a social contract – is logically prior to real ownership" (Bromley 1991, 5).

Yet, in both of the above narratives, the idea of property is conflated with ownership, specific property rights, and particular property regimes (namely private property). In the first narrative, Locke makes an argument about private ownership of property rights via possession. In the second narrative, the social recognition of rights to a right holder is used to differentiate property from possession (which may not involve social recognition). This second narrative sometimes refers to property as 'intelligible possession', but this causes many authors to blur the idea of ownership with the idea of property. A more lucid narrative for justifying property recognize would separate the concept of ownership from the concept of property to recognize that neither *de facto* nor *de jure* possession is equivalent to property or ownership (Honoré 1987). These concepts each represent distinct analytical categories that should not be collapsed into a synonymous jumble. Munzer (1990) argues that ownership is neither *de jure* recognition nor *de facto* possession but rather the societal recognition of a continuum of rights that are often determined by cultural reference and context.[19] Possession is not property, but the narrative of possession as property continues to play an important role in modern law and colloquial understanding of ownership (Rose 1994).

In summary, insights into how interest groups justify ownership and property while quietly dispossessing and negating equally valid narratives of ownership and forms of property cannot be easily extracted from analysis of rights alone. Other human relations that contextualize property in society might also be overlooked if narratives are not included as part of a social scientific approach to property. This is of critical importance in post-conflict scenarios wherein narratives are used to justify particular property regimes, policies, and

[19] Honoré (1987) argues that the following incidents are common requisites for the idea of ownership to be applied to someone who has property interests in an entity: the right to possess, the right to use, the right to manage, the right to the income, the right to the capital, the right to security, the power of transmissibility, the absence of term, the prohibition of harmful use, liability to execution, and residuary character (Becker 1977; Honoré 1987). Thus, holding specific property interests (legal incidents or entitlements) leads to societal recognition that a holder is an owner or has ownership. Munzer combines Honoré's incidents into a Hohfeldian framework of legal concepts: (1) claim-rights to possess, use, manage, and receive income, (2) powers to transfer, waive, exclude, and abandon, (3) liberties to consume or destroy, (4) immunities from expropriation, (5) duties not use harmfully, and (6) liabilities for execution to satisfy a court judgment (Munzer 1990, 22). Munzer (1990) observes that if 'a person has all of these incidents, or most of them, with respect to a certain thing, then he or she owns it' (Munzer 1990, 22).

projects such as statutory land titling. In Chapter Four, this narrative approach is used to examine post-conflict versus post-disaster framing of property relations and property issues.

2.3.4 PERSONHOOD

Radin, like Hohfeld (1913) and Rose (1994), sees property as more than either a material thing or a bundle of rights. Radin (1993, 2) argues that the study of relations between property and personhood "has commonly been both ignored and taken for granted in legal thought." She develops a property theory that is based on a continuum between constitutive property (that which is bound up in a person and makes us who we are) and fungible property (instrumental, monetary, or market). Whereas fungible property can be assessed and exchanged in purely monetary terms, constitutive property is so central to a person's identity that separation would threaten their identity and impact the human ability to flourish – or their personhood. Some objects in a person's life are so intimate to the person's identity that the object's value cannot be properly assessed or commodified in monetary terms. She observes that these constitutive connections are often implicitly part of judicial reasoning and argues that personhood should be an explicit criterion in determining whose claim to property trumps other claims. That constitutive property claims should outweigh fungible property claims when deliberating entitlements in relation to property and desirable social outcomes. The closer one's claim is to the extreme of constitutive property, the more weight the claim should be given in determining outcomes.

If Hohfeld's approach focuses on the jural relations between people and Rose's approach focuses on the narratives and rhetorical devices we use to justify property, Radin's approach could be said to focus on the dialectic relation between the subject and object of property. Radin questions the subject/object dichotomy and reveals that the object of property is part of and constructs the subject of property. The subject/object dichotomy delineates the active and passive parts of property – the subject that owns, manages, or thinks versus the object that is owned, managed, or thoughtless (Whatmore 2003). The subject of property is commonly taken to be the active component (the human, the property manager, the community, etc.) and the object of property is commonly taken to be passive (a house, a car, an orchard, etc.). In this subject/object (active/passive) dichotomy, the

'objects of property' (the entities of value, benefit streams, or otherwise) are passive entities in regard to active humans and human relations. Radin shows that such dichotomies are false.

Contrary to the idea that property consists only of rights or active relations between humans (subjects of property), understanding property requires inclusion of the so-called objects of property and the relations between humans and things. Of course, this is not to suggest that the concept of property can be limited to only the 'objects of property' or relations between humans and things – as these relations are always socially mediated. Understanding how property is constituted through these dichotomies is central to interpreting current trends in neoliberal ideology and resource management strategies. As Mansfield (2007, 394) describes it, "property has become the central mode of regulating multiple forms of nature" and "efforts to create and impose new private property regimes are remaking ecosystems, livelihoods, and identities..." While the relative consistency of land facilitates an imagination of the 'objects of property' as inert entities, management of dynamic and mobile entities like water, air, and migratory animals reveal challenges to ideas about property and to property relations – especially when private property regimes are assumed to be the most economically efficient and rational strategies but do not produce desired management outcomes (Bruns and Meinzen-Dick 2000; Schmidt and Dowsley 2010).

Radin's work is interesting on a number of levels. First, as described above, Radin argues for a better understanding of property by re-examining the false dichotomies around our notion of property. Second, Radin creates a justification for emotion and feelings of place to be brought into judgments regarding property by arguing that these components are integral to an individual's identity and to property itself. Sociospatial identities grounded in place and spatial arrangements are constitutive of property as it is the everyday working and interpretation of human relations through landscape, land, and the material world that produce property. Third, fungible property and constitutive property are represented on a continuum, as identification of fungible and constitutive property changes over time and in different social and spatial contexts. This has implications for the ways in which social

identity frames are linked to fungible property over space and time. Fourth, the links that Radin makes between property and personhood can be applied in interesting ways to the relation between territory or homeland and nation. In the same way that the relationship between a property entity and human may be constitutive to personhood, the relationship between territory and nation can be fundamental in the collective imagination of nationhood and an autonomous 'nation-state.' Indeed, there is a strong parallel between liberal thought about property and individuals as citizens and territories and nations as 'nation-states'. The parallel of personhood and property to nations and homelands, territories, and natural resources offer insights into post-conflict property debates, peacebuilding, and natural resource management as discussed in Chapter Six.

Theorizing and operationalizing property beyond rights is rendered difficult by the fact that property is multivalent and multifunctional. Property is a contested terrain of ideology, political claims, economic models, identity, religion, governance, and legal models that plays out in "struggles at all levels of social organization" (Benda-Beckmann, Benda-Beckmann, and Wiber 2006, 2). In employing the above three approaches to property in the case study of Aceh, insights are drawn from legal geography literature on property, authority, landscapes, scale, and post-conflict land tenure.

2.4 Legal Geography

2.4.1 Defining Legal Geography

Legal geography is a sub-discipline that examines relations between law, physical space, and sociospatial processes (Holder and Harrison 2003; Kedar 2003; Forman 2006). While legal geography is diverse both in terms of topics and methods, it is thematically coherent in its focus on research and theory that examine the law-space nexus (Blomley 1989).[20] Property is a core concept in the law-space nexus. As Whatmore writes, "property is one of

[20] This focus can be diverse both in terms of topics and methods, but thematically it is coherent. Blomley (2000) outlines four themes that summarize the type of questions being asked about interlinkages of the legal and the sociospatial. These themes are that (1) law is produced in context and through spatial aspects of political struggle, (2) law is interpreted in spaces, (3) legal interpretation produces spaces, and (4) legal representation modifies spatial phenomena.

the, if not the, primary currencies through which conversations between Law and Geography have been, and continue to be, conducted. This should come as no surprise, given their shared complicity in the cartographies of governance, commerce, and science" (Whatmore 2003, 211). Legal geographic interpretations of landscape and scale can provide analytical frameworks that recognize "the dialectic between power and resistance, the manner in which property entails both practice and representation, the complex politics of place and the historical narratives and spatial mappings that underwrite property claims" (Blomley 1998, 608). In utilizing legal geography understanding of the concepts of propertied landscapes (Blomley 1998), evidence landscapes (Unruh 2006), and scalar politics (MacKinnon 2011) to inform approaches to property in the context of PCNRM, this dissertation contributes to a growing body of literature grappling with approaches to property.

While legal geography may be an emerging sub-discipline, Blomley (1994) finds that the intellectual history of legal geography can be traced back to the 16th century writings of Bodin on mapping law and Montesquieu's 18th century theory of climatic influences on legal traditions. Blomley (1994) argues that three theoretical emphases – regionalism, impact analysis, and critical legal geography – can be used to classify the different ways in which geographers have dealt with law. The first emphasis, *regionalism*, includes works that map categories of legal traditions over space and works that deterministically link the origin of legal traditions to their physical contexts. The second emphasis, *impact analysis*, explores how law and legal practices influence landscapes and spatial forms. Impact analysis, thus, inverts regionalism's line of causality between geography and law. The third emphasis, *critical legal geography*, focuses on how law, physical space, and sociospatial processes are mutually constituted. It owes its emergence to the law and society movement (Sibley 2002; Vago 2008), critical legal studies (Gordon 2001; de Been 2008), ideas about the social production of space and the role of space in social power (Foucault 1980; Lefebvre 1991), and concepts resulting from the broader 'spatial turn' in social theory (Warf and Arias 2009). Mutual constitution is the fundamental conceptual divide between critical legal geography and previous legal geographic emphases that accepted both the division and unilinear causality of spheres of law and space.

> The distinguishing feature of this perspective is its refusal to accept either law or space as pre-political or as the unproblematic outcome of external forces. Both are regarded as deeply social and political. Law is seen both as a site in which competing values, practices and meanings are fought over, and also as the means by which certain meanings and social relations become fixed and naturalized, either in oppressive or potentially empowering ways. Similarly, space is regarded as both socially produced and as socially constitutive, with attention being directed to the 'politics' of space. (Blomley 2000, 436)

Research on property has recently been reinvigorated by the growth in interest in the 'law-space nexus' and legal geography's cross-pollination of critical inquiry in human geography, legal anthropology, and law and society (Blomley 1994; Blomley *et al.* 2001; Delaney 2001; Holder and Harrison 2003; Benda-Beckmann *et al.* Griffiths 2009). Of course, the study of property is not the sole domain of legal geography as geographers have long been involved with research on property. In the following sections, I critically overview geographic work on property and then introduce propertied landscape, evidence landscapes, and ways in which the scalar politics can be used to understand property.

2.4.2 Geographic Perspectives on Property

Within the discipline of geography, the diversity of approaches to property defies any easy categorization. These approaches include everything from Kropotkin's (1995) anarchistic rejection of private property to attempts to understand subject/object dichotomies in regard to intellectual property and 'wilderness' (Whatmore 2003), analyze gendered tenure relations (Rocheleau and Ross 1995; Rocheleau and Edmunds 1997), disaggregate forest and territorial definitions of property (Peluso 1995), develop applied approaches to property claims and evidence in post-conflict settings (Unruh 2003, 2006), design policy for natural resource management issues (Giordano 2003), understand how property links to sovereignty and human territoriality (Sack 1986; Scott 1998), investigate legal narrative and judicial reasoning about property in the context of societal change and in relation to human rights and the geographic concept of place (Delaney 1993, 1998, 2001b**;** Blomley 2004; Flemsæter and Setten 2009). Despite the overwhelming diversity, the spectrum of contemporary geographic literature on property can be organized into three heuristic groups. First, there are those approaches that use the term property simply as a synonym of land; second, are approaches to property narrowly as rights; and, third, are approaches that

see property as a broad field of inquiry into the discursive and material processes implicated in sociospatial relations. The first of the three groups of geographic literature, which uses 'property' or 'landed property' as a synonym for land or land parcels, can be found in studies that investigate topics like property value (Che 2005) , housing markets (Choko and Harris 1990), and land acquisition programs (Naylon 1959). While this approach to property as land is interesting in that it reveals the cognitive link between land, territory, and property, it is insufficient for developing an analytical approach to property as a sociospatial process. Thus, the main focus of this overview of geography and property is the distinction between property narrowly conceived of as rights and property more broadly conceived of as a field of inquiry.

The distinction between narrow and broad approaches to property has not, until recently, been an issue in the discipline of geography. Of course, topics that implicate property relations (like land, territory, and sovereignty) have long been and continue to be concerns in geographic literature (Jones 2003; Delaney 2005). As well, property rights remain a central concern of geographic work in diverse, though often overlapping areas like political enfranchisement, capitalism and class struggle, natural resource management, gender, peace processes, land claims, livelihoods, international development, authority, and place and race (Emel and Brooks 1988; Prem 1992; Ford 1994; Schroeder 1997; Feldman and Jonas 2000; Unruh 2002, 2003; Blomley 2003b; Wolford 2004; Campbell 2007; Sikor and Lund 2009). Yet, several authors argue that there has only recently been an interest among geographers in how society conceives of and practices property and how property functions as a sociospatial relation (Blomley 1994; Blomley, Delaney, and Ford 2001; Blomley 2003a, 2003b; Whatmore 2003; Blomley 2004, 2005; Brown 2007a, 2007b; Flemsæter and Setten 2009).

The narrow approach to property accords with geography's long standing traditions of empirical research on governance, resource management, economics (such as, housing and real estate models), and politics. In this approach, property often functions as an independent variable in the spatial modeling of land use and land cover change (Nelson *et al.* 2001; Chowdhury 2006) and in economic development models investigating the role of

property (rights) in determining investment in urban and rural areas (Rogerson 1996). Approaches to property as rights also figure into articles that confront the logistics and ethics of the distribution of property rights within society (Price 1995). Authors that use this distributional perspective, including some who study political violence in regard to land claims (Simmons *et al.* 2007), tend to focus on property rights as an outcome or goal of actors rather than the property relations or narratives that are constitutive of sociospatial processes.

On the spectrum between the narrow and broad approaches are many attempts to conceptually situate property rights within larger analytical frameworks concerning resource access, governance, and authority. These attempts move beyond the narrow view of property as simply variables in models or outcomes, but they continue to define property narrowly as rights. These attempts can lead to rich work on how property rights are used to structure sociospatial relations in contexts wherein state formation and the limits of state legal systems are challenged. They can also be fruitful in investigating how property rights are recognized and distributed by the state, negotiated in local communities' tenure systems, and function in resource management or in building systems of political and legal authority (Peluso 1995; Sowerwine 2004a, 2004b; Sikor and Lund 2009). Yet, limiting property to rights alone weakens the theoretical framework and resulting analyses.

For example, access theory has been developed by scholars who focus on rural livelihoods where state institutions have incomplete territorial control, have challenges to their legitimacy, and are sometimes nearly irrelevant to local property relations (Ribot and Peluso 2003). Access theory criticizes property theory as focused only on rights rather than the numerous ways that people exercise the 'ability to benefit from things' (Ribot and Peluso 2003, 153). However, rather than broadening the understanding of property, access theory provides a narrow account of property as simply rights. Access theory argues that the ways in which people access property are as important to social scientific analysis as the rights that constitute property. However, in separating access from property, access theory narrowly defines property as just one type of authority-approved claim or authority-approved ability to benefit from things (Ribot and Peluso 2003; Sikor and Lund 2009). For

example, in a recently published edited collection, Sikor and Lund (2009) draw from access theory to examine governance and resource management through a conceptual framework based on the difference between property/access and authority/power. They draw from the idea that property (specifically, rights) represent a formalization of access that is constitutive of authority and power. Yet, authors in the edited volume stray and critically engage with broader ideas of property as sociospatial processes, narratives, and non-rights relations. Access theory is an approach that has encouraged some insightful work on the interactions between property rights, authority, and natural resource management. Yet, when rigidly followed its framework loses the nuances of the nature of property – proprietary interests in relation to societal change, the wide diversity of property relations (including the diversity of emotional connections, types of rights and duties, and numerous jural relations), and the different cultural narratives and imaginations of property and ownership.

Another example of literature that falls somewhere between the narrow and broad approaches is Giordano's (2003) article on scale, property rights, and resource governance. Giordano (2003, 369) conceptualizes property as the spatiotemporal domains of rights – a rights domain. He argues that the "commons problem occurs when a resource domain is coincident with or intersects the rights domains of two or more resource users". To illustrate the mismatching aspects of the "natural domains of resource and the rights domain of users" (2003, 371) he delineates private, open access, fugitive, and migratory domains based on how resource flows move through the temporal, spatial, and scalar structure of rights domains. These 'rights domains' represent different sorts of property regimes, but he is only concerned with the rights. He argues that understanding commons problems involves correctly specifying what aspects of the resource domains conflict with right domains. While his framework is an important contribution to conceptualizing the commons, he does not include any other jural relations that constitute resource management regimes. Understanding and solving problems in the commons is not just a question of getting the sociospatial aspects of property rights correct. Attention should also be placed on the sociospatial aspects of property obligations, duties, powers, immunities, privileges, emotional connections, and narrative and moral discourses. Without a

consideration of all these other aspects of property, the rights domain is a relatively limited way to approach the commons problem.

The broad approach to property envisions property as an expansive field of inquiry. It uses the narratives, representational practices, sociospatial relations, and material practices that constitute property as analytical lenses through which broader human relations can be investigated. Literature in the broad approach to property is more interested in how changing concepts of property and property relations interact with sociospatial processes than with simply pointing to rights as outcomes of those processes. Critical legal geography provides tools for engaging in broad approaches to geography. Perhaps because critical legal geography's origins are closely linked to critical legal studies, scholars involved with this approach tend to question any sort of law/society dichotomy. Thus, the idea of limiting property to authority-approved claim-rights to access resources is antithesis to investigating the totality of property relations and changing concepts of property (Blomley 1998). Legal geographic approaches investigate how conceptualizations of property may limit or enable political struggles, impact public and private spaces, and influence claims to proprietary interests (Delaney 2001b; Blomley 2003; Unruh 2003; Blomley 2004; Unruh 2006). Such approaches also call into question the way we emphasize only human relations in speaking about rights and thus create a dichotomy between the subject and object of property. Put in concrete terms, the way that we disregard how characteristics of the object of property (such as a house or home) play a role in defining and changing the subject of property (such as an homeowner) (Whatmore 2003). These approaches provide avenues through which sociospatial theory can inform the interplay of property and law.[21]

An example of the recent legal geographic literature in this broad approach to property is Delaney's (2001a) investigation of property in the Anti-Rent Wars. Delaney underscores the ways that legal argumentation and judicial decision-making in several 19th century cases involving the Manor of Rensselaerwyck in the New York State Court of Appeals reveal

[21] For example, drawing from Henri Levebfre's (1991) theory of tripartite space (the vécu, conçu, and perçu), some authors have attempted to examine how property interacts with law, place, territory, landscapes, place, capitalism, and political resistance (Delaney 2001; Flemsæter and Setten 2009).

changes in the concept of property reflective of ongoing social, political, and economic changes in New York State and the USA. At the heart of the matter in these cases was whether the granting of the 'manor' necessarily entailed what had become illegal feudal tenure relations (subinfeudation) or whether the property relations of the manor were simply incidental to a land grant. Delaney focuses on the narratives used to contest the redistribution of semantic elements (i.e. manorial territory and manorial privilege, property and possession, ownership of land and ownership of rent, and rent and remedy) and how "the maneuvering of these semantic elements creates new property relations" (Delaney 2001a, 503). His argument is not just about who has or should have the stronger property rights. It is about how different narratives change property, who has the ability to decide which jural relations are legal and equitable, and how "partisans attempt to produce (or reproduce) social space through the strategic interpretation of lines of continuity (or discontinuity) of the legal meaning of space encoded in rival conceptions of property" (Delaney 2001a, 493). This study on the Anti-Rent Wars, like other studies in the broad approach, reveals property to be a rich area for the expansion of geographic inquiry.

In another example, Peluso (1995) examines how mapping and 'counter-mapping' can be used as narrative devices for framing claims to resources. When local users engage in counter-mapping to protect their forest resources against state claims, they engage in a "process of mapping that forces the reinterpretation of customary rights to resources territorially, thereby changing both the claim and the representation of it from rights in trees, wildlife, or forest products to rights in land" (1995, 388). This is a powerful statement about how even when contesting the state, simply making claims in the language of the state transmutes local concepts of property from a complex network of sociospatial relations to a simplified, less dynamic, and more territorial concept coherent with statutory approaches to forest resources and property rights. Peluso (1995) demonstrates how the process of 'counter-mapping' changes the sociospatial relations that constitute property, the way people make claims to property, and the way people think about property. The above examples of broad approaches to property reveal ways in which sociospatial struggles over discursive and material processes are implicated in the realization of property.

2.4.3 LANDSCAPE

Landscape is a core concept in the discipline of geography that has proven particularly useful for exploring relationships between governance, law, land, and property (Olwig 1996; Schein 1997; Blomley 1998; Unruh 2006; Maandi 2009). Approaches to landscapes are divided broadly into two lines that follow (1) Sauer's (1925) 'morphology of landscape' or (2) ideas about 'landscape as a way of seeing' and 'landscape as text' (Cosgrove 1984; Cosgrove and Jackson 1987; Duncan 1990). This latter approach is sometimes known as 'new cultural geography' (Mitchell 2000). Although the latter approach sometimes draws from Sauer's 'morphology' insight that culture acts as an agent on the natural area producing a cultural landscape, the new cultural geography approach also critiques Sauer's lack of a clear definition of culture or nature and identifies ways in which landscapes and representations of landscapes work politically and ideologically on human practices (Cosgrove and Jackson 1987). These new cultural geographers argue that landscapes encapsulate contested political discourses and social contradictions (Duncan 1990; Schein 1997). Duncan (1990), for example, sees the landscape as a text and reveals how political discourses in 19th century Sri Lanka used the material and symbolic aspects of landscape and architecture to contest and reproduce power. The struggles represented by and realized through landscapes often relate back to how sources of territorial authority reproduce and contest property (Moore 1973; Blomley 1998; Unruh 2003; Moore 2005). In fact, Blomley argues that landscape provides a critical component for frameworks designed to understand property that must be sensitive to "the dialectic between power and resistance, the manner in which property entails both practice and representation, the complex politics of place and the historical narratives and spatial mappings that underwrite property claims" (Blomley 1998, 608).

Of interest to this dissertation is work that links landscape to property (Blomley 1998, 2003), evidence (Unruh 2006), and post-conflict land tenure (Unruh 2003). There are two main benefits of using landscape as a way to inform approach to property in this dissertation. First, geographic approaches to landscape can help operationalize property narratives and facilitate the analysis of land property without reducing property to static rights or land parcels. Blomley (1998, 577) points out,

> If struggles around property concern, in part, contested material spaces, and the representation of space, the polysemic qualities of landscape seem a useful point of *entry*. However, a closer attention to the term also reveals that "landscape," whether understood as "morphology" or "representation," can be shot through with contesting claims to property. To the extent that "landscape" alerts us to the materiality of property, it seems useful. Land as both an ideologically reified surface and a social site for embodied practices is important to property relations. But the concept of landscape invites us to also think about the ways in which "land" is represented. Such representations, I shall suggest, are ineluctably caught up with contending claims to property.

The second benefit of landscape is that it not only helps conceptualize representational and material struggles over property, it also offers a way to operationalize these struggles in response to issues in post-conflict scenarios. Unruh (2003) points out that local disputes over land, conflicts between informal and formal authority that implicate territorial control over land property, and ambiguous land tenure regimes are central problems in providing tenure security in post-conflict scenarios. Navigating these issues with an understanding of landscape reveals how property narratives (evidence) come to be realized in the landscape through everyday practices and offer opportunities to overcome the disconnection between informal and formal property regimes (Unruh 2006). Below, I outline how the concepts of 'propertied landscape' and 'evidence landscape' have been applied in post-conflict scenarios.

Propertied Landscape

Blomley (1998) uses the term 'propertied landscapes' to frame his investigation of the complex ways in which property is spatialized in urban spaces. He undertakes a study of downtown Vancouver which reveals how the creation and maintenance of property requires normative organization of the representations and lived practices of property. He probes ethical questions underlying the way property is discursively created in relation to people's actual behaviour, connections to place, and the social distribution of rights and obligations. He finds that lived practices create types of property incoherent to market-driven gentrification and that alternative, progressive representation of legal spaces and property must necessarily contradict the normal idea of property as simply the right to exclude. Blomley's argument aligns with both Singer's (2000) critique of the 'ownership model' of property as unrealistic and ideological and Radin's (1993) personhood approach

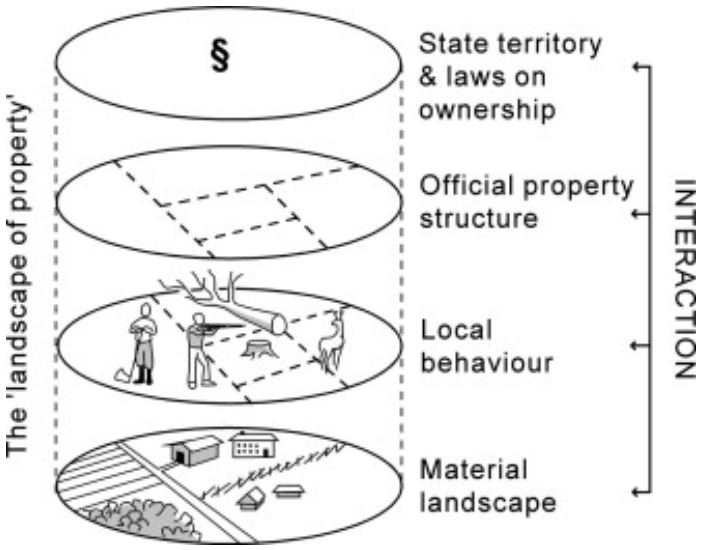

Figure 2.3: The 'landscape of property'. The layers represent different ways in which landownership is articulated. Source: Maandi 2009,456.

that argues constitutive property should be weighted more than fungible property in adjudicating claims. Blomley's propertied landscape opens some interesting avenues for exploring property in post-conflict scenarios. As property challenges in post-conflict scenarios often involve land property, the ability of landscape to operationalize alternative approaches to property by integrating insights on law, land, and property is particularly compelling. Maandi (2009) directly applies Blomley's idea of propertied landscape to an investigation of how local Estonian communities managed to maintain and articulate private property rights through behaviors and subtle landscape features during periods of Soviet control in 1940-41 and 1944-1991. In Figure 2.3, Maandi identifies four layers of interaction of the propertied landscape: state territory and laws on ownership, official property structure, local behavior, and material landscape.

He finds that local property relations were able to survive half a century of an alternative vision of property imposed by the Soviet state. Claims to certain spaces were kept through activities like haymaking and fuel wood gathering; material artifacts including networks of tracks, stone walls, cattle lanes and ditches; and oral histories passed down through the family. In his three case studies, pre-Soviet owners or their heirs reclaimed 39-100 percent

of village lands by basing claims on these alternative forms of evidence during the post-Soviet privatization of land parcels. These findings reveal that while dominant visions of property can be violently imposed through the frontier, survey, and grid, there may always be alternative propertied landscapes that resist and continue to exist beneath the surface of structures that territorialize state power and singular visions of property, territory, and sovereignty (Blomley 1998; Blomley 2003). Indeed, herein we begin to see ways in which authority, scale, and property intermingle. While Maandi (2009) directly operationalizes Blomley's propertied landscape, Unruh (2006) offers his own unique concept of the 'evidence landscape' to explore the construction of authority and statutory systems.

Evidence Landscape

The violence used to control property is dramatically displayed in war and post-conflict scenarios wherein collapse of territorial authority occurs (Unruh 2005). These outbreaks of violence and fissures in territorial authority create new and contribute to existing tenure disconnects between informal (non-state) and formal (statutory) property systems – between, respectively, *de facto* and *de jure* systems of property. While the tenure disconnect between formal and informal property systems is a common and particularly visible concern in post-conflict scenarios, it is also a broader issue that troubles the territorial extension of the state, tenure security, and treatment of property in relation to human rights and understanding of 'development.' In fact, this tenure disconnect is fundamentally about different understandings of what property should be and of what property relations can and should be recognized by statutory law. Unruh (2006) outlines existing paradigms used to bridge the tenure disconnect as replacement, evolution, and adaptation. The replacement approach simply implements a new property system without regard to local practices so it is less of a bridge and more of a bulldozer. The evolutionary paradigm "holds that population increase results in land scarcity, change in land values, increased uncertainty, and conflict; as a result, the populace demands and the state delivers more secure property rights via title" (Unruh 2006, 758). The evolutionary paradigm implies that there is a natural evolution towards private property in all domains of property relations (de Soto 200). The third paradigm of adaptation (or co-adaptation), emphasizes that the development of informal property systems occurs through an adaptive relation between

formal and other informal systems and leaves open the possibility that some parts of the policy disconnect may never be truly resolved into one coherent property system. These different paradigms affect how post-conflict policy and projects approach property and may influence whether opportunities for peacebuilding are adequately realized in PCNRM.

The 'evidence landscape' is embedded in the adaptive paradigm as it emphasizes and provides a way for practitioners and researchers to infer and recognize the practices of existing, post-conflict property systems in ways that build state legitimacy and respect ongoing, lived practices. In Unruh's analysis of informal and formal conflicts ranging from Zuni claims in the US Southwest to post-conflict land tenure in East Timor and Mozambique, he argues that 'evidence landscapes' are constituted of empirical artifacts generated by practices like clearing vegetation, erecting fences, or planting certain tree types to make claims to land (Unruh 2006). This 'evidence landscape' concept follows the American tradition of cultural landscapes that sees the landscape as "our unwitting autobiography... the cultural record we have "written" in the landscape…"(Lewis 1989, 12). While this empirical and autobiographic 'evidence landscape' is very useful for practitioners hoping to support property tenure security in postwar contexts, it can also be important to answering questions about the creation, representation, and interpretation of property and authority. Indeed, as Unruh's discussion of evidence reveals, his work is not simply about culture's impact on nature, it also about getting statutory institutions to read the landscape in a different way. He contends that it will be "much easier to secure land tenure by getting Western-based formal law to attend more closely to its own traditions in the treatment of evidence, rather than attempting to incorporate customary rights into formal law, or to change customary tenure via titling" (Unruh 2006, 756). He argues that Western-based formal law's own understanding of evidence as arguments that can be indeterminate, based on fact and inference, and linked to other arguments to become more persuasive, should be applied to these landscapes. In linking evidence to persuasion and evidence, the evidence landscape links discourse and material practices. In a textual metaphor, Western law has been reformatting the landscape rather than reading it for the logical arguments coherent with Western legal logic and understanding of evidence.

In Chapter Four, I apply these ideas of landscape as persuasive narrative in both representational and material dimensions to explore how the post-conflict versus post-disaster narratives surrounding property issues and practices on the ground influenced the definition of property and ways that property was/was not linked to peacebuilding.

2.4.4 SCALE

Scale is a complex and contested concept that has come to be the focus of some of the core debates in geography. In fact, geographers are often at the center of broader academic debates over what scale means, how scale should be thought of and researched, and whether scale even exists (Taylor 1982; Smith 1984, 1988, 1992; Jonas 1994; Agnew 1997; Delaney and Leitner 1997; Swyngedouw 1997; Cox 1998; Morrill 1999; Marston 2000; Brenner 2001; Purcell 2003; Mansfield 2005; Marston *et al.*2005; Leitner and Miller 2007; Moore 2008; Herod 2011; MacKinnon 2011). Of particular interest here is how the broad approach to property might be linked to scalar processes; more specifically, how scales are socially constructed through the discursive and material practices of property and, in turn, how property is constituted through scalar processes.

In geography, scale has "at least two very different meanings" – one that is technical (as a methodological issue in data collection and cartography) and another that refers to human perceptions of the size (geographic extent and sometimes quantity) and level (like national, regional, or urban levels) of processes and phenomena (Herod 2011, xi). This latter type of scale as size or level is innately subjective, relational, and fluid (Howitt 1998, 2002). Several authors argue that rather than focus on how to conceptualize and operationalize these different scales, researchers should reorient their focus towards the political and social processes through which scales are constituted (Moore 2008; Herod 2011; MacKinnon 2011). MacKinnon argues that a focus on 'scalar politics' replaces the notion that the 'politics of scale' are about scale with the idea that 'particular political projects and initiatives have scalar aspects and repercussions' and 'focuses attention on the strategic deployment of scale by various actors, organizations and movements' (2011, 29). This draws from the argument that rather than perceiving of scales as territorial containers or 'space envelopes' that gain or lose power through processes like 'rescaling' the state in neoliberalism or serve as platforms for political strategies of 'jumping scales,' we should

analyze scales as variable dimensions of political economic practices and processes (Mansfield 2005). MacKinnon (2011) also argues that a focus on scalar politics reveals the influence of perceptions of scalar structures on the material and discursive practices of projects engaged in scalar processes. In other words, scales themselves are the contingent result of political, social, cultural, economic, and ecological processes. Additionally, such an approach recognizes that no particular scale can be designated as a privileged entry point for analyses.

Scaling property and 'propertying' scale

Links between property and scale feature in geographic research on topics like environmental governance, sovereignty, and natural resource management (Giordano 2003; Liverman 2004; McCarthy 2005). Yet, this literature tends to either limit property to restricted versions of property as rights or to reify versions of scale as levels or 'space envelopes.' The focus is often on the distribution of property rights between predefined levels like the individual, household, neighborhood, community, province, and nation-state. Other studies investigate how social actors operating from different levels obtain property rights. These approaches tend to frame property conflicts as occurring between scales – such as the 'community' versus the nation-state (or other levels of government) or 'local' actors versus 'global' actors. Occasionally, in relying on scale as level, these approaches may draw on disputed notions of the nation-state as a monolithic force or as a vehicle for corporate interests that dispossess people of property rights through various levels of statutory law acting against or restructuring 'local', 'community', 'customary', 'traditional', or 'indigenous' property practices and relations (Scott 1998; Blomley 2003; Harris 2004; Zulu 2009). Such works engage with interesting theoretical constructs regarding social power and can reveal much about the problems and processes involved in property rights distribution over scales. However, it is rare that scalar processes are given priority over scale levels. As well, other legal concepts or jural relations rarely feature as part of these analyses – even when the cultural and emotional connections to material resources are discussed as ethical grounds for making property claims and are seen in some ways to sociospatially constitute the nature of a 'community' (Moore 2005).

One example of a study that uses alternative legal concepts to explore property relations within a scalar framework is Sikor's (2004) study of 'post-socialist' land reforms in rural Vietnam. Drawing from Gluckman's (1972) work on Barotse jurisprudence and Verdery's (1999) ideas about 'post-socialist' fuzzy property, Sikor (2004) outlines a framework for examining changing obligations and rights in the context of state-led changes to property relations. These changes stemmed from a 1993 land law that required 'land allocation' (demarcation of plots, registration, and issuance of title certificates) that conflicted with existing property relations. In his article, Sikor uses 'land relations' and 'property relations' interchangeably. He argues that the land allocation process embodied a 'post-socialist,' neoliberal idea of property that challenged 'pre-socialist' property relations and socialist land laws – the allocation process erased the complexity of overlapping temporal and spatial rights and destroyed the social embeddedness of existing property relations.

Sikor argues that the utility of Gluckman's (1972) framework for analyzing property relations is in Gluckman's incorporation of the idea of obligations and vision of property relations as based on a hierarchy of scales or overlapping estates. Following Gluckman, Sikor uses the terms 'duties' and 'obligations' interchangeably. Gluckman recognizes, like many philosophers and anthropologist before him, that rights come from a social community and, in acquiring property rights, all right-holders simultaneously acquire a number of social obligations that bind them morally to their community and to the social authority that recognizes and enforces their rights. Taxes, gifts of wild game, portions of harvests, or other transfers may be property rights-holders' obligations to maintain their right. Other parties have a duty to respect the right until the right-holder does not fulfill his or her obligations. In Gluckman's (1972, 89-93) framework, the authoritative body itself also has certain duties and obligations. The authority has a duty not to preempt people's rights without good cause (what is sometimes called 'takings') and it has an obligation to provide for claims of community members. These observations become clearer within an analysis of Gluckman's hierarchical framework of estates.

While Sikor uses the terms 'estates', 'powers', and 'rights' interchangeably throughout his article, Gluckman reserves the term 'estates' to describe a complex of rights and obligations

(Gluckman 1972, 90). Briefly summarized, Gluckman theorizes that property embodies a hierarchy of overlapping estates (Sikor 2004, 77). There are two types of estates – an 'estate of administration' and 'estate of production'. The estates each include several different types of rights and obligations. The estate of administration involves "actions as trustees on behalf of subordinates by seniors, the power and obligation to apportion land among subordinates, and to some extent powers to regulate the use of the land," while the estate of production refers to different complexes of usufruct rights (Gluckman 1972, 89-90). While the estates of production can be concurrent and overlapping, they always occur as subsidiary to the estates of administration. An estate of administration can be subdivided into further estates of administration or estates of production. These estates are seen as "'nested layers of control over land' or 'a 'hierarchy' in the sense of a 'series of estates'" (Sikor 2004, 77). Whether one holds a primary, secondary, or tertiary estate of administration depends on one's location on scales of social or political status – a king holds a primary estate, chiefs hold secondary estates, households hold tertiary estates, and so on.[22] Though this framework is proposed as a hierarchy of social status, Gluckman's divide between estates of administration and production parallels common contemporary approaches to property that designate the right of transfer and 'rights to regulate, supervise, represent in outside relations, and allocate property' as superior rights to the rights to use or exploit resources (Benda-Beckmann *et al.* 2006, 17). This framework is an interesting point of departure for studying property in relation to authority and scale. Sikor points out that though lower estate holders do not have the right of alienation, as long as they meet their obligations "they continue to enjoy secure estates of production... Obligations and social debt thus are primary to rights" (Sikor 2004, 77).

Building upon Gluckman's framework, Sikor make some stimulating insights about the 'post-socialist' change in property relations in rural Vietnam. First, in regard to the 1993 land law, he describes a situation in which all resources and property relations have been subsumed under a discourse of land law. As in many cases, property relations regarding all

[22] Similar to feudal systems, holders of lower estates may have obligations to give superior estate holders part of their harvest or hunt, but unlike feudal tenure systems the holders of primary estates have obligations to provide land for people who are part of villages within their realm of authority (Gluckman 1972).

resources (forest, water, and otherwise) have been treated as if they were land or permanently connected to land parcels. Second, the 1993 'post-socialist' Vietnamese land law territorializes all resources, rendering the complex and flexible relations regarding resources into a bounded, static formula regarding land. The socialist and pre-socialist frameworks allowed fluid and fuzzy geographic boundaries and a situation wherein, "Property claims can relate to different resources on the same piece of land, they can vary over time, and they may be embedded in a series of allocations including multiple claims" (Sikor 2004, 78). Third, "the balance of powers between the different layers of social control may differ between places and plots" (Harris 2004, 78) due to land scarcity. According to Gluckman, the balance of power between various holders of estates of administration and estates of production tends to lean more towards holders of estates of administration as land scarcity increases. This final insight reveals how the distribution of rights, duties, and obligations has an impact on how scales are politically constituted and that property relations change in response to societal and ecological contexts.

Drawing on the above insights and empirical data, Sikor argues that 'local land relations' are multi-layered (on scales of sociopolitical status), socially-embedded, spatially fluid, bound to strong obligations, legitimized through moral and social goals, and flexible enough to allow dynamic distribution of powers between scale levels. This is in comparison to the 1993 legislation which creates property that only has a dual hierarchy (individual-state), is detached from social status, is legitimized only through formal legal procedures, has rigid spatial boundaries, has weak obligations (from the top down, the state has few obligations to the people), and creates a situation wherein the balance of power is fixed and inflexible to local ecological constraints and social needs. Sikor's approach tends to reify sociopolitical scales (in both the pre and post-1993 versions of property) as fixed levels from which power is negotiated rather than as scale positions or dimensions that are constituted through the sociospatial aspects of property relations. Yet, his arguments reveal the power of theorizing property relations in relation to sociopolitical scales and that property relations play a role in constituting sociopolitical scales. As Sikor's (2004) article demonstrates, investigating property rights and obligations within scalar processes can

reveal much about why particular statutory regulations, programs, and projects that attempt to change property relations succeed or fail.

In Chapter Five, I draw from these frameworks to analyze to examine how authority, property, and scalar processes interacted in a controversial land titling project that took place in Aceh, Indonesia between 2005 and 2009. I argue that this project rescaled property relations and, in so doing, redistributed political power across different scales of governance.

2.5 SOCIAL IDENTITY

In Chapter Six, I build a policy tool that uses an understanding of the constitutive dimension of property (Radin 1993) to link social identity to PCNRM and peacebuilding. Below, I offer a working definition of social identity based on social identity theory; examine how social identity and natural resources are linked to armed conflicts; and outline some gaps in the analytical links between social identity, property, natural resources and PCNRM.

I argue that conceptualizing social identity as either a fixed, permanent category or as a framing process that is always reflective of social and spatial contexts will influence how we understand the relation of identity to property, territory, and place. These different understandings of social identity change how we understand the interplay of identity frames and constitutive property in the flourishing of individuals (Radin 1993). Property struggles implicate social identity narratives and material artifacts of the landscape (Schein 1997; Blomley 1998; Unruh 2003, 2006). After all, identity, property, authority, and landscape are closely intermingled, the "normalizing, normative capabilities simultaneously make the landscape central to the ongoing production and reproduction of place and identity (individual and collective)" (Schein 1997, 676). Changing the way that we understand social identity may help in providing insights into intractable conflicts.

The links between social identity and property may result in positive outcomes in terms of natural resource stewardship, individual personhood, and group functions. Yet, these same links can cause problems when social identities are in conflicts involving property. In the

case of post-conflict natural resource management, the social identity links to property may undermine peacebuilding – particularly when land is involved. Land and landscapes function as the spatial containers through which such social constructs as territory, homeland, and home come to be conceptually framed and materially realized (Moore 2005). An understanding of the links between social identity and property (and particularly land) might assist planning appropriate timing, locations, and methods for designing and implementing PCNRM policies.

2.5.1 Social Identity and Armed Conflicts

There is a well-developed literature on the links between social identities and armed conflict (Huntington 1997; Kaufman and Smith 1999; Fearon and Laitin 2000; Shmueli *et al.* 2006). Much of this literature focuses on ethnicity or ethnic conflict (Nagel 1994; Gurr and Harff 1994; Gurr 2000; Eriksen 2001; Toft 2003), yet ethnicity is only one type of identity frame. It is necessary to consider both the broad literature on social identity and the more narrowly framed work on ethnic conflict to understand how social identities have been linked to armed conflict.

Approaches to social identity can be located on a continuum between two ontological stances: primordialism and constructivism. Primordialist approaches conceptualize social identity as a fixed collection of traits that are genetically inherited (in the strong sense of primordialism) or determined by cultural narratives and social structures (in the weak sense of primordialism) (Gurr and Harff 1994). Primordialist approaches are both essentialist and determinist in their understanding of identity as a stable aspect of group and individual psychology. Huntington's (1997) well-known work on the clash of civilizations is a modern example of how a primordialist perspective frames some conflicts as the inevitable result of irresolvable, ancient prejudices and predicts people's behaviors along lines of historical identity categories. On the other hand, constructivist approaches emphasize that identity is not fixed; they recognize the complex ways in which social identity and collective action are simultaneously constructed through social psychological framing, context, and discourse (Bowen 1996; Schmueli *et al.* 2006). Constructivist approaches look more at contextual factors and agents' decisions concerning overlapping

social roles, framing discourses, and historical experiences. In other words, constructivist approaches accept the idea that social identity is historically constructed, multi-faceted, and contextually dependent (Gardner 2003). Examples of constructivist approaches to identity include everything from Smith's (1998) perennialism to political opportunity theory (Meyer 2004), social identity theory (Tajfel and Turner 1979; Hogg *et al.*1995), and social movement theory (Tilly 2003). The choice of a constructivist or primordialist viewpoint influences understanding of how social identity relates to property, natural resources, war, and peacebuilding. For example, a primordialist approach would see the link between identity and homeland territories as a fixed relation. Not only would the relation be fixed, but it would determine the types of possible interactions between identity groups with competing claims for the same homeland and would inevitably lead to conflict. On the other hand, a constructivist would argue that violent conflicts are not inevitable, but the result of strategic interests and political discourses linking identity to territorial or resource claims—for example, irredentist claims of Greece over the southern Balkans (Peckham 2000) and the flexible links between identities and livelihoods in Darfur (Young *et al.* 2009) reveal how territorial claims are often manipulated or contextually framed as social identity claims. Where a primordialist approach envisages inevitable conflict, a constructivist approach encourages a search for ways to reorder the primacy of identity frames (for example to deemphasize some identity claims and to emphasize the benefits of shared user rights, to point to common interests in maintaining resources, or to create new identity frames) in conflicts in which identities are linked to natural resources or violence.

In this dissertation, the definition of *social identity* is based on social identity theory—a constructivist approach that emphasizes ways that structural factors, group characteristics, and individual actor decisions play a role in framing and choosing identities (Tajfel and Turner 1979; Hogg *et al.*1995; Stets and Burke 2000; Ashmore *et al.* 2001). The emphasis in social identity theory is less on how intragroup roles interact and more on how categories (or frames) are formed through intergroup interaction. This approach is useful for moving beyond simply finding identities in conflict to finding out how identities are constructed as categories, interact with each other, and are linked to natural resources in conflicts. I draw from Tafjel's (1978, 63) definition of social identity as "that part of an individual's self-

concept which derives from his knowledge of his membership in a social group (or groups) together with the value and emotional significance attached to that membership". The emphasis in social identity theory is on both the person and the dynamics of groups. However, it is less on how intragroup roles interact and more on how categories (or frames) are formed through intergroup interaction. This approach is useful for studying the process by which identities relate to intergroup conflict (Ashmore *et al.* 2001).

Brubaker and Cooper (2000) identify some additional key conceptual distinctions that are useful when investigating how types of social identity are constructed. First, does social identity refer to relational or categorical modes of identification? Second, does the act of identification come from an external source or through self-identification? Brubaker and Cooper (2000) recognize that the divisions between relational/categorical and external/self-identification are not always clear, but that these can be analytically useful. For example, identification by positioning in a relational web (such as kinship, friendship, or business ties) may sometimes overlap with identification through categorical attributes (such as race, ethnicity, language, or citizenship) but these represent two very different modes of identification. Likewise, an externally imposed identity (such as legal citizenship) can be incompatible with self-identification. For example in 1933, the Belgian identity cards issued in Rwanda rigidly classified residents into ethnic categories of Hutu or Tutsi and denied the mixed heritage and self-identification of many residents as something other than what was on their identity cards.

The distinctions of external/self-identification and relational/categorical can be important for understanding how social identity is described in cases involving natural resources and armed conflict. For example, in exploring how economic rents from natural resources are used to recruit soldiers for rebel groups, Weinstein (2007) examined how young men develop identities tied to rebel groups through relational modes of self-identification. Such dynamics are also evident in places like Darfur, where identities often considered as ancient labels for ethnic groups or tribes actually have a more fluid and permeable nature in which political alliances, ecology, and livelihood strategies cause individuals or groups to adopt new identities based on context-dependent opportunities (Young *et al.* 2009). In Southeast

Asia, Scott (2009) describes how the flexibility of identities of remote groups may in fact be strategies for escaping oppressive governments' tendency to categorically define and manage communities. Li (2000, 151) investigates this interplay between imposed categories and self-identification in Indonesia and notes "that a group's self-identification as tribal or indigenous is not natural or inevitable, but neither is it simply invented, adopted, or imposed. It is, rather, a *positioning* which draws upon historically sedimented practices, landscapes, and repertoires of meaning, and emerges through particular patterns of engagement and struggle… the contingent product of agency and the cultural and political work of *articulation*."

Categorical modes of identification are powerful social organizing tools that can be used by actors that are both external and internal to groups to discursively frame property claims, resource access, and political positions. As Li (2000) points out, identity categories are not always internally eschewed as groups and individuals can adopt them for their own political goals. For example, Bowen (2005, 160) outlines ways in which the Acehnese liberation movement is based on the group category of 'Acehnese people' – a category that he argues has been internally generated by a narrative of precolonial autonomy and by drawing from international discourses external defining the category of 'indigenous people' to position the movement and consolidate several distinct regional and language groups. Also in Aceh, Burke and Afnan (2005) point to the risk of such dynamics in complex political emergencies. They outline how the designation of recipients of aid and the timing of aid were affected by ways in which individuals were categorized by external organizations as conflict refugees or disaster refugees. People may strategically self-identify with external categories that better position them for aid. Another example of categorical modes of identification can be found in the negotiations leading to the Permanent Court of Arbitration's redrawing of the borders for historical land claims in the Abyei region of Sudan. As detailed in Chapter Six, these negotiations arguably use an understanding of identity based on imposed categories that bear little resemblance to the actual historical character of communities and kinship networks in the region. The narratives used to frame problems in peacebuilding processes may involve creating categorical modes of self-identification and external identification relevant to establishing political negotiation

positions or to gaining access to resources or post-conflict aid.

The social identity frames formed through externally imposed categories (for example, by the colonial state) are analytically different from and play different social roles than relational modes of self-identification that are so important in defining incentives in recruitment processes, serving as ways to resist state power, and defining the contours of armed conflict dynamics. Yet, it is also key here to note that categorical identities are not always externally imposed as they can also be internally imposed and used by groups for their own political and economic benefit to position themselves in regard to other groups or to erase the flexibility of relational identification strategies (Li 2000).

2.5.2 Natural Resources and Armed Conflicts

As discussed in Section 2.2, the literature linking natural resources to armed conflict has mushroomed since the 1990s. Several issues in this field have gained attention in the popular media. One such issue is the resource-scarcity-versus-resource-abundance debate, wherein arguments that resource scarcity triggers armed conflict in several ways have been criticized by authors who point out that petroleum and other types of resource abundance better predict and explain interstate and intrastate armed conflicts (Homer-Dixon 1998; Peluso and Watts 2001). Popular interest in global environmental change and its potentially dramatic impact on human societies has inspired a large body of research and some misguided popular speculation on the potential for future 'resource wars' caused by environmental degradation, scarcity, and migration (Nordås and Gleditsch 2007; Dyer 2010).

One influential model of the links between resources and armed conflict is the 'greed and grievances' model (Collier and Hoeffler 1998, 2004, 2005). The gist of this model is that high-value natural resources provide the incentives (for greedy rebel leaders) or opportunities (for rebel groups) that encourage armed conflict and undermine peacebuilding (Aspinall 2007). While the greed is clear, grievances are simply related to perceived unequal distribution of rents. This model has inspired theoretical work on how the characteristics of resources affect both rebel group formation and conflict types, and it

has driven policy approaches that focus on intervening in resource commodity chains to stop rebel financing and build peace in places like Liberia and Afghanistan (Ross 2004; Le Billon 2008). However, this model has also been criticized by scholars who emphasize that natural resources affect a wider range of economic, political, and cultural factors (Ballentine and Sherman 2003; Ross 2004; Fearon 2005). For example, an abundance of a high-value resource like petroleum has been shown to destabilize governments by causing macroeconomic instability, to undermine the state's ability to govern dissenting groups, to lead the state to adopt policies that encourage oppositional groups to use violence, and to encourage competition over state control when state control becomes equivalent to control of high-value resources (Humphreys 2005). Humphreys (2005) discusses how, in the Chadian case, armed conflict was not maintained through resource rents, but rather alternative revenues could be raised in advance to fight for control of the Chadian state and the future oil revenue that would come with control of the state.

While the symbolic value of resources (especially land) is often recognized as an important factor in conflict escalation, duration, and intractability (Kahler and Walter 2006), popular models like the 'greed and grievances' model tend to focus on the economic value of resources as the main causal and limiting factor in the escalation and duration of violence. While the model is useful for understanding many groups engaged in modern conflicts and is responsible for policy prescriptions that undermine rebel financing, this model fails to explain the escalation and duration of armed conflicts over resources that have little economic value. As well, it is inadequate for explaining the ways in which armed conflicts over identity resources (such as sacred forests, fishing rights, and homelands) and locally valuable livelihood resources occur and become intractable.

2.5.2 Social Identities, Natural Resources, and Armed Conflict

Cultural or political values associated with land, sacred forests, fisheries, water, and other natural resources play a role in ethnonational discourses, livelihood struggles, and religious narratives, and link to many identity frames. These links are between identity and natural resources are often mediated through property relations that can sometimes be constitutive of both the subject and object of property – especially in the case of the symbolic cultural and political value of land. Of course, these links between social identity and property (in

this case, natural resources) exist outside the realm of armed conflict, but this section only focuses on some ways in which the links of social identities to natural resources influence armed conflict.

Theories of armed conflict often under-theorize the complex links between social identities and natural resources (Ballentine and Sherman 2003; Ross 2004; Aspinall 2007). Yet, the overlap between identity and natural resources involves at least four links related to armed conflicts. These links are important in identity formation and mobilization, they do not necessarily lead to armed conflict but they help to understand how armed conflicts occur (Peluso and Watts 2001). These links are not isolated and one or more of these links may be found within any one conflict:

1. How identity claims involving ownership or privileged access to resources lead to armed conflict.
2. How identity influences claims of inequitable distribution of resource rents and leads to grievances and armed conflict.
3. How identities are used by elites and 'ordinary folk' to mobilize collective action in conflicts over natural resources.
4. How identity framing facilitates conflict over natural resources.

The first link includes identity conflicts over the historic use or symbolic value of resources. For example, narratives that influence the legal alienation of Arab lands in Israel draw from historical claims to the land (Forman and Kedar 2004). The second link is represented in several center-periphery relationships in which rents from high-value natural resources located in peripheral regions are captured by urban elites or states and not equitably distributed to populations in these peripheral regions that often bear the costs of resource extraction. In situations where center or periphery groups can be linked to identity frames (like ethnic groups), identity often becomes one of the primary frames through which claims to equitable distribution are pursued. For example, Suliman's (1999) study and recent work by the International Crisis Group (ICG 2008) on the dynamics of the Nuba and Baggara conflict over lands in Sudan's Southern Kordofan state indicate how identity has been shaped by center-periphery relations and conflict dynamics.

The third link includes the Collier-Hoeffler ('greed and grievances') line of research wherein

greedy political entrepreneurs create or manipulate existing local identities in order to profit from new political and social arrangements or continuing armed conflict. In this situation, case studies of Rwanda have sometimes cited the underlying land conflict as a source of tension and indicated the role of political entrepreneurs in recasting this tension into the genocidal conflict (Percival and Homer-Dixon 1998; André and Platteau 1998). Other authors see perceived grievances against a community as one of the main ways in which identity becomes a primary mobilizing frame for conflict. Robinson's (1998) study of the role of hydrocarbon extraction in mobilizing collective identity and legitimizing violence in Aceh, Indonesia illustrates such a natural resource extraction - political manipulation - - identity grievances - armed conflict causal chain. This chain is also clearly presented specifically for land property in Indonesia by the Peluso and Harwell (2001, 86) study of the 1997 violence in West Kalimantan, where violence resulted "to signal a reclamation of the Dayaks' historically occupied spaces, resources, and identities, and to demonstrate the protection of their collective honor. The notion of *kawasan*, or territory, is a crucial part of their collective concerns." Here we hear the echoes of Radin's (1993) constitutive property as we examine if the Dayak group can exist and flourish without *kawasan* and, if not, what happens in result.

The fourth link is subtly different from the third in that it argues that a specific type of identity frame must pre-exist political manipulation and mobilization of identity frames in armed conflict. Rather than assuming that political manipulation can mobilize any identity frame for armed conflict, this link indicates that specific types of identity frames must pre-exist political manipulation. For example, Aspinall (2007), in discussing Aceh, attempted to go beyond the typical political manipulation identity grievances -armed conflict causal narrative by arguing that collective grievances and legitimization of violence cannot occur without a specific type of pre-existing identity frame.

> Rather than seeing natural resource grievances as a source of conflict, or as a catalyst or accelerant for the crystallization of identity, I emphasize that it was the evolving framework of Acehnese identity that provided a prism through which natural resource exploitation was interpreted in grievance terms. Put more bluntly, one might say that without the identity framework there would have been no grievances, at least no politically salient ones. Instead, natural resource exploitation in Aceh may have been viewed as unfair and irritating, but also as banal and unavoidable, as it arguably was in other provinces. In this view, grievances should

> not be seen as trigger factors, antecedent to the discourses that motivate violence. Grievances are instead integral to the ideological frameworks though which the social world, including notions like "justice" and "fairness" are constructed and understood. (Aspinall 2007, 957)

Despite arguments between scholars prioritizing different causal mechanisms, identity and natural resource conflicts are not mutually exclusive themes in the study of armed conflict. Property as natural resources is linked in several ways to social identities in armed conflicts. This dissertation focuses on territory and land issues to examine how the ways in which social identities are mobilized in resource conflicts affect how links between social identities and natural resources might positively or negatively affect PCNRM. Although the literature on peacebuilding and natural resources often refers to the role of communal groups in PCNRM and peacebuilding (Bush and Opp 1999; Bruch *et al.* 2011), there is rarely a theoretical or practical link drawn between natural resources, identity, and peacebuilding. As shown in a number of case studies, the lack of consideration of such links undermines PCNRM and peacebuilding programs (Webersik and Crawford 2011; Yezer 2011).

In Chapter Six these themes of social identity, constitutive property, natural resource management, armed conflict, and peacebuilding are explored using data collected in the dissertation research supplemented by other case studies. The result is an analytical policy tool for policy and research on social identity and PCNRM.

2.6 CONCLUSION

This chapter introduced and critiqued four bodies of literature that provide the foundation of the dissertation's analytical framework: PCNRM, property, legal geography, and social identity. As outlined in Figure 2.2, the dissertation is broadly situated in the growing field of PCNRM, uses three approaches to property drawn from property literature, draws several concepts from legal geography to explore property through scalar politics and landscape, and relies on social identity theory to conceptualize social identity as a framing process.

Throughout the rest of the dissertation, I use the above concepts to examine how the social-embeddedness of property impacts PCRNM. As each chapter is a standalone manuscript, there is some overlap with the literature review. In Chapter Four, I examine how post-

conflict and post-disaster disaster narratives influenced approaches to property and land titling in Aceh, Indonesia. I use the concepts of **propertied landscape** and **evidence landscape** to explore the material and discursive nature of these narratives. In Chapter Five, I analyze semi-structured interviews and survey data to explore how through **scalar politics** may change rights, duties, obligations, and other **jural relations**. In Chapter Six, I draw from the **personhood** approach to property to design an analytical policy tool that links social identity, property, and conflict to help practitioners evaluate options in for using identity framing to support PCRNM for peacebuilding.

CHAPTER THREE: METHODS

This chapter provides a more detailed version of the methods sections that are summarized in the manuscripts in Chapters Four, Five, and Six. Editors of the manuscripts often wanted more emphasis on policy relevant findings and lessons learned at the sacrifice of more detailed exploration of methods and reflection on the course of research. Below, I overview the research context, ethical considerations of data collection, the methods used to collect data, and data analysis procedures.

3.1 RESEARCH CONTEXT & SITE SELECTION

This dissertation critically examines experiences and debates regarding property in post-disaster, post-conflict Aceh, Indonesia, during the period of 2005–2009. I did my research in Aceh as it provided one of the most interesting cases of simultaneous post-disaster and post-conflict scenarios in modern times. Research for this dissertation includes semi-structured interviews, focus groups, archival research, and observations from four field visits (totaling five months) between August 2006 and June 2008 to the city of Banda Aceh and the regencies of Aceh Jaya, Pidie, and Aceh Barat (see Figure 3.1).

I did most of my fieldwork in the districts of Aceh Jaya and Aceh Barat where post-tsunami and post-conflict recovery activities simultaneously occurred and where several coastal villages and urban centers were targeted by the state-led land titling program known as RALAS. In Aceh Jaya and Aceh Barat, I was based in the district capitals (respectively, Calang and Meulaboh) but made frequent trips into the surrounding region where I conducted semi-structured interviews, direct observation, and focus groups. As shown in Table 3.1, damage from both the tsunami and conflict was extensive in these districts so they provided ideal places to examine how property issues were being framed by actors on the ground and how the RALAS project was being implemented on the ground. Being based in these areas also allowed me to work with international organizations to gain access to rural areas I would not have been able to economically or logistically access as an individual researcher. While the military restrictions that had limited travel before the tsunami were not of major concern by 2006 (when I was on the ground), there were several geographic

Figure 3.1 Map of four field work districts ('regencies' or *kabupaten*). Source: Author.

Table 3.1 Level of damage caused by conflict and tsunami. Source: Wong *et al.* 2007.

District	*Conflict Index*	*District*	*Disaster Index*
Aceh Timur	3.63	Aceh Jaya	5.46
Bener Meriah	3.34	Simeulue	4.93
Nagan Raya	2.11	Bireuen	3.74
Aceh Jaya	1.75	Aceh Barat	3.38
Pidie	1.65	Aceh Besar	3.17
Aceh Utara	1.64	Aceh Singkil	3.15
Aceh Selatan	1.56	Aceh Selatan	3.00
Gayo Lues	1.50	Aceh Barat Daya	2.79
Aceh Barat	1.49	Gayo Lues	2.75
Lhokseumawe	1.35	Aceh Tenggara	2.67
Bireuen	1.04	Pidie	2.65
Aceh Tenggara	0.87	Aceh Utara	2.35
Aceh Singkil	0.80	Nagan Raya	2.01
Aceh Besar	0.74	Aceh Tengah	1.85
Aceh Tamiang	0.69	Aceh Tamiang	1.76
Aceh Barat Daya	0.56	Aceh Timur	1.47
Aceh Tengah	0.46	Lhokseumawe	1.11
Simeulue	0.22	Bener Meriah	0.81

areas that were not accessible to me due to the tsunami damage and to lingering security concerns.

Much of the archival research and several of the semi-structured interviews with official representatives of the Government of Indonesia (GOI), international and national non-governmental organizations (INGO and NGO), and other institutions occurred in Aceh Besar in the city of Banda Aceh (the provincial capital).

When I originally planned the dissertation research and fieldwork, I had hoped to use a mixed methods approach that included semi-structured interviews and a large-scale, randomly-sampled survey that examined how statutory title was perceived in different regions, whether/how many loans were being accessed via mortgage, and how much foreign direct investment was coming into specific areas of the region based on the titling that supposedly increased tenure security and opened up property markets. When on the ground in 2006, it quickly became evident that I needed to change the way I approached data collection due to my inability to access to some areas, the slow rate at which land titles were being issued, the lack of any clear accounting of foreign direct investment, and the unique ethical and logistical constraints of working in a post-conflict, post-disaster scenario with communities that often moved between locations. Due to the above reasons and lack of financial support to employ enough ground personnel to administer the survey or to fund an extended period of stay in the region, I decided not to pursue the a large-scale, randomly-sampled survey and to focus more on data that was readily available (public comments, publications, and archives), expand the number of semi-structured interviews over a number of visits, and rely on focus groups to understand why or why not land titling was an important community priority. This change in the methods required reorienting the data analysis away from statistical models and more towards qualitative approaches to gathering data, analyzing data, and presenting information.

Qualitative research must be sensitive to nuance and situation. This requirement poses special problems to research working in foreign contexts and in languages that they have not mastered. For my fieldwork, gathering data required learning a new language, recruiting translators, and jumping through many bureaucratic hurdles to be in the region

(hurdles that may be encountered in many studies that take place abroad but are ever present and intensified in disaster and conflict areas). One of the most difficult aspects of conducting research was the number of language barriers required to navigate Indonesia and in particular the multi-ethnic region of Aceh. My language training took place in Yogyakarta, Java, Indonesia where there are several language schools and as language training was not available in Aceh when I started my research. I learned Bahasa Indonesia as it is the lingua franca of Indonesia. Despite having a functional ability in Bahasa Indonesia, I was required to hire a translator as many of the people in Aceh are more comfortable speaking one of the local languages – of which Acehnese is only one. I worked with two different translators over the period of my research, one at a time. I also occasionally employed automatic translation tools to aid in text translation when my language ability did not allow full comprehension. Necessarily, much nuance is lost in this process and this is limitation of the research. More on methods and analysis is below in Sections 3.3 and 3.4. Before overviewing methods, it is necessary to outline some of the ethical considerations unique to post-conflict scenarios and to my own positionality.

3.2 Ethical Consideration of Post-Conflict Data Collection

Aceh is a post-conflict scenario and could have relapsed into violent conflict during my field research. In fact as of 2013, there are still serious threats to a sustainable peace in Aceh (AI 2013). My data collection required confidentiality (see Appendices). In order to avoid problems my data could potentially cause for informants, I kept the data on a password protected drive. In the final products of my research, none of the data collected are traceable to specific communities or individuals. I have changed names and given a level of geographic specificity which provides detail but not enough to jeopardize communities or individuals. The data collected for this research proposal was approved by the McGill University Research Ethics Board (see Appendix I).

As a Caucasian, male, US American researcher in a post-conflict and post-disaster setting, I was not able to access certain communities and situations for data collection. I believe that the primary impacts of this on data collection were low rates of women participation and implicit assumption that my presence meant more aid was coming. Women participants in interviews and focus groups were under represented. This may have been due to village

dynamics, my failure to more overtly invite women to participate in focus groups, and the lack of women in leadership positions in many of the sub-districts. While I made it clear in initial meetings that I was there to look at needs and understanding the dynamics around land titling, sometimes focus groups leaned towards lists of wants rather than more thoughtful discussion of the merits and problems with certain requests.

My area of research involved collected information about conflict-related property damage. Often, other human rights abuses were mentioned, commonly physical abuse and occasionally human death. Given the nature of my research people may have embellished details or hidden details. The only tools I had for triangulating property damage claims were to look back at newspaper records or to ask other community members about their experience.

In addition to challenges to data collection, data analysis and my research directions are influenced by my positionality. I chose to focus on differences in property narratives, the manipulation of property relations over scale, and ways that social identity link to property (as natural resources) because these avenues for approaching property appeared evident to me in the data. Surely, another set of eyes may have found another avenue of thinking about property that may have been informed by alternative understandings of the logic of gender, Islam, or social justice. In brief, I my research is meant to point out gaps in the ways we approach and offer alternatives rather than dictate a 'silver bullet' solution to property issues. I think this is the best way to present results that are necessarily subject to ethical and positional limitations and would be interpreted differently by different people.

While my position inevitably caused some distortion of data collected and analysis, I also believe it allowed certain frankness from some respondents that may have not been more forthcoming to larger surveys and research projects like the beneficiary impact assessments conducted for international institutions. The subdued nature of the quotes reported in such assessments and the passion behind the statements I collected in the field lead me to believe that either my fashion of questioning or my positionality led to stronger stances from informants.

3.3 Data Collection Methods

Given the context and the nature of the research questions, methods such as regional

surveys were not advisable or realistic data collection methods for an individual researcher. As a result, my sampling strategy for semi-structured interviews followed a referral sampling strategy (snowball sampling). For focus groups, I identified communities that were undergoing land titling projects and worked with NGO and INGO colleagues to identify communities that were accessible and provided a representative sample of the disaster and conflict impacted communities.

Non-English documents and interviews in Bahasa Indonesia were translated using an interpreter, my own language training (May-August 2005, Yogyakarta), and automated language translation tools. Data collected includes:

1. 68 semi-structured interviews (Bernard 1994) with farmers, non-government organization (NGO) staff, and government officials established the importance of land titling as a local priority, examined officials' public and private opinions about land titling, identified constraints to land titling, and documented the land titling process. See Appendix IV for example questions.
2. 16 focus groups (Morgan, Krueger, and King 1998) with farmers. The focus groups ranged from 3-12 participants. Activities involved the identification and ranking of community needs and semi-structured questions to understand property issues. See Appendix V for an example agenda.
3. Direct observation (Bernard 1994) of community mapping and reconstruction activities through site visits during five months in Aceh Besar, Aceh Jaya, Aceh Barat, and Pidie.
4. Archival research on available registry documents and legal cases concerning property inheritance (BPN offices and at the Syiah Kuala University).
5. Collection and analysis of public documents dealing with property and land issues developed during the period of 1999-2010. Sources include academic literature, gray literature (NGOs and government offices), legal texts, and news articles - which include:
    a. Serambi Newspaper (Bahasa Indonesia)
    b. Waspada Newspaper (Bahasa Indonesia)
    c. Aceh Kita (English/Bahasa Indonesia)

d. Analisa Daily (Bahasa Indonesia)
e. Ceureumen Aceh's Reconstruction Newsletter (English/Bahasa Indonesia)
f. Jakarta Post (English/Bahasa Indonesia)
g. Google News (English/Bahasa Indonesia)
h. Factiva Subscription News Service (English)
i. Aceh Conflict Monitoring Update (English)

6. Collection of secondary census and assessment data sets from:
    a. BRR: Agency for the Rehabilitation and Reconstruction of Aceh and Nias or *Badan Rehabilitasi dan Rekonstruksi* (2005-2009)
    b. BPN: National Land Administration or *Badan Pertanahan Nasional Republik Indonesia* (spatial data and reports 2005-2007)
    c. BPS: Statistics Indonesia or *Badan Pusat Statistik* (2005)
    d. Village Potential Statistics census (PODES) (2003 and 2005)
    e. GAM Reintegration Needs Assessment (2006)
    f. Kecamatan Development Project Aceh Village Survey (2006) (Wong *et al.* 2006)
    g. ASNLF violent incident reports (2003-2005)
    h. Project reports from the World Bank and RALAS (2005-2009)

While the above data collection methods are applicable to Chapter Four and Five, Chapter Six deviated as it involved collection of data from a number of case studies. Research for the manuscript in Chapter Six draws from Yin's (2003a, 2003b) approach to case study research. Yin defines the case study research methodology as an empirical inquiry to examine a contemporary phenomenon within its real-life context in which multiple sources of evidence are used. The Aceh case study draws from data collected during field research between August 2006 and June 2008 in Aceh, Indonesia. The material collected for the two additional case-studies in Sudan and Chiapas was accomplished via literature searches and included gray literature and academic articles. While I draw many insights from the primary and secondary data collected from Aceh, it was necessary to include other case studies to develop and explore the policy tool which is the outcome of this manuscript. No one case study would suffice to build a policy tool that can be deployed in geographically, politically

and culturally diverse post-conflict scenarios. Therefore, I studied several cases and presented hose which I thought to be most illuminative of the links found.

3.1 DATA ANALYSIS

I used SPSS and ArcGIS to visualize descriptive statistics and for exploratory data analysis of census data. The reliability of census data in Aceh is questionable due to the data collection occurring during conflict, but this early investigation helped identify regions that would be of interest to the research question. Interviews, focus groups, observations, archival research, and texts were analyzed using content analysis procedures. Content analysis follows Krippendorff's (2004) model of data organization. The approach to coding data follows Hsieh and Shannon's (2005) definition of *directed content analysis* – wherein theoretically informed codes are used to begin coding but inductively derived codes are also generated, added, and used through reiterative processes of working with the data. To examine the code used for data please refer to Appendix VI.

As I intended to let the data speak, coding and data analysis were the most time intensive part of the research process. I used NVIVO 7 to perform computer assisted qualitative data analysis procedures. This required some training, but also allowed me to share my coding structure with colleagues. Colleague feedback and the data itself caused changes to the codes. In directed content analysis, I began by open coding the interviews, focus groups, and other documents line by line. The codes used were derived from Indonesian land law, property theory, and other theoretical bodies. In addition, more simple codes were used to analyze a disaster narrative versus a conflict narrative. During open coding, some things did not fit the pre-existing codes – leading to the new codes arising from the data and to experimentation with alternative coding frameworks. For example, early on it became clear that simply coding property systems as statutory, Islamic, or *adat* was not analytically adequate for describing the number of normative property relations at work in Aceh. This led me to experiment with a coding models based on Tamanaha (2007) and Morse and Woodman (1988).

Tamanaha (2007) argues that developing a typology of normative orders facilitates examination of heterogeneity and hybridity. He argues that six ideal types of normative

orders are often found in the normative pluralism literature: official-legal, customary-cultural, capitalist-economic, community-cultural, religious-cultural, and functional normative. These are useful heuristics for recognizing different logics and types of authority that constitute normative orders. These different ideal types may assist understanding different approaches to property in Aceh in that they allow us to identify a more complex terrain of authority narratives and institutions than Weber's three types (charisma, customary, bureaucratic). Tamanaha's work is especially useful in Aceh, where there is often a static assumption by scholars, practitioners, and even locals that only three authorities are relevant (the flexible adat category, Islamic law, and state law) and that each of these authorities is autonomous. While Tamanaha's approach was interesting, I ultimately set it aside as I was more interested in analysing the types of property relations (Hohfeld's jural relations and Singer's obligations) more than just categorizing types of normative orders.

I went through similar attempts at coding using Morse and Woodman's (1988) approach to sorting through the complicated ways in which statutory law relates to non-statutory normative orders. There are a number of ways in which the domain of law (particularly statutory law) can interact with existing normative orders. Morse and Woodman (1988) identify how interaction can be negative (law prohibits or does not recognize other orders) or positive (various levels of acknowledging the relevance of non-state, normative orders). These positive interactions involve a spectrum of increasing recognition starting from admittance of evidence, incorporation of procedures, or designating areas/topics where non-state, normative orders have equal or nearly equal authority to the state. The state can make legislative acknowledgement of adjudication between systems, confer the right of another order to practice, recognize existing legitimate powers, or made provide overlapping or sole authority over certain legal powers. These different types of interaction and recognition are interesting in regard to property and evidence, and can be used to explore and categorize relations between normative orders, not just statutory law and other normative orders.

This method of open coding data line by line and trying different codes from theoretical bodies that code inform insights into the data as well as attempting to let the data challenge

Table 3.2 An example of themes and facts associated to narratives.

Conflict Narrative	*Disaster Narrative*
Legitimacy of state State claims during the conflict Evidence: need for statutory vs. Islamic, adat, and other informal relations Lack of cultural context for mortgages Lack of land markets Problems with statutory recognition of *adat* Taxes Relapse of conflict €3500 for destroyed house	Neglected post-conflict issues (no conflict displacement like East Timor but up to 160,000 conflict IDP in Aceh) Threat to women and orphans property inheritance Hernando de Soto (neoliberal, mortgages, right of transfer, types of evidence, title > deed) Mapping (clear lines property) Overestimated capacity and legitimacy of state institutions Islamic inheritance €7000 for destroyed house

such theoretical frameworks produced some interesting insights but was extremely consumptive of data analysis time. In order to present results that could be summarized for policy makers and that would allow me to finish the dissertation, I simplified my coding hierarchy, but I plan to look at whether the above approaches are feasible as post-doctoral research projects after I finish my doctorate.

After open coding, I performed relational coding, wherein relations between codes are explored to possibly generate new codes or provide information that can be used to support or refute an argument. It was through this process that I began to see how different actors and property relations were emphasized in the disaster narrative. For example, in Table 3.2, I outline some of the different themes and facts that were associated to disaster through the relational coding process.

In retrospect, I can see several different ways that this research may have benefited from alternative data collection and data analysis methods – but I believe that is the nature of research endeavours that are forced to conform to the situation rather than make situations conform to the research questions. The results from my data analysis were presented as

several conferences, as working papers, and circulated among colleagues. Comments received have been integrated into the manuscripts in the following results chapters – which each constitute an article.

CHAPTER FOUR: TITLE WAVE – LAND TENURE AND PEACEBUILDING IN ACEH

Chapter Four consists of the first manuscript and corresponds to the dissertation's first objective. The first objective is to identify how the framing of property issues by individuals and organizations active in post-disaster/post-conflict recovery and reconstruction (stabilization and transition) impacted the design, implementation, and outcomes of the land titling project Reconstruction of Aceh Land Administration System (RALAS). In investigating how property issues were framed, this chapter conceives of property by employing Rose's (1994) work on the narratives of property. Drawing from the concepts of 'propertied landscape' (Blomley 1998) and 'evidence landscape' (Unruh 2006), I argue that the narratives that framed property issues as post-disaster problems led to policies that failed to consider the nexus of property, land, social identity, and political authority in a separatist region; impacted the success of RALAS in issuing land titles; and led to missed opportunities for post-conflict land management to contribute to peacebuilding. This chapter also provides geographic and historical context for the post-disaster and post-conflict scenario in Aceh, outlines property systems in Aceh, and provides a description of RALAS. Edited versions of this manuscript have been published as follows:

Green, Arthur. 2013. "Title Wave: Land Tenure and Peacebuilding in Aceh." In *Managing Natural Resources in Post-Conflict Societies: Lessons in Peacebuilding*, ed. Jon D Unruh and Rhodri Williams, 289–316. London, UK: Routledge.

Green, Arthur. 2010. "Land Tenure Security and Peacebuilding in Aceh, Indonesia." *Asian Journal of Environment and Disaster Management* 2 (1): 283–290.

4.1 INTRODUCTION

In this chapter, I examine how activities meant to improve land tenure security may have supported or undermined peacebuilding during the post-conflict stabilization and transition period of 2005-2008 in Aceh, Indonesia. Drawing from the idea that property is narrative (Rose 1994) and the concepts of 'propertied landscape' (Blomley 1998) and 'evidence landscape' (Unruh 2006), I argue that the narrative framing of property issues as a post-disaster problem led to missed opportunities for post-conflict land management to contribute to peacebuilding in the region. Policy narratives concerning property and tenure security affected the design, implementation, and outcomes of the internationally funded and state-administered project for land registration and title issuance called the Reconstruction of Aceh Land Administration System (RALAS). While RALAS successfully registered land in several areas of Aceh and rebuilt much of the technical capacity of the state land administration system, the RALAS focus on post-disaster property issues meant that connections between land tenure security, property issues, post-conflict dynamics, and peacebuilding were often neglected. The lack of consideration of post-conflict land and property issues may have not only limited RALAS' ability to issue land titles and support tenure security, but may have also undermined existing, secure tenure relations. I argue that the narratives for framing property in Aceh were linked to both logistical efficacy and political authority dynamics; led to policies that failed to consider the nexus of property, land, social identity, and political authority in a separatist region; impacted the success of RALAS in issuing land titles; and led policy makers to miss an opportunity to engage natural resource management in peacebuilding. This article concludes with lessons learned regarding the timing, location, institutional capacities, and methods of implementing post-conflict land management for peacebuilding.

In 2005, the population of Aceh began recovery from both a 29-year separatist war and the 2004 Indian Ocean Tsunami. Infrastructure, land, and land tenure systems were severely damaged by both the war and tsunami. (Wong *et al.* 2007; Jalil *et al.* 2008). Although property rights and tenure security were not among the central issues negotiated in the peace process nor among issues identified as problematic for demobilization, disarmament, and reintegration (WB 2006a), they were major concerns for many of the people involved in

post-disaster recovery (Fitzpatrick 2005). Many international donors, international nongovernmental organizations (INGOs), and state actors perceived the lack of state-issued land titles in these lowland areas to be a reflection of tenure insecurity and a central obstacle to tsunami recovery and future political and economic development (WB 2006b). In response to perceived tenure insecurity, donors offered technical resources and a budget of US$28.5 million for a state-administered land registration program called RALAS. Partly as a result of the early emphasis on post-disaster property issues, the ongoing narratives and approaches to property in Aceh emphasized post-disaster dynamics and judged the benefits and problems of RALAS in post-disaster terms (Harper 2006; Fitzpatrick 2008a; Jalil *et al.* 2008; Deutsch 2009).

This chapter is not intended to support arguments for or against state-administered land titles, registration programs, or property systems. Ample debates over the merits and problems of transitions to state-administered property systems document how statutory land titles, land registration programs, and property systems can simultaneously emancipate some people and dispossess others (Scott 1998; de Soto 2000; Blomley 2003b; Home and Lim 2004; Elyachar 2005; Otto 2009). These debates clearly indicate the lack of a simple solution to property problems. However, there is a tendency among policy makers to opt for 'silver bullet' solutions to development problems and property is no exception (Otto 2009). These debates point to the need to move beyond ideological approaches to property and to investigate the merits and problems of property systems in regard to specific situations and human relations.

Rose (1994) argues that these human relations and struggles can be interpreted through narratives that create property. She focuses on narratives, rhetorical devices, and the textuality of property and finds that the narratives used in struggles over the meaning of property, property rights, and property regimes are themselves integral parts of property and not just a way to get to rights. For Rose, property is persuasion. Rose (1994) argues that narrative discourses provide the persuasive vehicle. She examines narratives in everything from 'first possession' to 'neo-utilitarian private property,' communitarian property, story-telling in game theory, and the process of Eastern Europe at the end of the Cold War 'quite

consciously' talking itself into property. In brief, all property concepts and institutions are based on some sort of moral framework and justificatory narratives (Rose 1994). As property functions as a tool for social outcomes, it is inevitable that individuals and groups in society use narratives to justify particular property claims as well as particular forms and functions of property within society. While Rose argues that property and struggles over property must be understood through narrative, the everyday material practices that intermingle with and result from narratives are central to the geographies of property (Blomley 1998).

Indeed, landscape is a core concept in the discipline of geography that has proven particularly useful for exploring the spatial realization of narratives and material practices in governance, law, land, and property (Olwig 1996; Schein 1997; Blomley 1998; Unruh 2006; Maandi 2009). Geographic approaches to landscapes emphasize how political struggles are realized both through the material landscape (Mitchell 2000) and via 'landscape as a way of seeing' and 'landscape as text' (Cosgrove 1984; Cosgrove and Jackson 1987; Duncan 1990). The discursive representations and material reorganizations of landscapes are political. Duncan (1990), for example, sees the landscape as a text and reveals how political discourses in 19th century Sri Lanka used the material and symbolic aspects of landscape and architecture to contest and reproduce power. As Gregory and Pred (2006, 4) observe, landscape does ideological work and it is "more than a metaphor [...] the sheer physicality of landscape can become saturated with political violence".

The struggles represented by and realized through landscapes often relate back to how sources of territorial authority reproduce and contest property (Moore 1973; Blomley 1998; Unruh 2003, 2006; Moore 2005). In fact, Blomley (1998, 608) argues that landscape provides a critical component for frameworks designed to understand property that must be sensitive to "the dialectic between power and resistance, the manner in which property entails both practice and representation, the complex politics of place and the historical narratives and spatial mappings that underwrite property claims." While many socio-legal scholars insist that property is not a material and that it is only a bundle of rights or

relations (Penner 1996), geographic approaches to landscape reminds us that property narratives link to material practices. They help us facilitate the analysis of land property without reducing property to static rights or land parcels. Blomley (1998, 577) points out in developing his concept of 'propertied landscape':

> If struggles around property concern, in part, contested material spaces, and the representation of space, the polysemic qualities of landscape seem a useful point of *entry*. However, a closer attention to the term also reveals that 'landscape', whether understood as 'morphology' or 'representation', can be shot through with contesting claims to property. To the extent that 'landscape' alerts us to the materiality of property, it seems useful. Land as both an ideologically reified surface and a social site for embodied practices is important to property relations. But the concept of landscape invites us to also think about the ways in which 'land' is represented. Such representations, I shall suggest, are ineluctably caught up with contending claims to property.

Landscape not only underlines the representational and material struggles that constitute property, it also contextualizes property struggles in post-conflict scenarios. Unruh (2003) points out that local disputes over land, conflicts between informal and formal authority that implicate territorial control, and ambiguous land tenure regimes are central problems in providing tenure security in post-conflict scenarios. Navigating these issues reveals how property narratives (as evidence) come to be realized in the landscape through everyday practices and offer opportunities to overcome the disconnection between informal and formal property regimes through the 'evidence landscape' (Unruh 2006). In this chapter, I contend that the dominance of a particular narrative (post-disaster) over another (post-conflict) impacted the enactment of property through the RALAS land titling project.

The remainder of the chapter is organized as follows. Section 4.2 offers a description of the methods used for collecting and analyzing data. In Section 4.3, I overview the history of secessionist conflict in Aceh and examine land tenure security and land registration systems before and after the tsunami. In Sections 4.4 and 4.5, I overview the peacebuilding process and examine links between property, tenure security and peacebuilding. Throughout the chapter, I show evidence of how the post-disaster narrative influenced approaches to and embodied practices of property. I examine how property narratives impacted peacebuilding efforts through the following questions:

1. To what extent has peacebuilding been successful in Aceh?
2. Did activities meant to strengthen land tenure security also support, create opportunities for, or hinder the success of peacebuilding?
3. What lessons about post-conflict land management and peacebuilding can we generalize from the Acehnese experience to other contexts?

Section 4.6 concludes the chapter with several lessons learned regarding transitory approaches to timing, location, institutional capacities, and methods of implementing land tenure reform for peacebuilding.

4.2 METHODS

4.2.1 DATA COLLECTION

I collected data from four districts ('regencies' or *kabupaten*) in the province of Aceh, Indonesia: Aceh Besar, Aceh Jaya, Aceh Barat, and Pidie (see Figure 4.1). I did most of my fieldwork in Aceh Jaya and Aceh Barat where post-tsunami and post-conflict recovery activities were simultaneously occurring and where several coastal villages and urban centers were targeted by the state-led land titling program known as RALAS. In Aceh Jaya and Aceh Barat, I was based in the district capitals (respectively, Calang and Meulaboh) but made frequent trips into the surrounding region where I conducted interviews, observations, and focus groups. Much of the archival research and several of the interviews with official representatives of the Government of Indonesia (GOI), international and national non-governmental organizations (INGO and NGO), and other institutions occurred in Aceh Besar in the city of Banda Aceh (the provincial capital).

Figure 4.1 Map of four field work districts ('regencies' or *kabupaten*). Source: Author.

Non-English documents and interviews in Bahasa Indonesia were translated using an interpreter, my own language training (May-August 2005, Yogyakarta), and automated language translation tools. Data collected includes:

7. 68 semi-structured interviews with farmers, non-government organization (NGO) staff, and government officials established the importance of land titling as a local priority, examined officials' public and private opinions about land titling, identified constraints to land titling, and documented the land titling process. See Appendix IV for example questions.
8. 16 focus groups with farmers. The focus groups ranged from 3-12 participants. Activities involved the identification and ranking of community needs and semi-

structured questions to understand property issues. See Appendix V for an example agenda.

9. Direct observation of community mapping and reconstruction activities through site visits during five months in Aceh Besar, Aceh Jaya, Aceh Barat, and Pidie.
10. Archival research on available registry documents and legal cases concerning property inheritance (BPN offices and at the Syiah Kuala University).
11. Collection and analysis of public documents dealing with property and land issues developed during the period of 1999-2010. Sources include academic literature, gray literature (NGOs and government offices), legal texts, and news articles - which include:
    a. Serambi Newspaper (Bahasa Indonesia)
    b. Waspada Newspaper (Bahasa Indonesia)
    c. Aceh Kita (English/Bahasa Indonesia)
    d. Analisa Daily (Bahasa Indonesia)
    e. Ceureumen Aceh's Reconstruction Newsletter (English/Bahasa Indonesia)
    f. Jakarta Post (English/Bahasa Indonesia)
    g. Google News (English/Bahasa Indonesia)
    h. Factiva Subscription News Service (English)
    i. Aceh Conflict Monitoring Update (English)
12. Collection of secondary census and assessment data sets from:
    a. BRR: Agency for the Rehabilitation and Reconstruction of Aceh and Nias or *Badan Rehabilitasi dan Rekonstruksi* (2005-2009)
    b. BPN: National Land Administration or *Badan Pertanahan Nasional Republik Indonesia* (spatial data and reports 2005-2007)
    c. BPS: Statistics Indonesia or *Badan Pusat Statistik* (2005)
    d. Village Potential Statistics census (PODES) (2003 and 2005)
    e. GAM Reintegration Needs Assessment (2006)
    f. Kecamatan Development Project Aceh Village Survey (2006) (Wong *et al.* 2006)
    g. ASNLF violent incident reports (2003-2005)
    h. Project reports from the World Bank and RALAS (2005-2009)

4.2.2 Data Analysis

I used SPSS and ArcGIS to visualize and compare descriptive statistics and for exploratory data analysis. Interviews, focus groups, observations, archival research, and texts were analyzed using content analysis procedures. Content analysis follows Krippendorff's (2004) model of data organization. The approach to coding data follows Hsieh and Shannon's (2005) definition of *directed content analysis* – wherein theoretically informed codes are used to begin coding but inductively derived codes are also generated, added, and used through reiterative processes of working with the data. To examine the code used for data please refer to Appendix VI.

4.2.3 Ethical Considerations of Post-Conflict Data Collection

As a Caucasian, male, US American researcher in a post-conflict and post-disaster setting, I was not able to access certain communities and situations for data collection. Given the context and the nature of the research questions, methods such as regional surveys were not advisable or realistic data collection methods for an individual researcher. As a result, my sampling strategy for semi-structured interviews followed a referral sampling strategy (snowball sampling). For focus groups, I identified communities that were undergoing land titling projects and worked with NGO and INGO colleagues to identify communities that were accessible and provided a representative sample of the disaster and conflict impacted communities. In order to avoid problems my data could potentially cause for informants, I kept the data on a password protected drive. In the final products produced, none of the data collected are traceable to specific communities or individuals. The data collected for this research proposal was approved by the McGill University Research Ethics Board (see Appendix I).

4.3 Conflict and Land Security in Aceh

The Indonesian province of Aceh, also known as *Nanggroe Aceh Darussalam*, encompasses the northern tip of the island of Sumatra. From 1976 to 2005, this region was the site of a sporadic secessionist conflict between the Free Aceh Movement (*Gerakan Aceh Merdeka*, or GAM) and the government of Indonesia (GOI). Cyclical outbreaks of violence—combined with long-term intimidation, torture, and material dispossession of civilians—have claimed

some 15,000 to 33,000 lives, paralyzed regional development, and polarized much of the population (Reid 2006; Schulze 2007).

Although the conflict in Aceh has sometimes been depicted as being based on one or more main cleavages, the violence is actually a result of a complex mix of contextual opportunities and issues. These issues include ethnonational territorial claims, a desire for local political autonomy, disputes over local distribution of hydrocarbon and resource revenues, and even personal vendettas (Reid 2006; Aspinall 2007; McCarthy 2007; Schulze 2007; Drexler 2008). Adding further complexity are the issues of Acehnese cultural identity, recognition of Islamic principles of governance, and grievances involving justice and reparations for conflict-related crimes. The issues and the conditions that escalated and supported violent resistance in Aceh have changed over time according to the strategic agendas of changing participants (Reid 2006; McCarthy 2007; Schulze 2007; Drexler 2008). GAM demands for amnesty and a special reintegration fund for former combatants, for example, contributed to the failure of the 2003 peace negotiations. Working toward a sustainable peace in Aceh has required confronting the complex overlap of elite and grassroots grievances; dealing with changing participants and changing conditions that encourage violent resistance; and acknowledging the special needs of parties involved in the violence.

Even though previous peace processes have treated GAM and the GOI as monolithic representatives of the Acehnese people and the Indonesian state, victims of violence are indicative of the internal fissures within and between GAM, Acehnese civil society, the Indonesian military, and the GOI (Drexler 2008). These fissures, which often escape conflict analyses, contributed to failed peace negotiations and continue to pose obstacles to a sustainable peace. As Drexler (2008, 20) notes, “Observations of the Aceh conflict over the last ten years show that oversimplified analyses of conflicts extend and even intensify violence”.

Disregard of the internal complexities supports politicized narratives of group identities—narratives that have been used to undermine certain players and legitimize others in the conflict in Aceh. For example, while some narratives find the roots of the conflict and of

GAM in a nearly unbroken history of armed resistance to colonial Dutch, Japanese, and Indonesian forces since 1873, others identify GAM as a criminal organization whose goals have little connection to this historical resistance (Reid 2006; Nessen 2006; Drexler 2008). However, the conflict in Aceh is complex and cannot be reduced to a conflict based on any single issue between two monolithic parties. Analyses of the conflict and progress in peacebuilding must recognize that the actors involved in and the reasons for continued violence in Aceh have evolved during the 29-year conflict. Likewise, analysis of property issues requires recognizing that these changing political narratives have influenced approaches to property and land management.

The signing of the Memorandum of Understanding (Helsinki MOU) between the Government of the Republic of Indonesia and the Free Aceh Movement in Finland, in August 2005 marked the end of the most recent period of violence in Aceh, and it is the starting point for this study's investigation of property, land tenure security and peacebuilding.[23] The Helsinki MOU signing was inextricably linked with the 2004 Indian Ocean tsunami. Although the tsunami was only one of many factors leading to the end of violence, its massive destruction set the stage for the peace process by changing immediate political and military strategies and the region's economic, social, and ecological landscape (Le Billon and Waizenegger 2007; Gaillard *et al.* 2008).

On December 26th, 2004, the Indian Ocean tsunami inundated the lowlands of Aceh, killing some 167,000 people and leaving 500,000 more homeless. In addition to the human death toll, it is estimated that some 300,000 land parcels, 250,000 homes, 15 percent of agricultural lands, over 2,000 schools, and 10,000 kilometers of roads were severely damaged or destroyed (Fitzpatrick 2005; Kenny *et al.* 2006; Abidin *et al.* 2006). Indonesian military operations from 2003 to 2004 had weakened GAM, and unpublicized peace negotiations had begun at least as early as October 2004, but the tsunami allowed GAM and the GOI to make public concessions on issues like disarmament, amnesty, and a special reintegration fund for former combatants – issues that had been fundamental sticking

[23] For the complete text of the Helsinki MOU, see www.aceh-mm.org/download/english/Helsinki%20MoU.pdf

points in the collapsed peace negotiations of 2003 (Schulze 2007). However, even though the tsunami allowed concessions and changed short-term opportunities for pursuing political and personal violence, the resulting peacemaking process did not address all the grievances of different groups in Aceh (Le Billon and Waizenegger 2007; Renner and Chafe 2007; Drexler 2008; Gaillard *et al.*2008).

4.3.1 Tenure Security and Normative Pluralism in Aceh

In many post-conflict scenarios, clarifying and supporting property tenure security are key steps in addressing the roots of the conflict, conflict-related grievances, and post-conflict conditions that may lead to relapses of violence. Even where disputes over property are not the primary driver of violent conflict, the destruction of property systems can result in post-conflict disputes over resources and a relapse into violence. This is especially the case with land tenure security (Unruh 2003). Re-establishing land tenure security is fundamental for meeting immediate recovery needs, enabling dispute resolution, laying the foundation for sustainable livelihoods, and enabling investment and economic development (USAID 2005). However, in post-conflict scenarios, the state often lacks legitimacy and is faced with existing traditions and informal systems that can undermine state territorial authority. Where the state itself is unreliable and is known for using its legal system to dispossess and undermine local claims to property, the problems with making the statutory legal system locally legitimate can be difficult to overcome (Morse and Woodman 1988; Das 2004; Home and Lim 2004; Unruh 2004).

In Aceh, the importance of disputes over property ownership – particularly land claims – as a condition for the escalation and duration of violent conflict has changed over time. Although individual and communal property rights were not central to the escalation of violent conflict in 1976, the disruption over time of informal and formal property systems by violence, human rights abuses, and hydrocarbon resource exploitation have led to property-rights grievances against the government (Fitzpatrick 2008a). Aside from the effects of the violent conflict on property rights, there are several problems with applying the Indonesian legal framework for property rights in Aceh. For example, the legal framework regarding communal property rights is unclear (Lindsey 2008). This ambiguity means that application of the statutory system can create tenure insecurity and elites or

state officials can manipulate claims through the legal system or other means (Peluso 2005; McCarthy 2006). Indeed, the National Land Agency (*Badan Pertanahan Nasional*, or BPN) is locally perceived to be one of the most corrupt agencies in the country, and Indonesia has low overall performance in governance as measured by indicators such as Transparency International's Corruption Perceptions Index (2011).[24]

The weak legal framework and resulting tenure insecurity are especially problematic for the post-conflict legal landscape of Aceh, where the Indonesian state's legitimacy as a sovereign power is still questioned by some former combatants. Former GAM combatants did not want to register their lands as they felt that having their names on a list might help the government find them in case of recurrence of violence (Interview Indah, Calang, May 2007). As of 2008, the political, economic, ecological, and sociocultural value of land remained points of contention as changing regional laws, fees, taxes, and state claims transformed local ownership and locally acceptable understandings of property and tenure security (Fitzpatrick 2008a). Underlying these challenges with implementation of the statutory legal framework is the fact that Aceh is a legally pluralistic community where property claims are often subject to contradictory legal traditions (Bowen 2003).

Residents of Aceh draw from multiple legal and normative traditions in their daily interactions. Many authors and Acehnese residents identify three working sets of laws or normative traditions that define tenure security and govern the use and ownership of property: *adat* (informal or customary institutions), statutory law (formal institutions), and Islamic jurisprudence and Islamic courts (Bowen 2003; Harper 2006). Nevertheless, these three traditions are not necessarily best conceived of as autonomous, opposing sets of laws. There are many ways that the three traditions are interlinked, mutually constituted, and composed of overlapping practices. For example, *adat* is closely associated with Islamic jurisprudence in Aceh, and over time local communities have invested differing weight in flexible, equitable practices versus dogmatic religious principles (Bowen 2003). However, different traditions are associated with unique governance styles, economic relations, and

[24] In 2011, Indonesia was ranked 100th out of 183 (Transparency International 2011)

cultural places.

These three designations are also used to label practices for political purposes. Individuals and groups sometimes use these traditions as political labels to differentiate and categorize hybrid legal practices and hybrid legal spaces in order to make potent political arguments and claims (Li 2001). Proponents of one tradition tend to point to limitations and abuses in other traditions in order to justify changes that they feel are appropriate or that benefit themselves. Supporters of statutory titling contrasted what they considered as the vagaries and inequities of customary laws (*adat*) with the supposed economic benefits of title, the state's ability to avoid and adjudicate violent disputes, and the protection that statutory law provides for the environment and for the rights of women, children, and members of minority groups. For example, a representative of the state said that in spite of *adat* and Islam, "Without state supported land titles and joint titling, women and children will have no protection from male relatives that take their inheritance rights" (Interview BPN, Banda Aceh, August 2006).

A number of other normative traditions could also be considered either directly relevant to property or at least important for defining the practices of the three above traditions in regard to property. For example, the informal property transactions that occur in peri-urban and urban areas do not neatly fit into one of the three major traditions. Also, in post-disaster Aceh international and local NGOs influenced property rights through such activities as community mapping, building narratives about property rights, intervening in property disputes, and adding discourses of natural or human rights to property debates. (Interview UN-HABITAT, Banda Aceh, August 2006; Interview FFI, Meulaboh, May 2007).

Statutory land law in Indonesia is based on the Basic Agrarian Law of 1960 (Law No. 5/1960), which lays out the basic rights to landownership and the legal processes for resolution. Rights to land include private ownership rights (*hak milik*, which is similar to landownership as recognized by freehold title), building rights (*hak guna bangunan*), rights of commercial exploitation (*hak guna usaha*), rights of use (*hak pakai*), rental rights (*hak sewa*), and communal land rights (*hak ulayat*, which recognize customary land and resource tenure). Statutory laws link to or recognize the authority of *adat* and Islamic jurisprudence in several different ways and at different scales of governance. The Indonesian state also

uses terms that derive from broader Islamic law. For example, the term *hak milik* comes from the Islamic term *mulk/milk* and describes "private full ownership" (Sait and Lim 2006, 12).

In Aceh, Islamic jurisprudence has long been intimately linked to *adat* and plays an important role in local decision-making processes (*musyawarah*) at the *gampung* (village) and *mukim* (aggregate of villages) levels (Bowen 2003). Islamic jurisprudence has commonly been considered an avenue for handling inheritance cases, and new regional laws (*qanun*[25]) and national laws have given Islamic jurisprudence larger governance capacities and a more formal role in decisions over land use, investments, the property rights of women and members of minority groups, and the use of land as financial collateral (Bowen 2003; Harper 2006). For example, through National Law No. 48/2007, Islamic courts (*mahkamah syar'iyah*) are given the authority to decide rightful heirs and guardians in inheritance cases, and the Islamic treasury (*Baitu Mal Aceh*) is given equal authority with the public trust (*Balai Harta Peninggalan*) to manage post-tsunami property where no legal heir has been identified. This incorporation and formalization of Islamic courts and jurisprudence into the different scales of government reflect and repeat some of the historical missteps and legal vagueness that occurred during previous attempts to regularize or register property and to formalize the diverse, informal traditions known as *adat* (Interview UNDP, Calang, May 2007).

Adat practices are officially recognized in state law; however, this recognition can take many different forms in practice (Morse and Woodman 1988). This recognition might vary based on whether the state legally confers or acknowledges governance power to *adat* institutions, whether *adat* has sole or shared authority, and whether *adat* sanctions are rendered impotent or left intact. Additionally, recognition can effectively integrate *adat* into state authority when the power to appoint or change the composition of *adat* leadership requires state approval. The recognition of *adat* governance structures has been crucial to the decentralization of government of Indonesia. While this decentralization has been key in

[25] *Qanun* refers to regional regulations as passed by the Regional House of Representatives (DPRD) in Aceh. The capacity to create *qanun* was first granted by Law No.18/2001 (the Special Autonomy for the Province of Aceh as the Province of Nanggroe Aceh Darussalam) and was reaffirmed by Law No.11/2006 (the Law on Governing Aceh or LoGA).

attenuating some identity claims in Aceh, there has been a simultaneous drive to reorganize *adat* institutions so they fit seamlessly into the state. For example, the formalization of the *gampung* (village) and *mukim* (aggregate of villages) has implications for the adjudication of property disputes. When communities are faced with formal, statutory titles that reinforce *hak milik*, these communities may lose the authority and power to enforce traditional punitive sanctions that may alienate property rights from individual owners or expel owners from the community. In focus groups in rural communities, farmers worried that punitive sanction imposed by the community would no longer be honored once state titles were granted (Focus Group 10, Panton, May 2007).

One of the most important ways in which statutory laws interact with *adat* is in the recognition of communal property rights (*hak ulayat*). Statutory law recognizes communities' ability to allocate land, approve transfers, control use, and adjudicate land disputes (Harper 2006). But there are several problems with the clarity, implementation, and breadth of application of statutory laws regarding community property (Lindsey 2008). For example, communal lands are often subject to forestry laws, natural resource policy, and several bureaucratic layers inaccessible to locals. Searching for applicable laws regarding communal forests and forest-resource access in Aceh requires acknowledging the temporal sequence and ambiguities between the Basic Agrarian Law and laws on forestry, regional autonomy, and special autonomy for Aceh. In short, the relative simplicity of the Basic Agrarian Law framework overlooks how land is connected to resources, and it therefore contributes to disputes surrounding forests and communal resources (Eye on Aceh 2009).

Disputes with the government over communal resources were not part of the peace process, but they have been sources of local grievance in Aceh. Since there is no concept of adverse possession (obtaining land by occupying it) within Indonesian law, in some cases the state has failed to recognize communities' claims to land on which they have lived and paid taxes for more than forty years (Fitzpatrick 2008a). In interviews with rural households in the Aceh Jaya region in 2007, these legal ambiguities were cited as a disincentive to the adoption of statutory law and as one of the reasons that titles have not successfully supplanted *adat* practices and the use of sale documents as deeds (Focus Group 11, Madreng, May 2007). That said, *adat* practices are sometimes defined by the state, so

they should not be simply elevated as antecedent, customary practices that oppose the state (Li 2001; Burns 2004). Indeed, *adat* practices may incorporate statutory law; may consider the reaction of statutory law before local decisions are made concerning natural resources; or, in the case of 'countermapping' and 'weapons of the weak', may be reshaped by their resistance to the state (Peluso 2005; Bowen 2003).

The informal practices known as *adat* are resilient in Aceh perhaps because of the very way in which they are defined as flexible, local creations that draw from but are independent of statutory law and Islamic jurisprudence. Interestingly, the definition of *adat* and its use as a label evolved from colonial debates over property systems. Dutch legal scholars played a significant role in defining *adat* (Burns 2004). Otto (2009, 181) writes:

> Concerning the Netherlands Indies, vehement debates about the future of the colony's legal system took place during the first decades of the 20th century, with the focus on land tenure issues. The debate […] featured a 'Leiden' school led by Professor van Vollenhoven claiming that for native Indonesians the indigenous *adat* laws should remain the foundation of the legal system. This school argued that most Indonesian land belonged to Indonesian native communities, and that the colonial state should legally, by recognition of their *adat* law, preserve this land for them. 'Utrecht' however, led by Professor Nolst Trenité, and associated with the economic interests of Dutch colonial enterprise, claimed that the introduction of a unified civil legislation would stimulate land markets in the best interests of both the native as well as the European population groups. After protracted and intense polemics, Van Vollenhoven's views prevailed in parliament and state policies and law. Dutch colonial law continued to recognize adat law as the private law of the indigenous population. This *adat* law policy was supported by an immense body of knowledge, collected by dozens of field researchers of the 'Adatrechtsschool', which could not be effectively countered by Utrecht.

These same positions are echoed in modern debates over property management in Indonesia and other post-colonial nation-states. In fact, the 'Leiden' position is close to what some property experts now refer to as the co-adaptation paradigm (Bruce and Migot-Adholla 1994; Platteau 1996; Unruh 2006). On the other hand, de Soto's (2000) framework that has been adopted by many development programs mirrors the ideas of the the 'Utrecht' position in that de Soto "proposes a design of *rapid* and *massive direct incorporation* through *national programs* for *systemic titling and registration* of plots as *individual*, transferable property"(Otto 2009, 183).

The fundamental point of agreement in all *adat* practices is the emphasis on local, flexible management and consensual mediations that can consider a multitude of factors outside the range of formal courts and freehold title rights. These practices vary over space and time. Despite this diversity, *adat* commonly provides rights related to communal land (*hak ulayat*); customary ownership (*hak milik adat*); and use, including agricultural usage (*useuha*), rental usage (*sewa/kontrak*), sharecropping (*bagi hasil/mawaih*), pledge/pawn usage (*gadai/gala*), and cultivation (*numpang tanam*) (Harper 2006). Although paper documents are not always used in *adat* processes, statutory titles or deeds (*akte jual beli*) can be important components of informal transactions and sources of evience in disputes that are mediated by non-statutory institutions. The broad, qualitative differences between statutory and *adat* practices in regard to process and definition of property can be summarized as the social embeddedness of *adat*. *Adat* can work without or around formal titles and deeds, lower costs of tenure-security maintenance, and include particular rules concerning preemption and the transfer and sale of land. For example, land held under *hak milik adat* (typically rural and sometimes peri-urban land) may only be sold if first offered to neighbors and if third parties' ongoing right of access will be respected, may not be sold to outsiders, and may be appropriated by the community or community leader (*keucik*) as a community good (Fitzpatrick 2005; Harper 2006). These limits are not very different from statutory covenants, easements, and takings but are sometimes embedded in the unwritten traditions of a community and make little sense to statutory understandings of private property (Peluso 2005). *Adat* practices offer strong, flexible, and equitable tenure security for local needs. However, without state recognition, *adat* tenure is usually insufficient as collateral for bank loans or as protection from state claims (Interview Gema, Banda Aceh, June 2008).

4.3.2 Land Registration and the Torrens Title System

As mentioned above, the main form of property administration currently endorsed in many development projects follows de Soto's framework. De Soto proposes that the registration of property in state-administered title systems is the only means to achieve tenure security that facilitates political and economic advancement (de Soto 2000). Statutory titles can provide benefits in terms of tenure security against foreign claims, ability to mortgage

assets, and increased ability to alienate (transfer) property. Moreover, in a capitalist land market, a well-maintained, accountable, and transparent property administration system that guarantees an indefeasible title can reduce time and costs normally associated with other state-administered property management systems like deeds systems. Yet, despite these purported benefits, some authors argue that the reason de Soto's narrative of property has been widely adopted is because it is a narrative that is well-suited to the neoliberal, state-building policies of the post-Cold War era. As Otto (2009, 180) argues:

> First, De Soto is a brilliant story-teller. The style of his book is very confident and convincing. Secondly, he tells what most policy-makers and people want to hear, namely that there is a solution to all their problems, and that this solution combines all the goals of development and governance without problems or contradictions; the only condition is that we all stop being stupid. Thirdly, his story fits well in the dominant political and economic trends of neo-liberalism. Finally, most practitioners in land law and development, policy-makers, consultants and even academics do not speak out against him because they are faced with a difficult dilemma. On the one hand, here is a relative newcomer to an area they have worked in for decades, who makes claims that they find wildly exaggerated. On the other hand, finally here is someone who, more than anyone before, has promoted the importance of their field, of the rule of law, especially land law for economic development.

De Soto's narrative was adopted as the post-disaster approach to property and drove land titling activities in Aceh. In the case of Aceh, de Soto's logic was realized in the design and implementation of the RALAS project. In response to the perceived urgency of resolving the broad array of property issues that were often simply labeled as 'land tenure insecurity', the Multi Donor Trust Fund for Aceh and Nias (MDTF) focused the first of their 23 projects in the region on supporting the registration and titling of land parcels.[26] The fund established a budget of US$28.5 million for RALAS, a state-administered land titling project. Although RALAS was funded through the pooled contributions of many international donors, it was directly administered through the National Land Agency (BPN, *Badan Peranahan Nasional*), was subject to Indonesian national law regarding land and natural

[26] The World Bank served as trustee of the Multi Donor Trust Fund for Aceh and Nias (MDTF) - a partnership of the Indonesian government and the international community to support the recovery following the tsunami. The fund coordinated contributions from 15 donors: the European Commission, the Netherlands, United Kingdom, World Bank, Sweden, Denmark, Norway, Germany, Canada, Belgium, Finland, Asia Development Bank (ADB), United States, New Zealand and Ireland.

resources, and was linked to activities of the national agency meant to preside over the tsunami recovery known as the Agency for Rehabilitation and Reconstruction (BRR, *Badan Rehabilitasi dan Rekonstruksi*). As property issues were framed as post-disaster issues, RALAS was created to deal with natural disaster impacts on property. The RALAS project began in 2005 with the goal of issuing 600,000 titles while encouraging community participation in the titling and dispute adjudication process and guaranteeing protection of the property rights of orphans and women. The RALAS project was the equivalent of a poster child for the recovery, reconstruction, development efforts in Aceh. Even former US President Bill Clinton, serving as the UN Special Envoy to Aceh, extolled this project and recognized the influence of de Soto's theory in creating the RALAS project not just for Aceh but as a prototype for land titling projects around the world:

> "Those of you familiar with the work of Mr. (Hernando) de Soto around the world and similar projects know that the world's poor people have roughly 5 trillion dollars in assets that are totally unusable for economic growth because they don't have title to them so they can't get credit using what they own as collateral. This is going to be done through the World Bank grant in Aceh. It is very forward thinking on both the part of the World Bank and Indonesia but I hope that the other countries affected will do that and in its pursuit of the Millennium Development Goals, I hope that you, Mr. President and ECOSOC, can have an influence in urging this sort of project to be done in other countries outside the tsunami affected areas." (July 2005)

De Soto's narrative not only pushes a neoliberal, market-focused version of property, but it also recommends specific registration methods – that regulatory frameworks be immediately changed and that property be registered and titled in a widespread, massive, immediate overhaul of the entire property system. As well, he recommends implementation of a specific type of property administration system – the Torrens title system – over any other variation of state-administered property systems. Developed in Australia, the Torrens system organizes the central management of titles and focuses on the state cadastre as the primary legal instrument for tenure security. But such a system is not costless, politically neutral, free of faults, or the only option for states that need to intervene in order to reinforce or guarantee tenure security. The process of creating geographically complete and accurate property-administration systems sometimes dispossesses politically marginal communities and forces new costs (such as taxes, transfer fees, and registration fees) onto

poor communities that use informal practices (Home and Lim 2004). Such a system also requires that the state have the capacity and legitimacy to enforce the registration of property and property transactions. Furthermore, the economic and social costs of converting informal systems into state-administered title systems are often quite high and tend to disregard systems that are better able to interact with informal practices, such as those that emphasize deeds or that incorporate social-tenure models.

Although some urban areas, peri-urban areas, and market-oriented rural communities may benefit from state registration in Torrens title systems, state titles can be inappropriate in rural and post-conflict areas that do not meet many assumptions regarding state legitimacy, land markets, or cost-benefits (Home and Lim 2004; Otto 2009). Moreover, some authors and activists argue that state-led registration and titling processes are synonymous with the dispossession of local property rights and the reorganization of social, cultural, and political relations (Scott 1998; Elyachar 2005; Moore 2005; Fauzi 2009). Indeed, the registration of lands appeared to not recognize that claims to land and resources made by the state during the conflict sometimes dispossessed local resources users (Interview Mukir, Banda Aceh, June 2008). In fact, locals made road blocks that limited movement on the main roads in protest of such resource claims in communities between Banda Aceh and cities on the southern coast of Sumatra during 2006-2008 (Direct Observation, April-May 2007). The costs of maintaining centralized title systems that accurately reflect transactions, the absence of anticipated benefits among local populations, and the politicization of registration processes have historically undermined formal property systems (Smith 2003; Sowerwine 2004a, 2004b). Likewise, where everyday interactions deviate over time from centralized title systems, variations of the Torrens title system are unable to adequately mirror what is actually occurring with property transfers and ownership at the ground level. These concerns cast serious moral doubts on the utility and efficacy of allocating money to build centralized title systems immediately after conflicts when alternative deeds systems or informal networks can support tenure security.

4.3.3 Land Tenure Security after the Tsunami and Secessionist Conflict

The extent to which property and formal or informal tenure systems were damaged by the

tsunami and conflict is largely a geographic question. Tsunami impacts were limited to lowland areas whereas conflict intensity and impacts were clustered in areas that were and were not impacted by the tsunami (Wong *et al.* 2007) (see Figure 4.2). The wide array of tsunami- and conflict-related problems confronting land tenure security in Aceh included the destruction of the BPN (National Land Agency) offices, the death of several BPN staff, the destruction of field markers and boundary lines, promises of land for reintegration of former combatants, and disputed claims against the Indonesian state.

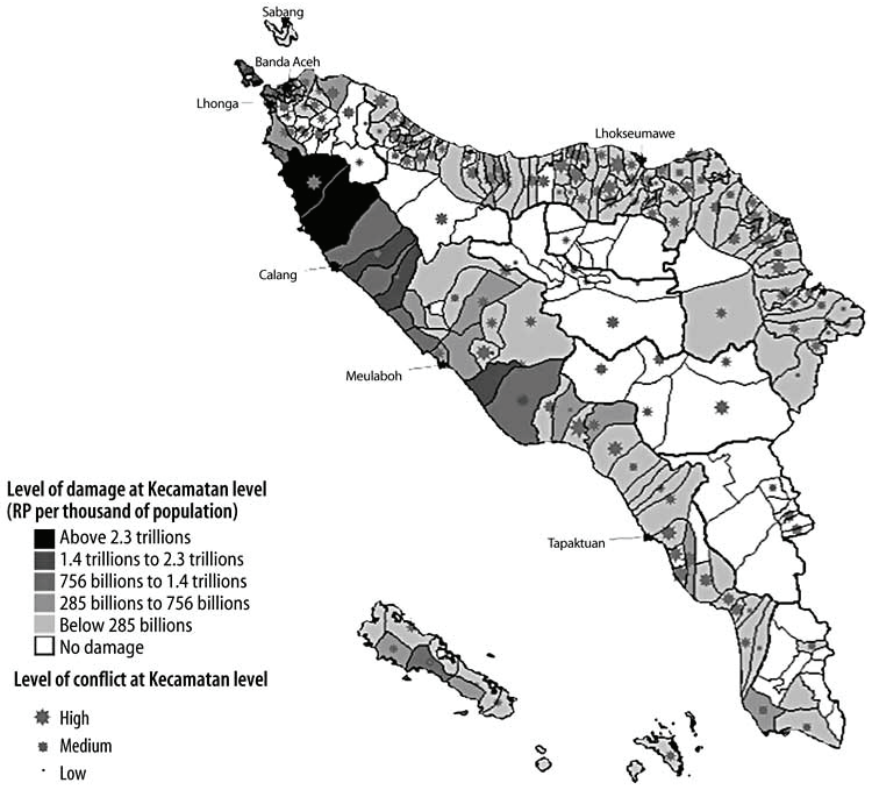

Figure 4.2: 2004 Conflict Event and Disaster Damage Map. Source: BRR 2005.

In addition, there have been gender rights and inheritance issues resulting from deaths, tsunami and conflict refugee movement and resettlement, as well as inconsistencies between intact local practices and statutory law (Fitzpatrick 2005). Further problems included compensation for irrecoverably damaged land and property, the nebulous status of renters and squatters, and informal agreements regarding property use and ownership. Complicating these matters were the region's legal pluralism and the fact that land and property rights were potent political symbols that were especially problematic where the state's territorial control and right to tax were still disputed (Fitzpatrick 2005).

The legitimacy and the capacity of Indonesian state institutions were limited in the region, and informal institutions were the predominant basis of tenure security and property management. Of the 300,000 parcels affected by the tsunami, only 25 percent had titles issued by the state (Fitzpatrick 2005; Abidin *et al.* 2006). Statutory law was most prevalent in the lowland cities, where the tsunami was most devastating. By killing several BPN officials and destroying existing titles, state registration offices, and field markets for plot identification, the tsunami threw the cadastral system into chaos (Abidin *et al.* 2006). Some 80 percent of the damaged titles have been recovered by work at the Japan International Cooperation Agency, but the lack of fidelity of these documents to activities on the ground may contradict community maps of claims and cause additional problems for tenure security. Lowland informal institutions were more resilient than the BPN-administered cadastre, but they suffered greatly from the loss of traditional property markers, of human knowledge surrounding use rights and informal arrangements, and of the overload of inheritance cases (Interview Adhi, Banda Aceh, August 2006; Focus Group 3, Setia Bakti, May 2007).

In the highlands and in some separatist areas, the tsunami had a limited impact. In these areas, formal institutions were not well staffed or, in some cases, even functional. Local resistance to statutory law and a lack of implementation capacity meant that statutory laws never supplanted local traditions in rural and conflict-prone areas. Likewise, in urban areas informal (but not always *adat*) arrangements regarding renters, squatters, and use rights undermined the state cadastre's ability to reflect reality. There were many reasons why the

state-administered cadastre was unable to make a permanent foothold in Aceh before the tsunami, including the history of colonial legal structures, economic costs of title registration and title maintenance, incompatibly of local customs and national legal systems, and corruption on the part of government officials. Lack of implementation capacity, lack of land markets, GAM's territorial authority in some areas, and a general resistance to state institutions also impeded the cadastre (Direct Observation, April-May 2007; Interview Wening, Meulaboh, February 2008).

Land tenure security was thought to be important for disaster recovery because it allowed agencies to establish camps and negotiate relocation of refugees, provide basic services, and identify and compensate owners of destroyed property. Furthermore, agencies were able to protect orphans' and widows' property rights, begin reconstructing houses, and mediate land-related disputes (BRR 2005; Fitzpatrick 2005). Encouraging land tenure security was also thought to support peacebuilding. It was argued that it provided the ability to give immediate access to basic and essential services, mediate conflict-related land disputes, resolve land-related grievances, provide land for reintegration of former combatants, and promote long-term goals of good governance and economic development equitable for women as well as men (Harper 2006).

Land tenure security in post-conflict Aceh appeared to be greater than in other post-conflict regions because there were: (1) intact village-level customary institutions for land management; (2) no significant secondary occupations of houses, and therefore fewer resettlement issues; (3) no layered history of displacement and dispossession, and therefore fewer competing claims between local groups; and (4) no significant commercial tourism developments on the coasts, and therefore fewer competing claims between commercial and local groups (Fitzpatrick 2005). Assuming that conflict-related land issues were minor, policy makers concentrated almost exclusively on post-disaster issues rather than post-conflict dynamics (Deutsch 2009). The concepts and process were oriented towards urban and post-tsunami recovery by a number of logistical factors. These included: (1) the development focus on urban areas where there was little international commercial investments; (2) an absence of immediate land disputes; (3) a lack of conflict-related

resettlement problems; (4) a lack of understanding of the ambiguities regarding land and resource access. In fact, understanding how policy makers defined land tenure security is central to understanding how they pursued regional property administration and how this affected disaster recovery, post-conflict stabilization and transition, and long-term development.

Despite the widespread use of *adat* and the post-conflict resonance of the cultural and political representation of land in separatist struggle, the main emphasis of international donors and national agencies was on expanding the state-administered cadastre. Even before the Helsinki MOU was ratified in August 2005, international donors, INGOs, local activists, BPN, and the National Development Planning Agency (*Badan Perencanaan dan Pembangunan Nasional*, or BAPPENAS) identified land tenure security as a priority for post-disaster recovery, post-conflict reconstruction, and future regional development (Fitzpatrick 2005; Kenny *et al.* 2006; Lindsey and Phillips 2005). In April 2005, the BAPPENAS Master Plan for Rehabilitation and Reconstruction in Aceh and Nias made specific mention of restoring titles and expanding the national land cadastre (BAPPENAS 2005). The BPN-administered land registration project called RALAS became the primary tenure-security program in the region. The goal of RALAS was to facilitate fair processes for land registration, improve state capacity to manage the cadastre, and digitize the cadastre and land register. Mandated to run from August 2005 to August 2008, RALAS was initially financed by a grant of US$28.5 million through the Multi-Donor Trust Fund for Aceh and North Sumatra. RALAS also received technical support from several other donors and INGOs.

As evidenced by early publications and public statements by GOI officials, explicitly underlying the entire project were de Soto's assumptions that freehold title guaranteed by the state was the most secure form of land tenure security, allowed the state to protect individual property rights, gave license to reconstruct buildings, and liberated the 'dead capital' of the poor as financial collateral. Additional assumptions have been that freehold title enabled more equitable treatment of women and orphans and permitted the state to mediate conflicting claims and disputes over lands (BRR 2005). However, for critics on the

ground, the project's goal of registering 600,000 parcels seemed unrealistic and appeared to be an opportunistic effort to increase state control over lands and to generate new tax revenues (Interview UNDP, Calang, May 2007). Regardless of the underlying motives, RALAS took laudable steps to lower economic barriers to registration (for example, the Ministry of Finance waived taxes and fees), to incorporate *adat* through legislative reform, and to implement participatory methods for the delineation of property and adjudication of land claims (Abidin *et al.* 2006; Kenny *et al.* 2006).

Over time, however, problems surfaced, and the initiative met with limited success. Community-driven adjudication and mapping performed by NGOs and INGOs were not recognized by the BPN as valid for issuing titles; the early consultative communications between NGOs and the BPN ended; state claims over lands in Aceh Jaya and Aceh Besar dispossessed residents; activists from the Aceh Legal Foundation were arrested for assisting villages with claims from the conflict period that identified government dispossession or underpayment for land; and some neighborhoods were partially mapped and registered by the BPN, only to be left without titles (Fitzpatrick 2008a; Deutsch 2009). By 2009 when RALAS closed, fewer than 223,000 of the intended 600,000 land titles had been issues - the majority of which were concentrated in urban areas (Deutsch 2009; WB 2010). Nearly 50 percent of the recipients of title certificates who were interviewed in a project assessment of RALAS did not feel that the certificate had improved their tenure security (Deutsch 2009). Likewise, half of these respondents recognized that the community demarcation and adjudication activities had not been fair, especially with regard to women's rights, due to the internal power dynamics that dominated such sessions. Not only did RALAS fail to resolve many of the lingering disputes over property, several disagreements were caused by errors of land measurement or inadequate recording of ownership information on the titles (Interview Mukir, Banda Aceh, June 2008). There were other issues regarding the government's role in land management including the clarification of land transmission details, the mistreatment of women's claims to property rights even after issue of the title certificates, and the prospect of future transfer costs and taxes that remained unclear to a large portion of the residents of Aceh (Fitzpatrick 2008a; Jalil *et al.* 2008; Deutsch 2009).

4.4 PEACEBUILDING IN ACEH

To what extent has peacebuilding been successful in Aceh? As of late 2011, Aceh appeared to be exiting the post-conflict transition phase and moving toward a consolidation of peace. But even as several grievances and conditions contributing to armed violence have been attended to, some roots of the conflict remain unaddressed. Though it is tempting to look at the current lack of armed violence in Aceh and proclaim peacebuilding success, several measures of peacebuilding progress suggest considering broader criteria (Paris 2004; Barnett *et al.* 2007). Indeed, Kingsbury (2006) notes that although armed violence has decreased as a result of the Helsinki MOU and demobilization, disarmament, and reintegration, a commitment to the letter and the spirit of the peace agreement may still not guarantee a sustainable peace in Aceh. Broad changes in underlying social, political, and economic relations remain necessary for a sustainable peace.

Keeping these changes in mind, this chapter adopts the United Nations Environment Program's definition of peacebuilding—a definition consistent with peacebuilding approaches that move beyond peacemaking and peacekeeping to focus on transformation of the range of conditions that may lead to violence:

> Peacebuilding comprises the identification and support of measures needed for transformation toward more sustainable, peaceful relationships and structures of governance, in order to avoid a relapse into conflict. The four dimensions of peacebuilding are: socio-economic development, good governance, reform of justice and security institutions, and the culture of justice, truth and reconciliation (UNEP 2009, 7).

A number of organizations have been involved with peacebuilding in Aceh. The peacemaking process and resulting Helsinki MOU required the establishment of the Aceh Monitoring Mission (AMM) to monitor peacekeeping activities. The AMM and the related Commission on Security Arrangements began in September 2005 and ended in December 2006. At that time, the Communication and Coordination Forum for Peace in Aceh and the Commission on the Sustainability of Peace in Aceh took up where the AMM left off. The

AMM improved the security situation, but reforms involving the political process and socioeconomic development were being handled by other INGOs and official agencies, such as BAPPENAS, the UNDP's Emergency Response and Transitional Recovery Program, and the International Organization for Migration.

Immediately after the peace deal was concluded, the International Organization for Migration and the World Bank provided support for "socializing the peace" through the Socialization Team, and in February 2006, the government formally established the Aceh Reintegration Board (BRA, *Badan Reintegrasi-Damai Aceh*). The Socialization Team played a role in reintegrating some 2,000 former combatants and 400 former prisoners, and the BRA was responsible for economic and social assistance to conflict victims, aid to former combatants and political prisoners, reconstruction help for those who lost property, and compensation for victims and their families. In areas where the tsunami had a heavy impact, the duties of the BRA and the Rehabilitation and Reconstruction Agency (BRR, *Badan Rehabilitasi dan Rekonstruksi*) sometimes overlapped. However, because the BRR was focused primarily on infrastructure and on the economic, psychological, and social dimensions of disaster recovery and reconstruction, it did not explicitly examine post-conflict issues or work with conflict victims.

In Aceh, peacebuilding is an ongoing process, with successes achieved over time. Demobilization, disarmament, and reintegration of former combatants, integration of GAM representatives into political parties, local elections in 2006, as well as the implementation of local autonomy with regard to Islamic governance and recognition of Acehnese culture by way of the installation of a ceremonial head of state (*Wali Nanggroe*) are all clear peacebuilding successes. Other achievements include the adoption of an official Acehnese flag and hymn, redistribution of hydrocarbon profits through direct payments and a shared fund, and general implementation of livelihood projects and infrastructure development. While positive, all of these successes have attendant problems that require attention.

On the other hand, peacebuilding has been unsuccessful in establishing a Truth and Reconciliation Commission, supporting the Aceh Human Rights Council, equitably

distributing reintegration funds, resolving 17 problematic points of the Law on the Governing of Aceh, supporting the local government's delivery of basic services, and constructing a long-term peacebuilding plan that includes civil society. Not yet resolved are sub-provincial demands to break free from Aceh Province and internal frictions among GAM members who continue to insist on a separatist state. Indeed, former combatants and the Aceh Transitional Committee (*Komite Peralihan Aceh*) are linked to violent criminal acts, kidnapping, and political intimidation in the region (Center for Domestic Preparedness 2009).

4.5 Connecting Land Tenure Security and Peacebuilding

Did activities meant to strengthen land tenure security support, create opportunities for, or hinder the success of peacebuilding in Aceh? Land and property were mentioned in the 2005 Helsinki MOU, the 2006 Law on the Governing of Aceh, and many post-disaster needs assessments. The effects of the tsunami and conflict on property and land tenure security were qualitatively different and geographically varied. Despite recognition of the geographic variation of local needs and the mention of land and property in the peace process, land tenure security has been addressed primarily through the post-disaster-oriented RALAS project. This section outlines the ways in which land and property were addressed in the peace process. It then summarizes the design and implementation of the RALAS project and examines how RALAS and other land security activities affected peacebuilding.

4.5.1 Land Tenure Security in the Peace Process

Article 3.2 of the Helsinki MOU (2005) outlines several general activities with regard to land and post-conflict peacebuilding and requires the following:

> 3.2.3: GOI and the authorities of Aceh will take measures to assist persons who have participated in GAM activities to facilitate their reintegration into the civil society. These measures include economic facilitation to former combatants, pardoned political prisoners and affected civilians. A Reintegration Fund under the administration of the authorities of Aceh will be established.
>
> 3.2.4: GOI will allocate funds for the rehabilitation of public and private property

destroyed or damaged as a consequence of the conflict to be administered by the authorities of Aceh.

3.2.5: GOI will allocate suitable farming land as well as funds to the authorities of Aceh for the purpose of facilitating the reintegration to society of the former combatants and the compensation for political prisoners and affected civilians. The authorities of Aceh will use the land and funds as follows: a) All former combatants will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh. b) All pardoned political prisoners will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh. c) All civilians who have suffered a demonstrable loss due to the conflict will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.

The Law on the Governing of Aceh, passed in 2006, was meant to provide legal follow-through related to the guidelines set out in the Helsinki MOU. Although there are still unresolved complaints about deviations between the Helsinki MOU and the Law on the Governing of Aceh, the latter is currently the main legal foundation for confronting the origins and conditions of conflict in Aceh. Its most relevant sections for land tenure security are several articles from chapters 29 and 39:

XXIX, 213: (1) Every Indonesian citizen who is present in Aceh has right over land in accordance with the stipulation of law. (2) Aceh Government and/or District/city are authorized to regulate and manage the allotment, utilization and legal relationship in relation to the right over land by acknowledging, honoring and protecting the existing rights including the indigenous rights in accordance with the nationally prevailing norms, standards and procedures. (3) Right over land as meant in clause (2) covers the authorities of Aceh Government, District/ City to grant right to build and right of exploitation in accordance with the prevailing norms, standards and procedures. (4) Aceh Government and/or District/ City are obliged to conduct legal protection towards wakaf lands, religious assets and other sacred needs. (5) Further stipulation regarding the procedure for granting rights over land as meant in clause (1), clause (2) and clause (3) is regulated with Qanun which heeds the stipulation of law.

XXIX, 214: (1) Aceh Government is authorized to grant the right to build and right of exploitation for domestic capital investment and foreign capital investment in accordance with the prevailing norms, standards and procedures. (2) Further stipulation regarding the procedure for the granting of license as meant in clause (1) is regulated with Aceh Qanun. […]

XXXIX, 253: The Regional Office of National Land Agency in Aceh Provincial Region and the Office of District/City National Land Agency become Aceh and District/City Regional apparatus at the latest in the beginning of the Budget Year of 2008. (2)

> Further stipulation regarding the implementation of those meant in clause (1) is regulated by Presidential Regulation.

The Helsinki MOU clearly outlines the government's role in provisioning and replacing property. On the other hand, the Law on the Governing of Aceh is more oriented toward outlining assignment to the Acehnese regional government of responsibility for respecting and protecting property rights. However, according to a 2006 World Bank study on GAM reintegration needs, many of GAM never left their communities, so land for reintegration was a moot point; 55.5 percent of GAM combatants had access to land and most of GAM combatants who were interested in farming were part of this group; most land access was facilitated through family holdings (63.8 percent), individual holdings (24.4 percent), or communal lands (7.4 percent); and land was only an issue for GAM returnees where it was also a disaster or conflict issue for receiving communities (WB 2006a). Because the provisions mentioned here apply specifically to former GAM combatant reintegration and because many of the combatants did not need land as part of reintegration aid, the ways in which land and the violent conflict were linked were sometimes ignored or deemphasized. Former GAM combatants interviewed near both Calang and Pidie said that they had no need for government aid to get farm land as they could ask their community, and in any case they would be suspicious of "corrupt BPN officials taking money for nothing" (Interview Hasan, Calang, February 2008; Interview Umar, Pidie, February 2008).

4.5.2 RALAS AND THE PEACE PROCESS

Despite the previous references to land in the peace process, the main vehicle for implementing land tenure security was the disaster-focused RALAS project. RALAS rebuilt land administration offices, offered technical training, digitized cadastres and land records, and restored and expanded the land titles administered by the BPN. Several non-governmental organizations and aid groups were involved in advocating for and supporting property rights and community mapping. Some of the work outside RALAS included the extensive property rights studies performed by or on behalf of Oxfam and the International Development Law Organization, Fauna and Flora International's efforts in community mapping, and United Nations Human Settlements Program (UN-HABITAT) materials developed to inform the population of their rights and the steps needed to register

property. UN-HABITAT materials included a number of educational tools and forms that could serve as temporary statements of property ownership. Although these forms were distributed and occasionally filled out, they had no legal weight as evidence in state law (Interview UN-HABITAT, Banda Aceh, August 2006).

Land negotiations with resident communities were undertaken by BPN representatives and NGO and INGO staff to allow entire communities of tsunami refugees to relocate to land far from the coast. Legal assistance increased as mobile Islamic courts deployed primarily to tsunami-affected regions to assist communities that were puzzling through complicated inheritance and guardianship issues. Human rights 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. LBH-Aceh alleged that during the conflict, communities in East Aceh had been forced to sell their land at low prices to the plantation company PT Bumi Flora or, if they resisted the land purchase, be declared part of the separatist movement (Interview Mukir, Banda Aceh, June 2008). These allegations led to the retaliatory July 2007 arrest of eight LBH-Aceh activists and to their August 2008 conviction on charges of "orally or in writing committing a violent act against the government" and "disseminating hate against the government."[27] This prosecution suggests that property expropriation may be much more prevalent than currently known, but that cases are rarely reported due to the political dynamics in the region.

The RALAS framework adapted official protocols for registering real property to the situation in Aceh. It experimented with community-driven adjudication (CDA), community mapping, and lowering registration costs to facilitate and legitimize the registration process. Registration occurred in several stages: location determination (village selection by the BPN and the BRR), community agreement, measuring and mapping (BPN validation), announcement, filing of rights and issuing of title certificates, and title certificate presentation. Community participation was largely limited to the stage called *community agreement*, wherein members of the community came to agreement regarding the demarcation of the parcel boundaries and recognition of parcel ownership (BPN 2005). The

[27] Indonesian Penal Code, Articles 160 and 161.

process empowered NGOs and INGOs as community-agreement facilitators, outlined specific types of complaints, and designated the parties to whom complaints should be addressed. In villages that were not selected by the BPN, other programs, such as the "district development program, Program for the Elimination of Urban Poverty, Local Government Innovation Foundation program or UNDP or any other BRR endorsed programs" could implement the community-agreement phase (BPN 2005, 7).

Once delineation of property, ownership status, and a sketch of the parcels were agreed upon by the community and its facilitators, the BPN validated the community's work by checking the juridical and physical evidence on boundaries, ownership, and land types. In principle, these participatory processes were meant to legitimize and expedite registration, but BPN staff would sometimes repeat mapping exercises because of inconsistencies between the participatory processes and the BPN's internal regulations or inconsistencies between the BPN's existing land register, the 80 percent of damaged titles returned to Aceh, and participatory mapping results (Fairall 2008; Deutsch 2009). Results of the BPN validation were publicly announced for thirty days, during which objections to any of the data could be presented. After this period, the title certificates were to be registered and issued by the BPN office and then presented through the adjudication committee to land owners.

All titles were registered in and issued from Jakarta. Unfortunately, the reliance on Jakarta to issue the titles caused delays in title distribution and sometimes resulted in changes to the boundaries outlined in participatory mapping (Fairall 2008). All titles registered through this processes were integrated into an electronic land information system to avoid future loss and to facilitate government management. The project also took steps to establish and protect women's and children's rights regarding inheritance, custodianship, and ownership of land. It did so by requiring women's participation in community adjudication and by outlining clear standards for custodianship and joint titling. In December 2008, most land administration duties were transferred from Jakarta to the Acehnese regional government.

RALAS certainly had positive effects, including the training of nearly 700 NGO facilitators and 500 BPN staff in CDA mapping methods, the establishment of new land offices, the clarification of property rights in urban areas, and the introduction of a digital cadastre (Deutsch 2009). However, the RALAS process was also widely criticized. These criticisms revolved mainly around choices in 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 land and forest tenure, and the bureaucracy and corruption of the BPN. These criticisms can be generalized to land registration in the rest of Indonesia, but in Aceh there were additional conflict-related problems that undermined the process. The BPN was also responsible for implementing similar cadastral programs throughout Indonesia in its Land Management and Policy Development Project, but RALAS was unique to Aceh. Comparison of RALAS in Aceh to the Land Management and Policy Development Project throughout Indonesia shows that RALAS was much less effective than could be expected (Fairall 2008). World Bank staff and an Australian consultant attribute the differing results to a "mix of poor leadership, corruption and mistrust of the process by local land owners. Aceh has been in almost perpetual rebellion against Jakarta since colonial times, so this is not surprising" (Fairall 2008, online).

Although official recognition of the limited success of RALAS usually identifies bureaucratic bottlenecks and limited capacity on the ground as the main hurdles (Interview BPN, Banda Aceh, August 2006; Interview BPN, Meulaboh, May 2007), there were clearly a number of other cultural, economic, and political disincentives to titling, which have been identified in this chapter. It seems that the policy makers focused on post-disaster issues because there was a lack of intra-communal disputes and immediate problems related to post-conflict resettlement. Yet, in terms of the symbolic value of land and trust in national government, the post-conflict land registration hurdles in Aceh were similar to many other post-conflict scenarios. If taken into consideration, these problems may have altered the way in which land registration was performed and land tenure security conceived in Aceh. Indeed, the assumption that instituting a state-administered land cadastre in a separatist region simply

requires community participation and lowering of economic disincentives is naive at best and ideological at worst; naive in that many of the aid agencies and international consultants framed property as a post-disaster issue due to their lack of experience in post-conflict situations; and ideological in that this assumption is the result of overextending de Soto's ideas regarding formalization of property to rural and post-conflict scenarios. De Soto's theory was used to justify RALAS, even though his theory was developed for peri-urban and urban communities and has been widely criticized for its failure to recognize specific political, geographic, cultural, and social dynamics regarding property (Home and Lim 2004). Despite the fact that RALAS identified ways for the community to participate in and to lower cost disincentives for land registration, the working concepts of property and tenure security, and the goal of land registration themselves need to be reevaluated.

The RALAS emphasis on state land registration for tenure security is understandable from the standpoint of disaster recovery and international financial investment, but it ignores the post-conflict situation, strong existing tenure systems, local perceptions regarding the legitimacy of the Indonesian state, and contradictions in the national legal framework that weaken recognition of customary resource practices in a context of legal pluralism. Without a better grasp of the disincentives to land registration and the specific needs of different geographic areas, the RALAS program was bound to be only partially successful in its aims to increase tenure security through registration.

Despite all this, RALAS was necessary for increasing tenure security in some urban and tsunami-affected areas. Likewise, whether or not RALAS succeeded in increasing tenure security and issuing titles, the RALAS process and activities regarding property administration may have affected peacebuilding. Land tenure security was often mentioned as the foundation of the post-conflict society in Aceh, but the ways that property registration affected land tenure security and peacebuilding remain an open question. Did formal land registration provide tenure security? Did the process actually assist or hinder the restoration of basic needs and essential services, economic development and sustainable livelihoods, reconciliation, good governance, the reintegration of combatants, or the return and resettlement of refugees?

4.5.3 Basic Needs and Essential Services

Although GAM reintegration did not require formal land registration processes, the reconstruction of houses for many of the 500,000 tsunami refugees depended on RALAS. In tsunami affected urban areas where land markets existed and where informal practices and agreements were not as clear to survivors as the *adat* practices were in rural areas, accessing statutory titles played a role in establishing tenure security. The emphasis of UN-HABITAT and others on providing some sort of temporary evidence of possession – even if not legally binding—assisted with the process of providing housing as most 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 (Interview Mukir, Banda Aceh, June 2008).

While RALAS was not oriented toward rebuilding conflict-damaged property and the BRA may have caused more problems than it resolved with its conflict-damage and victim-compensation schemes, we still need to consider what might have happened to the peace process if formalization of land holdings had not been performed in urban and tsunami-affected areas. Would the peace process have progressed if RALAS did not exist? Although there were problems—including riots in 2005 and 2006 directed at the BPN and the BRR for not moving fast enough to provide shelter and title—the work done through RALAS paved the way for post-tsunami shelter and, one could argue, helped prevent relapse of violent conflict.

Evidence indicates that formalizing property rights was central to accessing improved shelter and played a role in aid distribution. The allocation of emergency housing and the rate at which neighborhoods could be rebuilt were contingent on the ability of groups to either prove their property claims with formal title or implement the RALAS titling procedures (Interview UN-HABITAT, Banda Aceh, August 2006). Compensation for owners with statutorily recognized claims often exceeded that paid to renters and others lacking formal titles (Interview Mukir, Banda Aceh, June 2008). Oxfam's work on property rights in the region indicate that the focus on 'reconstruction' and extending land administration and

land registration led RALAS to overlook property rights as a broader social justice issue for displaced and vulnerable groups (Fan 2006). Despite the divisions this may have caused, formalization of property rights helped move the building of shelters and visible reconstruction forward – preventing further delays, grievances and serious political backlash that could have derailed peacebuilding.

4.5.4 Economic Development and Sustainable Livelihoods

In Aceh, the RALAS project and formal property rights were explicitly linked to the ability to invest in land and to mortgage land to gain access to financial resources. Indeed, the BRR, politicians, and international organizations cited de Soto's approach to property registration for empowering the poor as one of the main justifications for the RALAS project (BRR 2005). But despite anecdotal evidence of businesspeople in Banda Aceh and other urban areas mortgaging their land, most of the people in Aceh have alternative means to access temporary financial assistance—through social networks or arrangements involving, for example, cooperatives, forward sales of crop harvests, or mortgages on vehicles (Focus Group 4, Kreung Sabee, May 2007) (Interview Muntasir, Calang, February 2008).

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 or homes) and cannot extract property from social relations and obligations in which it is embedded. Several bank representatives expressed hesitation at taking land as collateral even if it is formally titled because the social relations and legal framework surrounding the land may limit its use and because it is difficult to value rural lands where there is no developed market. Deutsch (2009, 43) reported that "within the study sample, 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." However, he notes, the small sample size does not account for such factors as a possible increase in investment and the lowering of collateral standards in the region due to the end of the conflict; nor did the study focus on areas where land markets already existed. There are plenty of examples of how formal registration has allowed investment in urban areas, but there is no clear evidence that livelihoods required formal land title or that the process of

registering land has allowed the poor to access more resources and encouraged international investment to the benefit of the peacebuilding process.

4.5.5 Reintegration of Combatants and Return and Resettlement of Refugees

Reintegration of GAM combatants was able to take place independently of the efforts to formally register land titles (WB 2006a). Most of GAM combatants accessed land through communal networks and did not need to be relocated onto land with formal title in order to gain tenure security. Where formal title could help was in payment for property damage inflicted during the twenty-nine-year conflict and in resolution of land disputes between communities and government agencies. Communities that were forced to move or sell their land under threat during the conflict became refugees or experienced violation of their property rights. When groups such as LBH-Aceh have supported communities with claims against the government, the allegations led to activists being severely punished. Publicized disputes with several communities over government-claimed land, local acknowledgment that lands had been taken but an absence of a climate deemed appropriate for pursuing these claims, the punishment of LBH-Aceh, and the ongoing political and personal violence in the region indicate that a minefield of conflict-related property claims still needs to be addressed.

4.5.6 Reconciliation

At a minimum, reconciliation with the government should address the different experiences of former GAM combatants versus those of local communities. Did the RALAS land titling process bring GAM and the GOI into a cooperative relationship? Did it provide an avenue for resolution of local grievances with the government? The answer to the first question is outlined in the tax structure and the Law on the Governing of Aceh: land registration was a cooperative governance project, and it will establish a source of revenue to be shared between the GOI and the Aceh Party (formerly GAM), which now runs local politics.

The community-driven adjudication process—where it was desired by the community and was successfully implemented—certainly built confidence in the capacity of the 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 community-driven process was meticulously followed and where local power dynamics were amenable to it. However, due to problems with implementation and local disincentives to registration, this process often failed to provide reconciliation between local communities and the government.

4.5.7 Good Governance

By emphasizing participation, transparency, accountability, and monitoring, RALAS promoted positive principles of good governance. Moreover, it built capacities within communities to interact with the government, created digital systems (land cadastres and evidence) that were less susceptible than earlier recordkeeping systems to corruption, decentralized powers by transferring some of them to local political authorities, and provided alternative avenues for dispute resolution through BPN-appointed facilitators. What RALAS and the regional focus on property administration could not do was change the substantive content of the rule of law by clarifying the ambiguous national legal framework regarding communal tenure and transitions of property between *adat* and statutory systems. But promotion of local capacity and principles of good governance helped the peace process by encouraging responsible governance.

4.6 Conclusion: Lessons Learned

The implementation of the RALAS land titling project in Aceh presents us with many lessons about post-conflict development and property administration. The RALAS project indirectly supported peacebuilding by supporting the meeting of basic needs and the delivery of essential services such as shelter, and by providing opportunities for reconciliation and good governance. But there was little real connection between land titling, on the one hand, and economic development, sustainable livelihoods, reintegration of combatants, or resettlement of conflict refugees, on the other. Ultimately, the project missed several opportunities to support peacebuilding and was itself limited by its lack of consideration of the conflict's effects on political, social, and economic relations surrounding land. Property narratives led experts to detach land titling from problems of violent conflict and to

associate it with tsunami refugees and 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 registration. The post-disaster property narrative based on de Soto's framework wove a story that overlooked all of the above.

A number of lessons from Aceh might be generalized to other post-conflict situations. For example, in complex political emergencies, development programs should be wary of categorizing programs as post-disaster while conflict dynamics are still relevant. Specifically, one should never assume that land is free of cultural and political value or that all disputes between individuals or between individuals and institutions are openly presented in post-conflict scenarios. Transparency, accountability, community participation, and monitoring can promote confidence in the process of adjudication and demarcation of property. Legal and financial accountability within the government hierarchy should be clearly established at the earliest possible date in order to prevent bureaucratic tension or hesitations in implementation. Likewise, the establishment of an independent monitoring institution and of requirements for regular disclosure can be more efficient and effective than reliance on existing institutions to self-police or monitor other institutions.

Furthermore, integrating INGOs and NGOs into government extension regarding property or the provision of essential services requires a clear legal framework. Time-limited and renewable laws can be issued by executive order to allow an immediate legal framework for such activities. The allocation of financial resources for land registration should be goal-oriented instead of time-oriented; there should be no expiring budgets that must be immediately used. There must also be clarification of the legal status of informal practices regarding property rights before property-registration programs are undertaken. Where informal or deeds-based systems are functioning, it is not necessary to immediately convert all land to a state-administered, centralized title system. Titling should be locally evaluated instead of broadly applied.

Finally, 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 better suited to financial limits and community needs in post-conflict transitions. Community participation in land demarcation and adjudication should be preceded by community-led assessment of needs and should identify methods of integrating women and members of minority groups into public forums that are more effective than simply mixing them with men and members of dominant groups. Although there were approaches that could have strengthened tenure security in Aceh while respecting the dynamics of communal property and factors surrounding violent conflict, alternatives to RALAS were never explored (Baranyi and Weitzner 2006).

In summary, managing property for peacebuilding requires understanding the competing narratives and embodied practices of propertied landscapes. As shown in the case of Aceh, adopting property narratives that fail to consider the social-embeddedness of property in relation to conflict dynamics can lead to inappropriate timing, location, and methods for implementing property systems and land tenure security programming for peacebuilding.

CHAPTER FIVE: SCALING PROPERTY

Chapter Five consists of the second manuscript and corresponds to the dissertation's second objective. The second objective is to examine the interaction of political authority, scalar politics, and property. In this manuscript, I outline a framework that draws from Hohfeld's (1913) work on jural relations, Singer's (2000) work on obligations, and the concepts of scale and scalar politics in relation to property (Sikor 2004; McCarthy 2005a, 2005b; Mackinnon 2011). This framework is used to examine experiences of property registration and land titling in a rural village and a peri-urban neighborhood in Aceh, Indonesia. In both cases, the process of formalizing property rights in statutory systems fundamentally changes ways in which property is defined and enacted on the ground. The research shows that the consolidation of political authority and the outcomes of post-conflict natural resource management strategies are dependent on the interplay of property relations and scalar politics. I conclude by outlining ways in which recognition of how property relations interact with scalar politics provides insights into the appropriate timing, locations, and procedures for land titling in post-conflict scenarios.

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5.1 INTRODUCTION

Developing an understanding of how post-conflict natural resource management intersects with governance is critical for supporting peacebuilding processes (Bruch *et al.* 2008; Jensen and Lonergan 2011; Wennmann 2011). How property is defined and enacted is fundamental to natural resource management, governance practices, and the constitution of authority (Macpherson 1978; Bromley 1991; Sikor and Lund 2009). Social negotiations over property throw "into sharp relief the lineaments of a society and the tensions between alternative claims to control its resources" (Bowen 1988, 274). Examination of post-conflict property management (particularly land) provides a powerful and illuminative window on these lineaments and into the interaction of authority with the sociospatial aspects of conflicts. Indeed, establishing effective and legitimate property management systems is one of the most important and complicated components of post-conflict natural resource management, reconstruction, and peace processes (Unruh 2003; Unruh and Williams 2013). Recent work outlines several best practices for post-conflict property management (Reimann 1997; Fitzpatrick 2002; Unruh 2003; Cotula *et al.* 2004; Das 2004; Leckie 2005; UNHABITAT 2007; Otto 2009; Unruh and Williams 2013). Yet, there is still relatively little literature that examines best practices for complex political emergencies wherein natural disasters and conflict dynamics both impact property management. Despite a growing literature on 'disaster diplomacy' (Le Billon and Waizenegger 2007; Gaillard *et al.* 2008; Waizenegger and Hyndman 2010), the intricacies of managing natural resources in such situations have not been adequately theorized or documented.

This study examines the interaction of property and scalar politics in post-disaster, post-conflict *Nanggroe Aceh Darussalam* (Aceh), Indonesia. I argue that an understanding of scalar politics and property provide a useful framework for understanding how political authority is constituted in post-conflict scenarios and in turn, help practitioners make sense of the outcomes of post-conflict natural resource management strategies. I outline a framework that draws from Hohfeld's (1913) work on jural relations, Singer's (2000) work on obligations, and several authors' ideas regarding scale and scalar politics in relation to property (Sikor 2004; McCarthy 2005a, 2005b; Mackinnon 2010). I use this framework to examine experiences and impressions of property registration and land titling in a rural

village and a peri-urban neighborhood in Aceh, Indonesia. This study concludes with some lessons applicable to property management in any scenario of simultaneous natural disaster and armed conflict.

In the early morning of 26 December 2004, a megathrust earthquake struck less than 150 kilometers off the coast of Aceh. This earthquake triggered a massive tsunami with waves that measured between 12 - 30 meters in height and that traveled as much as seven kilometers inland (BAPPENAS 2005a; Paris *et al.* 2007). A tragedy of inconceivable proportions emerged over following days as news reports revealed the scale of damage in countries surrounding the Indian Ocean. Aceh's lowland communities were some of the worst impacted areas (Jayasuriya and McCawley 2010). In Aceh alone, an estimated 167,000 people were killed or missing and over 500,000 more people displaced or homeless (BRR 2005; USAID 2005a). Local infrastructure was devastated as some 300,000 land parcels, 250,000 homes, 15 percent of agricultural lands, over 2,000 schools, 10,000 kilometers of roads, and many public health facilities were severely damaged or destroyed (BRR 2005; Fitzpatrick 2005b; Kenny *et al.* 2006; Abidin *et al.* 2006). The Government of Indonesia (GOI) estimated USD 4.45 billion in damages and losses – 78% of which were to private assets (BAPPENAS 2005a).[28] In response to the tragedy, an estimated USD 7.2-7.7 billion was pledged to Aceh by international donors and the GOI (Masyrafah and McKeon 2008; BRR 2009).[29] Over 400 agencies, several military deployments, and thousands of international aid and development workers mobilized to provide assistance for the recovery and to 'reconstruct' what they believed were the hallmarks of a developed

[28] National Development Planning Agency (BAPPENAS, *Badan Perencanaan dan Pembangunan Nasional*).

[29] BRR (2009) estimates 93% of the pledged was actually committed and used. Disaster financial aid flows were difficult to measure in all countries, so amounts vary quite a lot. Jayasuriya and McCawley (2010) factor in additionality and other accounting issues to estimate that aid to all tsunami impacted countries totaled USD 17.5 billion; international donors committed USD 14 billion in aid and USD 3.5 billion in aid was made available from domestic sources.

economy and civil society (Masyrafah and McKeon 2008; Jayasuriya and McCawley 2010).[30] Nevertheless, on the ground, there were many difficulties – both anticipated and unanticipated – that challenged disaster recovery and reconstruction. Progress was most obviously hampered by the magnitude of devastation, including the substantial loss of human capacity, logistical difficulties of delivering aid, recovery of basic legal documentation, and procurement of resources for reconstruction of physical infrastructure such as roads and buildings. Rendering this situation even more difficult was that Aceh was both a post-disaster and post-conflict scenario, wherein conflicting development and political agendas competed at multiple scales (Hyndman 2011).

At the time the tsunami struck, Aceh was almost completely closed to development agencies and was known in the outside world for primarily three things: substantial offshore hydrocarbon reserves, a strong Islamic heritage, and a nearly thirty-year separatist war between the GOI and the Free Aceh Movement (GAM, *Gerakan Aceh Merdeka*) that had resulted in some 15,000 deaths (Barron *et al.* 2005; Ross 2005; Reid 2006). Beginning in 1976 and intensifying throughout the 1990s, the causes and drivers of the modern conflict were complex – involving aspirations for local political autonomy, ethnonational territorial claims, personal vendettas, reaction to human rights violations, and grievances from local distribution of hydrocarbon and other resource revenues (Reid 2006; Aspinall 2007; McCarthy 2007; Schulze 2007; Drexler 2008).[31] Explanations of the conflict's root causes are still embedded in political narratives. Many former GAM see the conflict as an ongoing struggle of decolonization and their narratives trace the conflict through a 130 year history

[30] Masyrafah and McKeoon (2008, 8) estimate "463 agencies were involved with implementing projects" including 326 international NGOs, 109 national NGOs, 27 donors (including UN agencies), and the GOI (which while actually had multiple agencies on the ground including TNI, BRR, BPN, MOF and BAPPENAS).

[31] Schulze (2004) and Ross (2005) identify three phases of conflict that correlate to three incarnations of GAM. According to Ross (2005, 35), "the first in 1976–79, when it was small and ill-equipped, and was easily suppressed by the military; the second in 1989–91, when it was larger, better trained, and better equipped, and was only put down through harsh security measures; and the third beginning in 1999, when it became larger and better funded than ever before, challenging the Indonesian government's control of the province."

of resistance including the Darul Islam Rebellion (1953-1959) and opposition to British, Dutch, Japanese, and other foreign entities (Schulze 2004; Reid 2006). On the other hand, representatives of the GOI and Indonesian National Armed Forces (TNI, *Tentara Nasional Indonesia*) have described GAM as an opportunistic, loose affiliation of unorganized, criminal gangs dealing illegal drugs and often attempted to degrade the character of GAM leaders (Reid 2006; Drexler 2007). Scholarly analyses recognize these competing narratives as discursive weapons based on partial truths and that the complex and changing mix of actors representing GAM and 'the state' have to various degrees controlled the territory and committed crimes against the Acehnese people (Schulze 2004; Drexler 2007).

Interestingly, post-disaster village level surveys conducted in 2006 indicate that conflict-affected areas actually experienced more extensive infrastructural damage than the tsunami-affected areas (Wong *et al.* 2007). As well, conflict-related damages were not limited to the northeast and central districts – areas typically identified as GAM's traditional stronghold (Wong *et al.* 2007). Western districts like Aceh Jaya and Aceh Barat that experienced the brunt of the tsunami were also among the districts most damaged by the conflict – Aceh Jaya being the most impacted of all districts, with more than 80% of infrastructure destroyed by either conflict or disaster (Wong *et al.* 2007, 28). Despite a request for ceasefire after the tsunami, conflict incidents continued and even increased into mid-2005 with several reports of TNI killing GAM (Barron 2005). It was thought that some GAM moved towards the west coast and southern districts, where membership was thought to be less ideological and more based on economic self-interest (Schulze 2004; Barron 2005). Ironically, petition from Central Aceh, Southeast Aceh and West Aceh in recent years (2006-2013) has been to separate the districts from the province of Aceh into a new province, though this may be the political maneuvering of elites (Simanjuntak 2013). Despite this violence on the ground, the tsunami provided the political space for renewed peace negotiations that led to the Helsinki Memorandum of Understanding (MOU) on 15 August 2005 (Le Billon and Waizenegger 2007; Drexler 2008; Gaillard *et al.*2008). While the Helsinki MOU began the post-conflict phase, the peacemaking process did not address all the grievances of different groups in Aceh (Le Billon and Waizenegger 2007; Drexler

2008; Gaillard *et al.*2008) and village surveys indicated a lack of local understanding and access to information regarding the MOU (Wong *et al.* 2007).

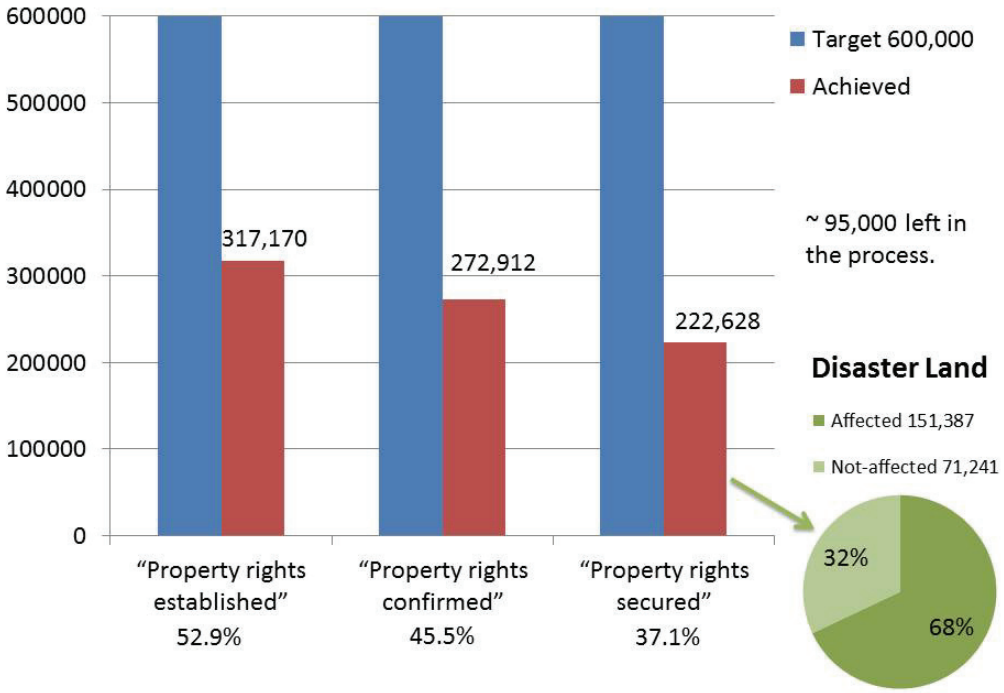
In 2005, there were no best practice guides for situations wherein natural disasters and peacebuilding efforts occur simultaneously. Research that recognized the complexity of cases in which natural disasters influenced violent conflicts and peacebuilding was just emerging (Comfort 2000). The absence of theoretical and policy frameworks for understanding a simultaneous natural disaster and violent conflict, the loss of local human capital, and the dearth of local knowledge and crossover technical skills among aid workers led to separate streams of post-conflict and post-disaster projects that rarely called for coordinated activities or project designs (Burke and Afnan 2005 ; Hyndman 2009; Hyndman 2011; Phelps *et al.* 2011). The "dual disaster" resulted in two aid streams and two solitudes between people that were victims of the tsunami or victims of the conflict (Hyndman 2011). In fact, Waizenegger and Hyndman (2010) argue the fact that assistance for tsunami survivors significantly surpassed aid for conflict survivors and ex-combatants may jeopardize a sustaining peace in Aceh. The reconstruction of property and land administration systems was one of the high priority aid areas in which post-conflict and post-disaster activities were entirely disconnected.

The Reconstruction of Aceh Land Administration System (RALAS) was the flagship project for the World Bank–led Multi Donor Trust Fund (MDTF) and it was backed by political luminaries like "U.S. President Bill Clinton (Special Envoy for the Tsunami), Hernando de Soto (the father of modern thinking of property rights for the poor), President Paul Wolfowitz of the World Bank and Agnes van Ardenne, the Netherlands Minister for Development Cooperation" (Breteche and Steer 2006, online). Approved for USD28.5 million funding in June 2005 (before the Helsinki MOU was signed) and implemented from August 2005 to June 2009, the project was a post-disaster land titling project in a post-conflict environment (WB 2010). RALAS was meant to target non-conflict areas and avoid conflict-related property issues (Deutsch 2009). Yet, after a 29-year conflict, there were few places in Aceh that were unaffected by the conflict – especially in RALAS areas like Pidie, Bireuen, Aceh Utara, Lokseumawe, Nagan Raya, Aceh Jaya, and Aceh Barat. All of these areas

were either thought of as GAM strongholds or had conflict-related damage above the provincial average (Schulze 2004; Barron 2005; Reid 2006; Wong *et al.* 2007). Moreover, when mapping and registration were implemented, the reasoning behind the choice of specific areas was not clear to locals or policy makers and several non-tsunami locations were included (Deutsch 2009). When the World Bank declined to renew funding for RALAS in June 2009, RALAS had been able to issue titles for less than 40% of its targeted goal (222,628 of 600,000 land parcels) and about 50% of the tsunami damaged parcels (151,387 of 300,000 land parcels) (WB 2010). While the World Bank identified this quantitative failure as mostly a failure of national management and implementation, BPN identified funding flows from the MDTF as a serious obstacle. In addition to the bureaucratic bottlenecks and problems with implementation, community members and people working on the ground questioned the value created, cultural appropriateness, and motives behind land titling (Interview FFI, Meulaboh, May 2007; Interview Muntasir, Calang, February 2008). As a result of the project's closure, many owners were left in limbo without titles for over 90,000 land parcels that had gone through community driven adjudication/community land mapping processes (some 40,000 parcels) or had been confirmed through official survey and public notification (some 50,000 parcels) (WB 2010) (see Table 4.1). While bureaucratic ineptitude was a significant and often identified problem (Deutsch 2009; WB 2010), the strong connections between property, authority, and politics were overlooked.

The two case studies in this chapter are based on fieldwork conducted on land titling during five months spent in the region spaced out over three years (2006-2008). The first case study is a rural village in the district of Aceh Jaya; the second is a peri-urban neighborhood near Meulaboh – the capital of the district of Aceh Barat. The RALAS land titling project implemented activities that were meant to reconstruct property and land systems in or near both of these communities. The data collected includes 68 semi-structured interviews, 16 focus groups with local farmers, direct observation, and archival research including census and secondary assessment data sets. Semi-structured interviews with farmers, non-government organization (NGO) staff, international agency staff, and government officials established the importance of land titling as a local priority, examined officials' public and

Table 5.1 Quantitative outcomes of RALAS at closure in 2009. Data Source: WB 2010.



private opinions about land titling, identified constraints to land titling, and documented the land titling process.[32]

The chapter is organized as follows. The next section overviews literature on property, authority, and scalar politics. The third section applies this framework to two case studies in Aceh and provides an overview of RALAS. The fourth section provides a discussion of research findings. The concluding section summarizes lessons learned.

[32] Exact locations and names are changed to protect the identity of informants.

5.2 Property, Authority, and Scalar politics in Post-Conflict Contexts

5.2.1 Authority and Property in Aceh

Competing visions of property and property systems often indicate broader disagreements over political authority (Macpherson 1978; Benda-Beckmann 1979). As Sikor and Lund (2009, 8) point out, authority "relates to property because rights, privileges, duties, obligations, *etc.* require support by politico-legal authority" and authority itself is constituted through the sociospatial practices of property. Weber (1978) defines 'authority' as legitimate domination and outlines three ideal types of authority based on tradition, charisma, or rational (legal/bureaucratic) grounds. Different types of authority influence geographies of power and governance strategies (Allen 2003). For example, similar to Weber's three ideal types of authority, Watts (2004) identifies three forms of governable space and rule (the chieftainship, the ethnic minority, and the nation state) associated with oil-based capitalism in Nigeria. Watts' work indicates that examining how different types of authority are expressed and constituted through sociospatial processes can provide key insights into governance of societies disrupted by armed violence. Governing space implicates establishing territorial authority which often translates into control over property (Vandergeest and Peluso 1995). Thus, property systems and land tenure security are intimately connected to the dynamic constitution of authority (Macpherson 1978; Bromley 1991; Unruh 2003; Sikor and Lund 2009).

The interaction of property systems and authority are fundamental to the constitution of the state and the power of governments to control or influence human behaviour (Blomley 2003b; Larson 2010). In fact, the modern state is sometimes considered the main guarantor of property entitlements and tenure security (de Soto 2000; Otto 2009). Yet, other social institutions express authority over property relations through non-statutory norms and laws (Bromley 1991; Singer 2000; Unruh 2003; Benda-Beckmann *et al.* 2006a). Land tenure security can be strong in non-statutory property systems (Home and Lim 2004), though it may be undermined in cases where competing authorities support conflicting property systems or property claims (Bowen 1988; Benda-Beckmann 2001). Situations wherein multiple authorities overlap and compete are characterized by normative pluralism (Bowen 2003). Operationalizing authority in normatively plural situations is difficult as authorities

may use the same principles, evidence, and legal forum; ostensibly different authorities may be embedded within the same governance structure (for example, village councils appointed by central state officials); or authorities may be too ephemeral to adequately engage with and study (Morse and Woodman 1988; Watts 2004; Santos 2006). Several authors studying property and governances have conceptualized the complicated discourses and activities on the ground as semi-autonomous social fields (Moore 1973, 2001; Griffiths 1986), normative orders (Bowen 2003; Tamanaha 2007b), or socio-legal configurations (McCarthy 2004). While the ebb and flow of authority through associated networks and sociospatial processes are difficult to operationalize, these approaches have proven useful for providing theoretical insight and policy guidance for post-conflict natural resource management (Unruh 2003; Plunkett 2005).

Normative pluralism and conflicting property systems are common challenges to sustainable post-conflict natural resource management – particularly in the case of land (Cotula *et al.* 2003; Unruh 2003). In post-conflict scenarios, central governments often lack legitimacy and capacity to implement property administration; as well, they may have statutory legal frameworks which do not represent the reality on the ground (Unruh 2003). Unruh and Williams (2013) find that four broad categories of problems commonly undermine land management for peacebuilding – legal ambiguity, legal pluralism, disputes, and land recovery. Three of these four directly relate to normative pluralism: (1) *legal ambiguity* resulting from normative hybridity and poorly enforced laws; (2) *land disputes*, implicating authority and often involving 'forum shopping' wherein claimants can choose from forums reflecting competing authorities; and (3) *legal pluralism* is a critical term politically deployed to describe normative pluralism in situations wherein the state centralizes power by marginalizing alternative authorities (Kidder 1998). The interaction of multiple authorities with property systems and governance is often complicated by people's ability to choose authorities at one or more scales; by normative hybridity wherein evidence, adjudication principles, and rules might be shared between authorities; and when authorities are embedded in complicated scalar relations wherein governance is shared or political categories becomes associated with particular scales. In post-conflict, post-disaster Aceh, all of the above dynamics were implicated in property management.

In Aceh, three dominant authorities are often recognized as pertinent to property management – statutory law, Islamic law (sharia, in Indonesian *syariah*), and customary law (i.e. the flexible *adat* category) (Bowen 2003; Harper 2009). While it is easy to imagine these authorities as three separate entities or normative orders with competing institutions, these authorities are actually enmeshed in a complicated network of political manoeuvre and normative hybridity where at any given time they may complement and defer to one another, may overlap and blend in adjudication decisions, or may be deployed as politically antagonistic categories (Bowen 2003; McCarthy 2005a; Harper 2006). Since 1999, the role of Islamic and *adat* authorities within politics implicating Acehnese identity and in newly created institutional positions in the courts and in government administration has created a complicated, unique, and dynamic governance environment (Harper 2009).

The relationships between these authorities in Aceh are influenced by broader political and legal currents impacting the Indonesian archipelago. Colonial governance strategies, national politics, and global undercurrents have altered the Indonesian legal recognition of the role of *adat* institutions, thus changing the definition of *adat* itself and modifying the role *adat* plays in property and natural resource management (Haverfield 1998; Li 2000, 2001; Burns 2004). Dutch colonial rule left an indelible imprint on property management throughout Indonesia that continues to influence jurisprudence, governance, and the relations between the state, Islam, and *adat* in regard to land law and property management (Burns 2004; Wallace 2008).[33] Between 1909-1926 the Dutch scholar C. van Vollenhoven and his Leiden School were not only central in theorizing how colonial and customary law should integrate, they also played an important role in defining what constitutes customary law (*adatrecht)* – identifying nineteen local *adat* systems that could be united through universal principles into a super category of "*ur-adat*" (Burns 2004; Lindsey and Phillips 2005). This "*ur-adat*" idea underlies the idea of a pan-Indonesian *adat* as articulated in the Basic Agrarian Law (Law No.5/1960), the first law in post-independence Indonesia to

[33] Wallace (2008,192-194) indicates law, administration, and traditional or informal behavior as three "discrete components" that have interacted during the Pre-Cadastral Phase (1626-1837), Old Cadastral Phase (1837-1875), New Cadastral Phase (1875-1961), and Modern Cadastral Phase (1961 to current).

codify property relations. On the other hand, during the 1990s, the revival of *adat* linked the term to a supposedly incommensurable array of dynamic, local practices and was often discursively deployed to support regional claims for autonomy and resource control (Li 2000; Bowen 2003; Fitzpatrick 2006; Lindsey 2008).[34] This latter usage of *adat* to support indigenous, ethnic, or local resource claims parallels larger discourses in the 1990s that identified the local as the point of resistance to fight against 'globalization' (Swyngedouw 2000). Fitzpatrick (2006, 75) outlines three phases of Indonesian land law that reflect how larger political trends have influenced the way different authorities (particularly *adat*) have been implicated in property management and territorial control since independence in 1945:

> The first, characterised by the Basic Agrarian Law 1960 ("the BAL"), was concerned with attempts to unify the colonial legacy of legal dualism. This endeavour was partly based on the alleged existence of pan-Indonesian customary (*adat*) law principles. The second, coinciding with the New Order period, was characterised by extension of centralised executive control over access to land and natural resources. In this period *adat* law failed to meet its romanticised promise, either as an effective source of private law or as a check on public administrative power. The third, apparent in current processes of *reformasi* and regional autonomy, is ostensibly concerned with re-recognising pluralism, devolving public administrative power and ensuring more equitable access to land and natural resources.

As political prerogatives changed in Jakarta, a complex and sometimes contradictory melange of forestry, village governance, regional autonomy, and government appropriation laws and regulations undermined the BAL.[35] These changes often created insecurity of

[34] Specifically, the regional and local use of *adat* for advocating political and legal interests played a central role during the end of the New Order and beginning of *reformasi* as laws like the Autonomy Law No.22/1999 recognized the role of customary norms in local governance and Regulation No.5/1999 by the Minister of Agriculture and Head of the Body of National Land concerning the Guidelines for Resolving the Issue of Traditional Communal Rights officially recognized *hak ulayat* (translated as *beschikkingsrecht* or the right of disposition, allocation, or avail) and the existence of traditional, communal rights subject to traditional law (Wallace 2008, 205).

[35] For example, the 1967 Forestry Law defined 70-75% of all of Indonesia as forest land under the administration of the national Ministry of Forestry thus undermining the BAL purview. The Forestry Law No.41/1999 recognized some rights of customary groups which subsequently were cast in doubt by laws on regional autonomy and resource control. In addition, Law No.5/1979, Law

tenure for local and customary interests regarding natural resource management, an insecurity that left openings for corruption in property and natural resource management and little opportunity for recourse (Thorburn 2004; McCarthy 2005a; Wallace 2008).

Given the ongoing problems, in 1988, the National Land Agency (BPN, *Badan Perananhan Nasional*) was established with the objectives of coordinating the registration of property, managing property transfers, and developing land policy. Yet, BPN rapidly became a representative of the corruption and problems of New Order rule (Thorburn 2004; Fitzpatrick 2008a; Lindsey 2008). BPN was nearly closed in 1999 due to decentralization legislation that would have handed over land affairs to some 416 local offices with no central coordinating agency (Heryani and Grant 2004; Wallace 2008). However, BPN remained active at the national (*pusat*), provincial (*kanwil*), and district (*kantah*) level with a director that answered directly to the president of Indonesia.[36] Although World Bank funded projects like the Land Administration Project (LAP) and Land Management and Policy Development Project (LMPDP) continue to be implemented through BPN, by 2011 the slow rate of registration resulted in only 39 million of the estimated 87 million land parcels in Indonesia being registered – less than 10% of the total surface area of the country (Heryani and Grant 2004; Abidin *et al.* 2011; WB 2011).[37] Efforts to have an orderly decentralization of land administration have continued throughout the 2000s though constantly plagued by politics and technical difficulties (Lindsey 2008; Abidin *et al.* 2011; Bell *et al.* 2013). In post-conflict Aceh, World Bank reports indicate that resistance to

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No.22/1999, Law No.32/2004, and a number of agency regulations have chang ed regional governance, *adat*, and village governance by restructuring traditional village councils and giving more authority to village heads.

[36] BPN recently went through restructuring under presidential decree No.10/2006 but continues to maintain its legislated central role in land registration, land management, and land policy across the country despite the push to decentralize.

[37] Such projects led to regulations specifying systematic land titling procedures being introduced just before the 1999 decentralization threat: PP No.24/1997, PMNA 3/1997 and PMNA 7/1998 (Deutsch *et al.* 2009).

decentralize BPN, "was fueled largely by issues that go beyond RALAS, such as the oil and gas concessions of energy-rich Aceh, which are currently under the jurisdiction of BPN–Jakarta" (WB 2010, 8). The political manoeuvering, slow rate of property registration through BPN, and complex legal framework for property have never adequately recognized local resource rights or met the needs of rapid urban growth, industrialization, and changing agricultural practices that have occurred since the 1960s throughout Indonesia (Lindsey 2004, 2008).

Implementation of Indonesia's legal and regulatory framework for property management was extraordinarily complicated and problematic in post-disaster, post-conflict Aceh (WB 2010). As mentioned above, property damage from both the tsunami and war was widespread (Wong *et al.* 2007). The loss of boundary markers, loss of proof of ownership, loss of BPN paperwork and death of staff, temporary relocation and permanent resettlement for tsunami victims, and the destruction of 300,000 land parcels (130,000 rural, 170,000 urban) were dramatic impacts after the tsunami (BRR 2005; Deutsch 2009). In turn, property issues from the conflict included infrastructural damage, some 36,000 internally displaced households, and widespread damage to productive assets like agricultural fields, generators, and forest gardens (Barron 2005; Wong *et al.* 2007). Moreover, large swaths of land in Aceh had never been registered as they were remote regions with poor transportation infrastructure; had strong customary resource management systems and village governance; or may have had substantial GAM influence (Bowen 2003; Schulze 2004; Fitzpatrick 2005, 2008; Harper 2006). Lingering disputes allege that during the conflict central government claims on and grants of land for commercial entities failed to recognize historical local use.[38]

Aceh has a number of unique laws and regulations that make regional governance different from other parts of Indonesia. This uniqueness evolved due to Aceh status as a special

[38] For example, TNI claims to land for military barracks were challenged by some communities and expansion of the palm oil industry plantations during the conflict also sometimes disregarded local property rights – see court decision PTUN Banda Aceh on PT. Nafasindo vs. Governor Aceh 2011.

region (*daerah istimewa*) and follows the peace agreement (Helsinki MOU) and subsequent post-conflict legislation in both the region and national legislative bodies. These laws set up a number of unique institutions and legislative tools that are different from other provinces. The provincial and district legislative bodies are allowed to pass *qanun* – regional regulations based on Islamic law.[39] The *qanun* have been used to establish and increase the purview of sharia courts (*Mahkamah Syariah)*, sharia police (*Wilayatul Hisbah*), and the Ulama Consultative Assembly (*Majelis Permusyawaratan Ulama)*. Further complicating property management, post-disaster reconstruction and development witnessed the introduction of new ideas and neoliberal principles regarding the social function of property (like mortgages, taxes, etc.) (WB 2010). The pre-tsunami cadastre did not represent many informal transactions that occurred with registered lands. The high costs of registering all transactions (5% of the value of property for initial registration) and the poor legal framework for recognizing such transaction caused people to use *adat* or informal systems and to underreport transactions to BPN (Interview Muntasir, Calang, February 2008).[40] While framed as a process of 'reconstructing' the statutory property system in Aceh, property registration and titling were actually processes of *creating* a statutory system in a region where most land was previously secured through informal or traditional mechanisms. Registering land in Aceh was not just a simple task of drawing boundaries and recording rights and names, it was a change to the existing ways in which property was enacted and functioned in local societies and in practices of governance.

[39] The capacity to create qanun was first granted by Law No.18/2001 (the Special Autonomy for the Province of Aceh as the Province of Nanggroe Aceh Darussalam) and was reaffirmed by Law No.11/2006 (the Law on Governing Aceh or LoGA).

[40] While *hak milik* is the standard right of ownership, do not flow from *hak milik* but rather further government registration. So beyond *hak milik* additional rights that must be registered with the state include building rights (*hak guna bangunan*), use rights (*hak pakai*), rental rights (*hak sewa*), and commercial exploitation (*hak guna usaha*). The very centralized land administration system becomes overwhelmed with registering transactions and rights that might be better handled through a combination of local zoning and district or subdistrict registration of transactions – which ironically is the *de facto* reality in Aceh.

The three dominant authorities in Aceh influence ways in which property is understood and enacted, yet they are not the sole influences on property. Human rights, environmental risk, and capitalist discourses regarding property also influenced property management strategies, especially in the immediate aftermath of the tsunami when international agencies, investment firms, NGOs, and foreign governments influenced reconstruction and development priorities and promoted specific types of property relations based on Hernando de Soto's (2000) work (BRR 2005; Breteche and Steer 2006). The combination of discourses, accompanying laws and norms, and actions taken on the ground by these institutions might be considered alternative semi-autonomous fields or authorities (Wilson 2000; Tamanaha 2007b).[41] In addition, even the idea of a monolithic state approach to property needs to be questioned in Aceh. In modern Indonesia, the basic organization of governance and legal framework for property cause conflicts over property and resources between different bureaucratic entities within the state (e.g., Ministry of Forestry and Ministry of Agriculture) as well as between groups that represent the territorial and hierarchical organization of governance (e.g., local, provincial, regional, national) (McCarthy 2005a; Wallace 2008). The hybridity of statutory law and conflict over property between national agencies can only be understood with a more in-depth understanding of post-conflict governance in Aceh.

The controversial Law No.11/2006 (LOGA, the Law on Governing Aceh) was meant to implement the Helsinki MOU. Yet, due to ambiguous language it became "a source of

[41] Despite the clear influence of capitalist approaches to property through NGOs, international agencies, investment firms, and foreign governments' influence of post-conflict, post-disaster reconstruction and development priorities these authorities have not been recognized as influencing property in the context of Aceh. Tamanaha (2007) argues that developing a typology of normative orders facilitates examination of heterogeneity and hybridity. He argues that six ideal types of normative orders are often found in the normative pluralism literature: official-legal, customary-cultural, capitalist-economic, community-cultural, religious-cultural, and functional normative. These are useful heuristics for recognizing different logics and types of authority that constitute normative orders. These different ideal types may assist understanding different approaches to property in Aceh in that they allow us to identify a more complex terrain of authority narratives and institutions than Weber's three types (charisma, customary, bureaucratic). Tamanaha's work is especially useful in Aceh, where there is often a static assumption by scholars, practitioners, and even locals that only three authorities are relevant (the flexible adat category, Islamic law, and state law) and that each of these authorities is autonomous.

substantial conflicts between Aceh and the central government" (May 2008, 42). LOGA specified Aceh's relation to Jakarta in light of several preceding laws regarding regional autonomy and the special status of Aceh and it organized governance in Aceh as hierarchy of territorial levels.[42] These levels include the province, *kabupaten* (regency or district) and *kota* (municipality), *kecamatan* (subdistrict), *mukim* (gathering of villages, traditionally around a mosque), and *gampung* (village).[43] While not in LOGA, the level of *dusun* (a neighborhood in a village) is also recognized as an important level of governance within villages. Each of these levels plays different roles in property management – defining rights, notarizing transfers, mediating disputes, etc. The provincial and district levels in the hierarchy have specified executive, legislative, and judicial institutions. Of note are the specification of a number of particular *adat* institutions and the presence of three court systems with first instance at the district level and appellate at the provincial level. The three court systems are the General Court (criminal and civil issues), Administrative Court (for cases involving public officials), and Islamic Court (*Mahkamah Syariah*) (which often handle divorces and inheritance issues but may have an increasing purview over property). The lack of confidence in General Courts and higher level of confidence in Islamic Courts has led some observers to recommend that all land and property issues be moved into the Islamic Courts (Fitzpatrick 2008).

The above governance levels represent a mix of GOI legislation and traditional Acehnese governance institutions so the governance powers of these levels and even the political nature of posts are often ambiguous. For example, the provincial level includes a governor, the courts, the regional legislative body (DPRA, *Dewan Perwakilan Rakyat Aceh*), an Aceh

[42] The LOGA followed a long line of laws that each fundamentally changed state and *adat* governance structures in Aceh, including Law No.5/1979 on Village Governance, Law No.44/1999 on the Special Status of the Province of Aceh, Law 18/2001 on Special Autonomy for the Province of Nanggroe Aceh Darussalam, Law No.32/2004 on Regional Government, Law no.33/2004 on Fiscal Balance between the Central Government and Regions, and numerous *qanun*.

[43] The LOGA recognizes *kelurahan* but stipulates that all *kelurahan* become *gampung* within two years of LOGA implementation. Spelling varies greatly in English versions of Acehnese and Indonesian words. *Gampung* are sometimes spelled *gampong*; a village head is variously written as *geucik* or *keucik*.

Adat Council (MAA, *Madjelis Adat Aceh*), the *Tuha Nanggroe* (Council of Elders), and a *Wali Nanggroe*. The position of *Wali Nanggroe* is unique to Aceh. In GAM the position was considered the head of state, but the LOGA specifies that it function as a sort of steward of indigenous traditions and thus is neither a political nor governmental institution. Interestingly, DPRA draft *qanun* in 2010 politicized *Wali Nanggoe* by stipulating that the position would be able to dissolve the regional parliament, set dates for elections, dismiss the governor from office, sign business contracts with foreign companies, establish Acehnese consulates, and determine *fatwa* (Stange and Missbauch 2011).[44]

Below the provincial level, Aceh is organized into districts and municipalities (*kabupaten/kota*). This level includes *bupati* and *walikota* (district and municipality heads), legislative bodies (DPRK, *Dewan Perwakilan Rakyat Kabupaten/Kota*), and first instance courts. The composition of district level courts has included a number of Islamic scholars that are forced to tread a narrow line of Islamic jurisprudence and *adat* tradition in regard to local sensibilities (Bowen 2003). Yet, few property disputes are elevated to even the district level as most mediation occurs at the sub-district, *mukim*, village, or neighborhood level (Interview Kharil, Calang, May 2007)(Interview Seta, Calang, May 2007). At the sub-district (*kecamatan*) level, *camat* (sub-district head) and the sub-district secretary play a leading role, typically without a strong judicial or legislative presence. While the above provincial and district/municipality levels often have representatives of national agencies like BPN and MOF, at the sub-district level the *camat* serves as a more multifunction office that does things like recognizing land transfers. Indeed, the *camat* has served as the main notary for transfers, issued *sporadik* which are a type of letter used as evidence for claim. The *camat* has also maintained property transfer records that are different from that of BPN – adding to the complexity of defining cadastral records for even non-tsunami regions (Fitzpatrick 2008).

[44] Since 2009, the Aceh Party (former GAM political party) has led the DPRA to pass or attempt to pass several qanun that appear to be emphasize the perceived failure of the LOGA to implement the MOU, push ambiguities in the LOGA, and seem headed towards more separatist sentiment. For example, DPRA qanun No.3/2013 instated the former GAM separatist flag as the official flag of Aceh and may result in Supreme Court hearings.

Below the sub-district level, Aceh has another unique governance institution incorporated into the state, the *mukim*. The *mukim* is a collection of three to ten villages (*gampung*) that is traditionally located around a mosque and led by the *imeum mukim* and committee of elders (*tuha peut mukim*). The *mukim* oversees issues like land and resource allocation and customary law. There has been support for increasing the binding nature of property mediations and decisions made at the *mukim* level (Fitzpatrick 2008). At the *gampung* level, there are an array of roles to be played in committee representation of the community through *tuha peut* and *tuha lapan*, but the role of *geuchik* (village head) has been attributed more power in the last forty years relative to village committees due to a combination of (1) legislation that redefined village committee membership, (2) corruption in resource management, and (3) the dynamics of conflict and disaster (Barron 2005; McCarthy 2005a; ACARP 2007). The role of the *teungku imuem meunasah* (*gampung* religious leader) has recently seen an increase in authority, that in theory parallels that of the *geucik*. As part of the *tuha peut* (often involved in religious and land issues) or *tuha lapan* (often involved in development issues), village elders and leaders like the village secretary, religious leader, youth leader, or women leader may play a role in resolving land disputes. Beyond these governance positions, some areas have resource governance institutions that manage a specific territorial space separately or in tandem with other more common governance institutions. For example, pepper (which is led by the *ketua seuneubock*) and marine fishing (which is led by the *panglima laot*) are so important that specific positions arise for managing property and dispute resolution in parallel to village governance (McCarthy 2005a; ACARP 2007). In many cases, property disputes are resolved at the local level through *musyawarah* (consensus building processes) led by the *geuchik* and implicate or are witnessed by several of the village leaders (Direct observation, Aceh Jaya, May 2007). While the local level meetings are often papered over as *adat*, they reflect highly dynamic and complex balancing of different types of evidence like land receipts (*jual-beli*), oral testimonies, and even state titles with principles that reflect the social function of property and idea of justice in individual communities (Direct observation, Aceh Jaya, May 2007; Bowen 2003). When parties are unable to resolve an issue, the case might escalate to the *camat* and then higher court or territorial governance levels.

Although there is a current trend of formalization of religious courts at higher levels, *ulama* (the collection of local religious leaders) often play formative roles in local, informal meetings for determining the outcomes of property disputes –applying principles drawn from *hukum* (law, value, consequences), *fique* (interpretation), and *sharia* (hadiths based action) (Bowen 2003; Harper 2006). Several studies funded by the International Development and Law Organization (IDLO) point to the central role of Islamic courts and principles in inheritance, conveyance, classification of property as gifts (e.g., *wakaf*),[45] adjudication, and other aspects of property management (Lindsey and Phillips 2005; Harper 2006). The emerging institutionalization of Islamic jurisprudence in courts parallel to the state courts and integration of Islamic principles into *adat* was noted before and accelerated after the tsunami (Bowen 2003; Harper 2006; Lindsey and Phillips 2005). In fact, Aceh is often said to have the oldest Islamic heritage of any region in Indonesia. Islam played a complex role in the conflict and continues to be a central issue in Acehnese identity, Aceh's civil society, and regional governance (Schulze 2004; Reid 2006).[46]

5.2.2 Scalar Politics and Property

From a geographic perspective, presenting Acehnese authorities and governance structures as a hierarchical scale of layers of nested space envelopes is somewhat problematic. Scale is a complex and contested concept that has come to be the focus of some of the core debates in geography. In fact, geographers are often at the center of academic debates over how scale should be thought of and researched, and whether scale even exists (Taylor 1982; Smith 1984, 1988, 1992; Jonas 1994; Agnew 1997; Delaney and Leitner 1997; Swyngedouw 1997; Cox 1998; Morrill 1999; Marston 2000; Brenner 2001; Purcell 2003; Mansfield 2005; Marston *et al.* 2005; Leitner and Miller 2007; Moore 2008; Herod 2011; MacKinnon 2011).

[45] *Wakaf* (commonly written as *waqf*) is a type of inalienable religious endowment meant to support Islamic workshop. It typically consists of property or money.

[46] As the purported place of introduction of Islam to Southeast Asia, Aceh is sometimes called the Verandah of Mecca. Aceh has been the host to a number of armed uprisings and political groups that took as the core goal the implementation of Islamic governance in Indonesia or within a separate Acehnese state (Reid 2006).

Scale and property issues are closely interlinked – both in terms of understanding authority (Sikor 2004) and in understanding the ways in which politics intersects with environmental governance (Giordarno 2003; Mansfield 2004; McCarthy 2005b). Cox (2013) recently noted that scalar politics are central to territorial organization of authority. That territorial organization relies on the fact that scales are socially constructed through the discursive and material practices of property and, in turn, property is constituted through scalar processes.

In geography, scale has "at least two very different meanings" – one that is technical and another that refers to human perceptions of the size and level of processes and phenomena (Herod 2011, xi). This latter type of scale is innately subjective, relational, and fluid (Howitt 1998, 2002). Recent debates over scale divide advocates of a 'human geography without scale' from those who would keep scale as a valuable analytical category (Marston *et al* 2005; Jonas 2006; Leitner and Miller 2007; Moore 2008). Marston *et al.* (2005) argue that the concept of scale has become a confused, overburdened concept within human geography – that the dominant understandings of scale as a vertical hierarchy confounds size and level, creates dichotomous thinking about scales like the local-global and micro-macro, provides a 'scaffold imaginary' into which researchers assume pre-given scalar architectures, and leads to postured objectivity in social science research. They propose that it is time to abandon 'scale' in order to adopt network approaches that privilege 'sites' and better reflect the true nature of social relations.

Many authors have either taken issue with the logic of Marston *et al.* (2005) or accept their arguments but reject the proposition of jettisoning scale because sites and networks do not capture scalar practices or popular imaginaries of scale. These scholars call for reorienting research towards the political and social processes through which scales are constituted (Moore 2008; Herod 2011; MacKinnon 2011). For example, Jonas (2006, 404) argues that,

> so-called "scalists" […] are responding to the challenge of narrative and deploying scalar categories in ways that attempt to show how particular material structures and processes have become fixed at or around certain sites and scales, are in the process of becoming unfixed at a specific scale, or combine to differentiate the world in complex scalar and site-specific dimensions.

Moore (2008) argues that the main problem is not with scale, but with geographers' failure to differentiate between scale as practice and scale as analytical or ontological category. Investigating scalar practices and how scales are imagined (in much the same way that ethnicities and nations are imagined) reveals the importance of continuing to focus on scale discourses whether or not scale exists (Moore 2008). MacKinnon (2011, 29) argues that a focus on scalar politics should examine the "scalar aspects and repercussions" of political projects and "the strategic deployment of scale by various actors, organizations and movements" (2011, 29). He argues against perceiving scales as territorial containers or 'space envelopes' that gain or lose power through processes like 'rescaling' the state or by serving as platforms for the politics of 'jumping scales.' Similarly, Mansfield (2005) argues we should analyze scales as variable dimensions of political, social, cultural, economic, and ecological processes.

Links between property and scale feature in geographic research on topics like environmental governance, sovereignty, and natural resource management (Giordano 2003; Liverman 2004; McCarthy 2005b). Such work engages with interesting theoretical constructs regarding social power and can reveal how property relations are distributed over different levels of governance. However, it is rare that scalar processes are given priority over scale levels (McKinnon 2010). These approaches tend to frame property conflicts as occurring between fixed scales such as the community versus the nation-state or local actors versus global actors, rather than analyzing the fluid processes that work at a scale and between scales (Smith 1992; McCarthy 2005b). A well-developed literature challenges the prioritization and simple juxtaposition of specific scales of governance (Swyngedow 1997; Martin 1999; Morrill 1999). It emphasizes the social construction of scale (Marston 2000) and the networked, reciprocal processes through which social and physical transformation of the world becomes embedded in scalar spatialities (Swyngedouw 1997). As well, scalar processes are at the forefront, property is rarely featured as more than a bundled of rights in these analyses – even when the cultural and emotional connections to material resources are discussed as ethical grounds for making

property claims and are seen in some ways to sociospatially constitute the nature of a 'community' (Moore 2005).

One example of a study that sets out to explore property relations within a scalar framework is Sikor's (2004) study of 'post-socialist' land reforms in rural Vietnam. Drawing from Gluckman's (1972) work on Barotse jurisprudence and Verdery's (1999) ideas about 'post-socialist' fuzzy property, Sikor outlines a framework for examining changing obligations and rights in the context of state-led changes to property relations. These changes stemmed from a 1993 land law that required 'land allocation' (demarcation of plots, registration, and issuance of title certificates) that conflicted with existing property relations.[47] He argues that the land allocation process embodied a 'post-socialist,' neoliberal idea of property that erased the complexity of overlapping temporal and spatial rights and destroyed the social embeddedness of existing property relations. Gluckman's (1972) framework is used to show how in acquiring property rights, right-holders simultaneously acquire a number of social obligations that bind them morally to their community and to the social authority that recognizes and enforces their rights – a hierarchy of scales of overlapping estates.[48]

Gluckman uses the term 'estates' to describe a complex of rights and obligations (Gluckman 1972, 90). Briefly summarized, Gluckman theorizes that property embodies a hierarchy of overlapping estates (Sikor 2004, 77). There are two types of estates – an 'estate of administration' and 'estate of production', each including several different types of rights and obligations. The estate of administration involves "actions as trustees on behalf of subordinates by seniors, the power and obligation to apportion land among subordinates, and to some extent powers to regulate the use of the land" (Gluckman 1972, 89-90). An

[47] Sikor uses the terms 'land relations' and 'property relations' interchangeably.

[48] Taxes, gifts of wild game, portions of harvests, or other transfers may be property rights-holder's obligations to maintain their right. Other parties have a duty to respect the right until the right-holder does not fulfill his or her obligations. In Gluckman's (1972, 89-93) framework, while the right-holder has obligations, the authority has a duty not to pre-empt people's rights without good cause and its own obligation to provide for/adjudicate claims of community members.

estate of administration can be subdivided into further estates of administration or into estates of production. The estate of production refers to different complexes of usufruct rights. These estates can be seen as "'nested layers of control over land' or 'a 'hierarchy' in the sense of a 'series of estates'" (Sikor 2004, 77).[49] Though this framework is proposed as a hierarchy of social status, the divide between estates of administration and production parallels common contemporary approaches to property that designate the right of transfer and "rights to regulate, supervise, represent in outside relations, and allocate property" as superior rights to the rights to use or exploit resources (Benda-Beckmann *et al.* 2006b, 17).

Building upon Gluckman's framework, Sikor makes some stimulating insights about property in relation to authority and scale in the context of 'post-socialist' change in rural Vietnam. First, in regard to the 1993 land law, he describes a situation in which all resources and property relations have been subsumed under a discourse of land law.[50] Second, the 1993 land law territorializes all resources, rendering the complex and flexible relations regarding resources into a bounded, static land parcels. The socialist and pre-socialist frameworks allowed fluid and fuzzy geographic boundaries and a situation wherein, "Property claims can relate to different resources on the same piece of land, they can vary over time, and they may be embedded in a series of allocations including multiple claims" (Sikor 2004, 78).[51] Third, the balance of power between various holders of estates

[49] While the estates of production can be concurrent and overlapping, they always occur as subsidiary to the estates of administration. Whether one holds a primary, secondary, or tertiary estate of administration depends on one's location on scales of social or political status – a king holds a primary estate, chiefs hold secondary estates, households hold tertiary estates, and so on. Similar to feudal systems, holders of lower estates may have obligations to give superior estate holders part of their harvest or hunt, but unlike feudal tenure systems the holders of primary estates have obligations to provide land for people who are part of villages within their realm of authority (Gluckman 1972).

[50] In this case, property relations regarding all resources (forest, water, and otherwise) have been treated as if they were land or permanently connected to land parcels. This effectively renders all resources into fixtures and negates any sort of fluidity of resources.

[51] Much like Rocheleau and Edmunds' (1997) argument regarding the flexibility of rights and the flexible deployment of strategies to access resources in gendered tenure systems in West Africa, this rejection of the complexity of existing property relations through simplified models of ownership that are later rendered into capitalist relations is clear example of territorialization and a mirror of

of administration and estates of production tends to lean more towards holders of estates of administration as land scarcity increases. This final insight reveals how the distribution of rights, duties, and obligations has an impact on how scales are politically constituted and that property relations change in response to societal and ecological contexts.

Sikor argues that local land relations are multi-layered, socially-embedded, spatially fluid, bound to strong obligations, legitimized through moral and social goals, and flexible enough to allow dynamic distribution of powers between scale levels. This is in comparison to the 1993 legislation which creates property that only has a dual hierarchy (individual and state), is detached from social status, is legitimized only through formal legal procedures, has rigid spatial boundaries, has weak obligations, and creates a situation wherein the balance of power is fixed and inflexible to local ecological constraints and societal needs. Sikor's approach tends to reify sociopolitical scales as fixed levels from which power is negotiated rather than focus on scale processes that are enacted through the sociospatial aspects of property relations. Nevertheless, his study underscores the importance of investigating property within scalar processes and may help explain why particular statutory land titling programs succeed or fail.

As shown above, literature on scaling property tends to restrict versions of property to bundles of rights or to reify versions of scale as fixed levels of 'space envelopes.' The focus is often on the distribution of property rights between predefined levels such as the individual, community, province, and nation-state. However, more comprehensive frameworks to approaching property, scale, and authority are needed and possible (Benda-Beckmann *et al.* 2006b).

5.2.3 JURAL RELATIONS

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dispossession practices that have been deployed on indigenous communities throughout colonial histories (Vandergeest and Peluso 1995; Blomley 2003b; Harris 2004).

Hohfeld's (1913, 1917) framework of jural relations and Singer's (2000) ideas regarding rights and obligations in property provide an alternative approach to understanding property and scalar politics. Hohfeld argues that abuse of the term 'rights' and confusion over 'property' in legal and political discourses must be clarified to facilitate clear judicial reasoning. He points out that property is a confused concept, "…with lawyers and with laymen this term has no definite or stable connotation. Sometimes it is employed to indicate the physical object to which various legal rights, privileges, etc., relate; then again-with far greater discrimination and accuracy-the word is used to denote the legal interest" (1913, 21). Hohfeld argues that the term 'right' should be limited to a narrow correlation with duty because it is often confused with property and other legal concepts.

Hohfeld (1913) outlines eight concepts that constitute property including rights, duties, privileges, no-rights, disabilities, liabilities, immunities, and power. In Table 4.2, these eight legal concepts are listed as terms in the two columns named 'Elements' and 'Correlatives'.[52] Correlatives must exist in order for the elements to exist; thus the four jural relations can be understood by substituting the terms from the respective columns for the underlined words in the following sentence: 'if A has an element, then B has a correlative'. If A has a right, then B has a duty to respect that right. Indeed, A's right does not exist without B's correlated duty.

[52] Hohfeld also offers an overview of opposites to the elements that I do not utilize in this analysis, but which could provide additional insights.

Table 5.2 Hohfeld's Jural Correlatives (adapted from Hohfeld 1913, 710)[53]

Elements	Correlatives
Right (Claim)	Duty
Privilege (Liberty)[54]	No-Right
Power	Liability
Immunity	Disability

In the first jural relation, *rights* refer to only socially-enforced claims. Recognition of a right for a right-holder necessarily entails the enforcement of a duty on others (Hohfeld 1913, 1917; Bromley 1991; Singer 2000). "*Duties* refer to the absence of permission to act in a certain manner" (Singer 2000, 132). One of the greatest hindrances to understanding and solving legal problems "frequently arises from the express or tacit assumption that all legal relations may be reduced to 'rights' and 'duties,' and that these latter categories are therefore adequate for the purpose of analyzing even the most complex legal interest" (Hohfeld 1913, 28). In the second jural relation, a *privilege* is a liberty that correlates with a situation of *no-rights* (Munzer 1990). Situations wherein everyone has liberties but no one has defined rights or duties are sometimes defined as open access regimes. If property is defined only as a bundle of rights, then we might follow Bromley (1991) and label such open access regimes as 'non-property' regimes. Or, we could recognize that even in the absence of rights, there is a property relation – one between privilege and no-rights. In the third jural relation of *power* and *liability* we move beyond rights, privileges, and duties to explore who has the ability to create new rules or promote social enforcement of different property relations. *Power*, for Hohfeld (1913), is the ability of one party to change property

[53] Hohfeld's framework also stipulates a set of "Jural Opposites" which are two legal concepts or positions that cannot exist together. While useful for understanding Hohfeld's framework , the jural opposites prove of less interest for analytical purposes in this dissertation so they are not presented here.

[54] Legal scholars sometimes call privilege a 'liberty-right' and Hohfeld's right a 'claim-right,' yet such changes to the wording dilute the clarity and analytical value of Hohfeld's framework and his argument concerning rights.

relations.[55] The fourth jural relation of *immunity* and *disability* can also be applied to this open access regime. *Immunity* exempts a party from the exercise of power of another party. Therefore, if A has immunity, then B has no power (B has a *disability*) in regard to the A's property relations.

One might add that a fifth relation occurs between rights and obligations (Singer 2000; Verdery 2004). As pointed out in Gluckman's framework, right-holders always have obligations to the social community and authority that guarantee entitlement of their claim. These obligations are different from Hohfeld's duties in that, rather than a duty-holder respecting a right, the right-holders themselves are encumbered by these obligations. The term 'obligation' is used differently from duties and is largely synonymous with what Munzer (1990) calls 'disadvantages'. These disadvantages might be outlined in statutory law as obligations to authority (like taxes) or obligations to other property holders (as limits in nuisance law). As well, they may be statutorily-defined as risks and financial obligations such as debts and liabilities (Verdery 2004). Yet, these obligations also come from non-statutory authorities in the form of social norms and institutions concerning property (Singer 2000).

Singer (2000) outlines the obligations of property entitlements in a convincing argument against using the 'ownership model' of property for policy and legal decisions. He argues that there are "multiple models of property" within any one society or single legal system and that these models are deployed in different social and legal contexts (Singer 2000, 86).[56] While the ownership model focuses on the relation between owners and things and

[55] In this respect, Hohfeld's legal idea of power is similar to what Lukes (2005) calls two dimensional power, a type of power that is exercised to change institutional structures and not the same as one dimensional power that is measured by institutional outcomes. Hohfeld's idea of power is not a sophisticated social theory of power like Lukes' idea that a third dimension of power exists wherein the modalities and techniques of power are integrated into the behavior and preferences of subjects (much like Foucault's version of power). Hohfeld's power is simply about a legal power to change legal relations, but if social theory on power can be used to expand Hohfeld's framework there would certainly be fruitful outcomes.

[56] By building from a 'nuisance' model of property (wherein property rights are limited by nuisance laws), Singer derives an 'entitlement model' of property that is opposed to the dominant political

owners and the state, an 'entitlement model' refocuses attention on the "interrelations between the state and its citizens, among owners and between owners and non-owners" (Singer 2000, 92). In brief, complex sets of obligations to an authority and members of one's social community are inherent to property itself. In the following case studies, I use Hohfeld's and Singer's ideas to analyze how scalar politics, property relations, and authority interact in a post-conflict, post-disaster land titling project in Aceh.

5.3 STAKING CLAIMS ON THE GROUND

The stated goal of the RALAS project was to improve land tenure security in Aceh by (1) recovering and protecting land ownership rights of the people in tsunami affected and surrounding areas and (2) rebuilding the land administration system (Deutsch 2009). Yet, justification for the project by the World Bank, the GOI, and BRR and BPN staff referred not only to post-tsunami damage it drew from several other narratives. These sources emphasized RALAS as a prototype model of de Soto's (2000) neoliberal strategy of implementing Western style private property systems to unlock what he calls 'dead capital' but the project advocates gently recast it as 'substantial dormant capital' (Breteche and Steer 2006, online) in the disaster context of Aceh (BRR 2005; Bell 2006). Reports from the World Bank offer mixed evaluations of the results of RALAS – sometimes optimistically stating that RALAS accomplished its primary goal of supporting tenure security (WB 2010), but then give the entire project "mostly unsatisfactory" to "moderately unsatisfactory" ratings on achieving target outcomes and implementation – pointing to details like errors on title certificates, failure to educate nearly 70% of recipients on how to register subsequent transactions, corruption of BPN officials charging for free titles, failure to

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imagination of an ownership model. His entitlement model is based on the observation that there are (1) multiple owners with disaggregated rights, (2) conflicting rights and the need for judgment, (3) changing conditions that warrant changes in rights over time, (4) boundaries that are relevant but not determinative or rights, (5) property rights are limited by other legitimate rights (one cannot commit harm to others under the excuse of property rights), (6) relationships between owners and between owners and non-owners matter, and (7) attention to the tension at the core of property – between harmful but legitimate uses of property and conflicting social interests.

adequately identify disputes over land compensation in adjudication, unfinished titling of some areas, and failure to distribute approved titles (Deutsch 2009; WB 2010). Often the support to women through joint titling, orderly transition of orphans' inheritance into guardianship, training of facilitators, and infrastructural improvements to BPN offices are mentioned as the main positive measurable outcomes (Deutsch 2009; WB 2010).[57] Nevertheless, RALAS fell far short of its quantitative goal of registering property and issuing titles, completing only 37% of 600,000 land parcels (WB 2010). The management, intentions, and logic underlying RALAS were openly questioned by civil society and UN agency staff in interviews conducted for this research. BPN staff, civil society organizations, and international donors often identified bureaucratic problems as the main hurdles to successful implementation (Jalil *et al.* 2007; Interview BPN Staff, Calang, February 2008; Deutsch 2009; WB 2010). Yet, politics and governance issues in post-conflict property management cannot be ignored. The cases below document local experiences and impressions of RALAS that show the complex ways in which scalar politics and property relations interact.

5.3.1 MEULABOH NEIGHBORHOOD

Meulaboh, the capital of the *kabupaten* (district or regency) of Aceh Barat, was the closest city to the epicentre of the 2004 earthquake and lost some 40,000 people in the tsunami. About two kilometers from the center of the city, the tsunami destroyed most of a peri-urban neighborhood of mixed residential and commercial buildings surrounded by farmland. This neighborhood was chosen as one of the RALAS project areas and underwent land titling activities during 2006-2007. Interviews were held in February, May, and June 2008.

[57] Though early reports were dismal with only 5% of all titles going to women (Fitzpatrick 2008), a World Bank project review found an amazing increase to 45% of all titles going to women by the time RALAS ended. Despite the dramatic increase, "Many obstacles were experienced regarding women's participation in the titling process, including (a) insufficient representation of women in field teams; (b) meeting places and times that were often inconvenient to women who had to care for family members; (c) presentations in Bahasa rather than in the local Acehnese language; and (d) no meetings were held exclusively for women" (WB 2010,21).

The RALAS approach to land titling is outlined in the RALAS Manual (the *Manual of Land Registration in the Affected Tsunami Areas at Nanggroe Aceh Darussalam and Sumatra Utara: Reconstruction of the Aceh Land Administration System*) (BPN and BRR 2005). BRR and BPN decided on priority locations for titling activities – though, they often did not provide adequate explanation as to the criteria used for selection to partners or communities (Deutsch 2009, 53-54). Beyond site selection, RALAS included three phases of implementation. Phase I established property rights using participatory processes (community land mapping, community driven adjudication for agreement on land parcels and ownership, and completion of required forms for application). Phase II confirmed property rights (official survey of land parcels, review of the documents received by field adjudication teams, committee meetings, public notification, receipt and resolution of objectives, and confirmation of status of the land parcels). Phase III secured property rights (entering titles into cadastres, confirmation and signature of records by district land office, and distribution of title certificates to land holders) (Deutsch 2009, 13; WB 2010, 15-16). The NGO Land Forum constituted in 2005 and mentioned throughout the RALAS Manual, was meant to provide input in each phase – specifically, steering RALAS activities, disseminating educational materials, and coordinating land mapping led by NGOs and INGOs.

However by late 2006, the feeling on the ground was that BPN had already "stopped consulting its partners in any meaningful way" (Interview UNHABITAT, Banda Aceh, August 2006). As a result, most community members in the Meulaboh neighborhood felt ill-informed about RALAS and the specifics of what to do when problems regarding titling arose (Interview Hadi, Meulaboh, June 2008). Indeed, a larger survey of RALAS area landowners across the province found that 70% of landowners did not get information on how to register subsequent transactions, over 60% received no information on what to do if errors in the final title were present, and less than 50% actually understood the types of land that could be registered through RALAS (Deutsch 2009). According to project reports, BPN had a fundamental communication failure with the public (Deutsch 2009, 21-23), did not consult with *camat* or *geuchik* (Deutsch 2009, 53-54), and "never engaged adequately

with other stakeholders particularly INGOs and NGOs" before or during the three phases of systematic titling implementation (WB 2010, 58).

While the reception of RALAS in this peri-urban neighborhood was overwhelmingly positive at the beginning of the process, by 2008 criticisms were being vocalized: "it has been 16 months since they [BPN staff] first came and many months since they just disappeared… me, I have no title to my land but they put my name on the board. Why?" (Interview Hadi, Meulaboh, June 2008). At the time of interviews, evidence indicated that the Meulaboh neighborhood had undergone confirming property rights (Phase I) and securing property rights (Phase II) activities. However, several community members expressed frustration that they had not been issued land titles – in other words, Phase III was either not being implemented or appeared to have been implemented in a partial manner that undermined the security of the very property rights that RALAS was meant to solidify and 'reconstruct' (Interview Hadi, Meulaboh, June 2008; Interview Thayeb, Meulaboh, June 2008; Interview Wening, Meulaboh, February 2008).

This delay caused some locals to take matters in their own hands. For example, most buildings that were still standing in the neighborhood after the tsunami needed to be torn down and rebuilt due to infrastructural damage. Yet, there was uncertainty as to whether locals would be approved for funding via tsunami-aid if they knocked down their own buildings. One local entrepreneur who ended up spending savings and borrowed money to reinforce his damaged building complained that "It would be better if the wave took everything then no one can tell me to keep a bad building" (Interview Thayeb, Meulaboh, June 2008). For those that were worried about the lack of financial aid for their particular situation, state supported titles were important steps towards obtaining clear claim on property and obtaining financing to rebuild. Yet those titles were long in coming due to what the BPN district office consistently reported as "problems in Jakarta" where they said they sent the original documents and mapping for approval (Interview Thayeb, Meulaboh, June 2008). The same entrepreneur said that, "In this neighborhood, everyone wants to have certificate [title] so that they can start to build their stores again with no problem… But how can we wait forever?"

To the surprise of many, BPN officials neither distributed titles in the field nor informed people to obtain their titles when titles were left at the *kantah* offices. In addition, many BPN staff felt that RALAS was a central government project that they were not necessarily involved in implementing or managing (Fitzpatrick 2008; Deutsch 2009; WB 2010). BPN staff argued that the problems with RALAS stem from problems with MDTF finance flows and the lack of a presidential decree to relieve individual BPN staff of their liability for incorrect registration information – a decree that was delivered only in September 2007 (Interview BPN Staff, Calang, February 2008).[58] Further complications occurred when buildings were rebuilt in flood zones and damaged by minor flooding and earthquakes several years after the tsunami. It was unclear if BPN or any government agency held further obligation to move and rebuild these families again (see Figure 5.2).

Although many community members did not obtain titles, others were issued titles and this partial titling led to unintended consequences. Two fruit vendors that recounted working on a particular street corner before the tsunami, suddenly found that their location of work was titled to the Jakarta relatives of a deceased, local, previous owner (see Figure 5.1). The Jakarta relatives insisted on payment for use of the land and the fruit vendors were contemplating shutting down their shops or moving to new locations (Interview Hadi, Meulaboh, June 2008; Interview Ramli, Meulaboh, June 2008). While the claim to the original land was valid in the vendors' eyes, it was the new terms of agreement that were unjust. The agreement with the previous owner to use the space in exchange for a percentage of profits rather than a monthly fee became the sticking point. One mentioned that the deceased owner had even let the vendor aggregate payments over several months or payoff in products rather the money. This loss of flexible use agreements at the

[58] "Presidential Decree (*Peraturan Pengganti Undang- Undang – PerPu*) was issued in September 2007. It is a wide-ranging regulation with main provisions focusing on: (a) land that was destroyed or lost by tsunami or earthquake; (b) land affected by tsunami or earthquake that still exists; (c) managing the property for which there is no claimant or owner at present; (d) specific procedures to cover land acquired for reconstruction and rehabilitation purposes; (e) prohibition on transfer of land parcels before the status is determined: (f) bank records as evidence of ownership, dealings with the accounts of deceased customers, decisions on mortgage and debt and the Bank's right to replacement documents for mortgaged land; (g) inheritance and guardianship; and (h) penalties for incorrect statements" (WB 2010, 38).

Figure 5.1 Fruit stand in Meulaboh. Source: author.

Figure 5.2 New buildings destroyed by flooding in 2007 in Meulaboh.
Source: author.

community level, impacted traders' livelihood strategies by creating fixed costs and payment methods that may have been unduly hard. The fruit vendors planned to close their shop given the new arrangement. RALAS focused on issuing *hak milik* ownership rights, as these were typically closest to the *hak milik adat* status of most of the land. However, direct conversion of socially embedded property from informal to statutory legal structures can result in the negation of existing social functions of property and result in tenure insecurity for a broad array of property relations outside of the narrow statutory structure. In fact, the focus on *hak milik* at the sacrifice of other property rights and relations led to serious grievances among renters and squatters who were left out of the original planning around property rights. As they took part in protests against BRR during 2006-2007 (Direct Observation, Banda Aceh, August 2006), their issues became widely recognized particularly through Oxfam's larger advocacy for property rights in Aceh (Kenny *et al.* 2006)

As mentioned above, such situations of partial titling and partial right recognition were not uncommon in Aceh at the end of RALAS in 2009. Some 90,000 land parcels were left without property rights secured even though they had gone through either community land mapping processes or had been confirmed through official survey and public notification (WB 2010). While these parcels without titles were often explained as bureaucratic problems and community level disputes, Fitzpatrick (2008) noticed that a large amount (possibly upwards of 1 out of every 30) of the parcels in Aceh had been registered to an unknown "Mr.X" due to BPN staff getting paid by the number of parcels registered and wanting to avoid legal liability in case of disputes. When surveying the landscape of ownership in the neighborhood, one local with an untitled claim commented that another neighbor "has four [title] certificates but I have none. I gave the land purchase receipts [*akte jual-beli*] and signed my name the same as him, but then BPN left and I still have nothing" (Interview Mahmud, Meulaboh, June 2008). Another informant pointed out, that Mahmud's purchase of the property was disputed by a Medan relative of the previous, deceased owner as the purchase occurred just weeks before the tsunami and they said they were unaware of the sale or BPN records indicating the sale. While fears that disputes regarding inheritance would overwhelm the judicial system were validated in some contexts, the main disputes mentioned by interviewees in this Meulaboh neighbourhood involved distant relatives

making claims that went against some informal property relations and unregistered transactions at the local level.

5.3.2 PANGA VILLAGE

Issues surrounding property in Meulaboh were quite different from the concerns expressed in a remote, rural village of the Panga sub-district of Aceh Jaya. While the village was not targeted by RALAS as a land titling area, word of the RALAS project reached the community as land titling activities unfolded in the lowlands. In a focus group on development priorities and subsequent interviews regarding the land titling project, there were mixed feelings that represented a community grappling with its present, past, and future within Aceh and Indonesia.

The village of approximately 95 people (52% male, 48% female) was undamaged by the tsunami due to its location in the uplands and several kilometers inland. All households in the village engaged in agriculture, primarily rice with contributions from a mix of other perennial crops including betel nuts, durian, citrus, rubber, coconuts, and some oil palm (Focus Group 13, Aceh Jaya, May 2008) (see Figure 5.3). Some of the village men had cleared a small area of forest (~2 ha) for patchouli as an experiment for export trade. Patchouli is an herb that is used to make fragrances. Prices in patchouli had spiked in the 2000s and this was an attempt to implement a diverse livelihood portfolio rather than a move towards only export-oriented cash crop production. Patchouli requires very little maintenance, but initial labor investment can be high and specialized equipment and skills for extracting oils are required (Direct Observation, Aceh Jaya, May 2008). Some selective extraction of timber was apparent, but the area was not deforested on an industrial scale.

Wong *et al.* (2007) note that when the damage of the tsunami and conflict are taken together, Aceh Jaya was the most damaged district in Aceh. While tsunami damage was absent, conflict damage included bridges, generators, forests, and agricultural fields. In addition to material resources, interviewees mentioned an unspecified number of villager deaths during the 1990s increase in violent conflict between GAM and TNI. Three of the interviewees admitted to being members of GAM. Barron *et al.* (2005) show that many

Figure 5.3 Panga village showing divided rice fields. Source: author.

areas of Aceh experienced a high level of conflict division between villages and between households in villages. Although not conclusive, comments regarding trust in the GOI from this village's focus group lead the author to believe that this village had some internal divisions over GAM support during the conflict.

The main land holding type can be classified as *hak milik adat*. Land and property tenure are secured via customary systems (i.e. negotiations within the community between households and with the *geuchik*) though forms of evidence such as signed letters from the *geuchik* and *camat* (SKKT, *Surat Keterangan Kepemilikan Tanah*) are considered important for illustrating individual and family claims (Focus Group 13, Aceh Jaya, May 2008). In 2008, there was no known outside interest in purchasing land in the village. Unlike the Meulaboh neighborhood where property issues seemed largely focused on individual disputes and some inheritance issues, villagers' issues revolved around inheritance, state claims to forest land, and the possibility of expansion of industrial palm oil cultivation in the region (Focus Group 13, Aceh Jaya, May 2008). These types of property issues are similar to findings of

other authors in Aceh and throughout Indonesia (Lindsey 1998, 2008; Thorburn 2004). The concerns about forest rights in this village are similar to the lack of recognition of local resource claims in forested areas throughout Aceh and Indonesia (McCarthy 2006).

The *geuchick*, *tuha peut* (village committee of four), and nine farmers were present at a focus group which aimed to identify development priorities, rank development priorities, and discuss the role of statutory property systems in the village.[59] Based on this focus group's results, villagers' top priorities included new roads, closer location of a clinic, improvement of the primary school, and support for an electric generator and small-scale sawmill equipment. Support for statutory property registration was not in the top five priorities, but constituted a large portion of the conversation due to the knowledge that lowland communities were currently undergoing registration through RALAS. Three farmers were very vocal supporters for property registration, citing (1) protection of community and individual property from state claims (while most of these concerns were about forest resources, there was also talk of land being taken for a possible road development project), (2) the fact that they already registered land transactions with the *camat* as notary so why not do it with the BPN so that their paperwork is "stronger", and (3) benefits to clarifying claims and avoiding inheritance disputes. Nevertheless, opponents to property registration outnumbered proponents three to one. Opponents cited a wide array of reasons to reject statutory property administration and registration. Their reasons included: (1) disputes over property can be resolved by the village leaders as they "always have been" because the *geuchick* and *tuha peut* require less travel, cost less than BPN or courts, and make just decisions; (2) as part of the *mukim* of Panga Pasie any other land issues should be taken care of at the *mukim* level because this was the "*adat* way" approved by regional *qanun*; (3) it will cost too much to register all future transactions at the BPN; (4) the state will ask for taxes in the future; (5) locals may have to pay fees to both the *camat* and BPN if they register their land; (6) BPN could limit the authority and ability of the

[59] Only one woman attended the focus group, though the entire village was invited. She left before the ranking exercise was over and was mostly silent throughout. This may have had to do with the timing or a perceived need to keep children out of the meeting which thereby eliminated women as participants due to childcare. This was an unanticipated result of research design.

geuchik and *camat* to mediate land disputes; and (7) doubts over what would happen if people sold their land without approval of the village committees and the *geuchick.*[60]

The final word on statutory property registration and the land titling project in the lowlands went to a village elder who said, "We should not we pay [GOI], when we can resolve our own land and inheritance issues here and now." In individual interviews after the focus group, the three former GAM members each expressed no desire to have their name on a registry if the government could find their household when they went back to battle. This was nearly three years after the Helsinki MOU was signed. Additionally, when asked about mortgaging land, farmers in the focus group thought that the idea of raising money from land may be good for lowlands but "here we have cannot go fish when the land is gone." The majority agreed it was wiser to sell future harvests of betel nuts, citrus, or other crops to *toke* (middlemen that buy future production for low prices – basically, an informal agricultural futures market) if the farmers needed money for immediate needs.

Many of the reasons for statutory property registration and land titling in the lowlands simply were not applicable to the more remote highlands. Results from the focus group and interviews with local farmers, UN agency staff, government staff, and NGO members suggest that the perceived benefits of statutory property administration were mainly relevant to urban and commercialized periurban areas. While titling did not occur in the Panga village during the research period, the statements bring into question whether the focus on registering and issuing titles across Aceh was appropriate at the time and in the locations it was implemented.

5.4 DISCUSSION

Clearly, bureaucracy and logistical delays plagued implementation of RALAS (Deutsch 2009; WB 2010). However, to thoroughly understand reasons why RALAS was not as successful as originally envisioned, it is essential to analyze the design and implementation of RALAS

[60] In many property systems where *hak milik adat* predominates, land is not to be sold to outsiders without first offering it for sale to other village members.

within the broader context of property management, politics, and development in Indonesia. As well, attention to the post-conflict dynamics surrounding property issues in Aceh can provide insight into the property landscape in which RALAS was implemented. Such approaches remind us that property registration is a deeply political project – especially in relation to the sociospatial processes of centralization, decentralization, and territorial control (McCarthy 2004; Thorburn 2004; Vandergeest and Peluso 2005; Fitzpatrick 2006; Lindsey 2008). The experiences and impressions of property registration in the two cases presented above took place in a post-disaster, post-conflict context with a fragmented state and hybrid forms of statutory law, Islamic jurisprudence, and hundreds of locally modified *adat* systems. These dynamics have resulted in numerous hybrid institutions (e.g., Sharia courts and the *Wali Nanggroe*), dysfunctional relations between government levels, and ambiguous implementation by state agencies (Lindsey 2004, 2008; Fitzpatrick 2006). Since 1999, the incomplete and uneven process of regional autonomy (decentralization) in Indonesia has resulted in diverse local socio-legal configurations that reflect the fragmentation of authority within the state itself and impact property management strategies (Bowen 2003; McCarthy 2004, 2006; Fitzpatrick 2006). The distribution of power between different state agencies and between representatives of local, sub-district, district, provincial, and national levels has dramatically changed over the last 50 years, especially in Aceh (Lindsey and Phillips 2005; ACARP 2007). In Aceh, the authoritative influence of institutions that do not neatly fit into the above categories (e.g., development agencies, NGOs, investment firms, or criminal gangs) needs to be considered; this is true even if such institutions are ephemeral territorial influences in the context of a fractured state (Watts 2004). The discursive and material practices of property can be a medium through which these scalar politics of authority are enacted.

McCarthy (2005b) identifies several scalar strategies that assist analysis of the scalar dimensions of authority and political action. He outlines six processes that are strategically employed in order to gain political power: defense of an established scale, use of established scale as a platform, reconfiguration of relations within scales, participation in construction of new scales, redefinition of relationships among scales, and jumping scales. The use of these processes may occur simultaneously and even in seemingly contradictory ways, for

example environmental organizations simultaneously draw on and undermine national and international scales in order to support their institutional and political goals for conservation (McCarthy 2005b). McCarthy's framework recognizes both the fixity and fluidity of scales while allowing examination of the consolidation of authority via scaling of property relations – rights, duties, privileges, no-rights, powers, immunities, liabilities, disabilities, and obligations. Rather than focus on specific estates or fixed levels, a focus on these scalar processes as lenses allows us to follow the arabesque qualities of property relations in the two cases described above.

The terms 'local' or 'community' are often politically deployed labels (Joseph 2002) that represent groupings that might sometimes be better thought of as active networks (Marston *et al.* 2005). Yet, in Aceh, such differentiation is difficult. The village functions as a territorial network wherein presence on the land, inheritance rules, norms and laws prevent the sale of property to outsiders, thereby creating a local scale that can be characterized as community (McCarthy 2005a). In fact, by Qanun No.5/2003 on Gampung Governance, the village is defined as a territorial unit with its own source of wealth and run by a *geucik* under the *mukim level.* As mentioned above, in governance and politics the term *adat* has come to signify this intensely local scale despite attempted appropriation of *adat* for the provincial and national governance (Li 2001; Burns 2004). If the spatial dimensions of *adat* can be thought of at the village or *mukim* level, then the consolidation of authority through property relations can also be examined at these levels.

In supporting the *geuchik* and village leadership as mediators in property disputes, the Panga villagers supported *adat* and the local scale of the village. They placed the power (in the jural relations sense of the term) to determine and allocate property rights at the local scale. Liabilities were then on all villagers who had an obligation to follow the decisions and the standards of evidence used by authority at that scale, even if these decisions did not result in their personal benefit. The *geuchick* and *tuha peut* did not have a right with correlated duty on the villagers, it is rather a relation of power and liabilities embedded in cultural system of obligations. While decisions that refer disputes between households on to *mukim* or *camat* or Islamic courts can be read as moving authority to new scales, such

referrals are expressions of the power and liability and the obligation to follow such decisions embedded in social norms n (Fitzpatrick 2008b). The arguments supporting statutory registration in this village were partly based on the idea that registering rights would protect the local claims to property by placing a duty upon the government to compensate land acquisitions at an adequate rate. Yet, a history of poor legal definition of rights/duties and poor financial rates of compensation for property appropriation plague development in Aceh and throughout Indonesia (McCarthy 2006; Fitzpatrick 2006; Lindsey 2008). Indeed, Law No. 2/2012 on Land Procurement for The Public Interest was specifically designed to provide legal certainty for such processes as they were historically vague and corrupt, but many still doubt whether the new law will provide legal certainty for holders of *adat* rights or even has the potential to expedite projects that may require two to five years for simple acquisitions (Tampubolon 2012). In Aceh, adequate compensation for land acquisition during road construction on the tsunami impacted areas was a source of protests (Direct Observation, Aceh Jaya, May 2007) and communal claims to local forests are still not recognized by the national government and palm oil industry (Arma 2012). There is a failure of the statutory system to fully recognize private rights and the public duty to compensate. Registering property would encumber locals with costly obligations (i.e. taxes) to the state while lowering the perceived relevance of local obligations to community members (e.g., the norm of selling property to other community members before selling to outsiders) and *adat* authorities. While both localized and statutory registration maintain several liabilities on villagers, statutory registration transfers *power* (to determine and allocate property rights) from an accountable local authority to state agencies and courts that are notoriously costly and corrupt. Some typical obligations that *hak milik adat* holders have to the community would not necessarily be recognized given a comprehensive statutory registration system that re-orients obligations to the state and reinforces strong individualistic, transfer rights. Typically *adat* property, "may only be sold if offered first to the neighbours (and possibly other community members as well); cannot be sold to community outsiders (although it may be leased with community approval); is subject to neighbours' and other community members' legitimate rights of access; may (in theory) be appropriated by the community for community purposes" (Fitzpatrick 2008a, 10). Supporting the power to define and mediate disputes over rights, duties, and

obligations at the local scale is part of the scalar politics of property. While the above represents defense of an established scale (the village level), it shades into use of established scale as a platform.

In Meulaboh, the dispute over property use between locals and distant relatives of deceased property owners could be seen as use of established scale as a platform. The fruit vendors desiring access to the location they had used for years for their fruit stands felt that the conditions of the agreement they had made with the previous owner should be respected. Yet, in this case claims were approached with the idea of 'legal certainty' being based on strict interpretation of statutorily documented rights and forms of evidence (e.g *akte jual-beli*, tax receipts, or previous land documents). Distant relatives drew on the national scale, formal law to reinforce their claim over the local network of informal relations. Locally perceived duties shaded into obligations that disappeared when the distant parties used established scales to enforce claims. The vendors first argued that they a right to the space under the terms of the previous agreement (that it was the duty of the distant relatives), but given the opportunity to renegotiate terms they argued that outside relatives had an obligation to allow the community to recover and for them to pursue their livelihoods. This use of an established scale to reinforce claims and produce types of evidence is similar to the idea of forum shopping that is typically conceptualized as a uniscalar decision, but actually implicates hybrid socio-legal spaces and forms of evidence drawn from and produced at many scales.

The promotion of the role of the *mukim* scale in property mediation was an interesting outcome of the post-conflict, post-disaster context. For example, Jalil *et al.* (2007), argue that RALAS left the *camat* and *mukim* out of the property registration process. While Deutsch (2009) dismissed many of the concerns expressed by the above authors, the large scale RALAS review that he led actually supported the finding that RALAS staff had not adequately consulted NGOs or leaders below the district level (*imeum mukim, camat, tuha peut,* and *geuchik).* Analyses in the field resulted in recommendations of clarifying and increasing statutory law support for leaders at these levels as it would lead to expediting and improving the clarity of governance and practices surrounding mediation of disputes

and ongoing transfers of land (Fitzpatrick 2008a, 2008b). Regional *qanun* specified that the *geuchik* and *imeum mukim* should play a role in resource management.[61] Moreover, as an intermediary level between the village and sub-district, the *mukim* was to be newly recognized and invested with statutory power or, in some cases, created where the *mukim* level may have ceased to exist. The complaints about failures to consult with these new levels and the actions taken to reinforce these levels represent participation in construction of new scales and redefinition of relationships among scales in regards to authority and property. As mentioned before, the authority to mediate disputes and enforce decisions is effectively a property relationship of *power* and *liability* that influence the definition and allocation of rights, duties, obligations, privileges, and no-rights.

While the above discussion of the *mukim* level shows both creation (statutory recognition) of a new scale and a reconfiguration of relations between scales, the idea of reconfiguration of relations within scales also frames a central question of many of the interviewees regarding the motives behind RALAS. RALAS helped reconstruct administrative offices, train hundreds of people in land registration procedures, and provided some support for property claims by orphans, widows, and women in general (WB 2010). Yet, the larger claimed outcomes of access to finance and tenure security established through creation of an orderly, cost efficient, and accountable property system were questioned by UN agency staff, NGOs staff, and locals who wondered why statutory registration was pursued so quickly, with little regard for the post-conflict dynamics. UN staff questioned the logic of the RALAS project and wondered if the statutory property registration project was simply an exercise in extending the national government's territorial control (Interview UNDP, Calang, May 2007; Interview UNHABITAT, Banda Aceh, May 2007). Despite the bureaucratic issues, RALAS was designed to focus on securing rights (and particularly the right of transfer above all other rights) within a statutory system. As a result, consideration of duties, liabilities, power, privileges, no-rights, immunities, disabilities, and obligations were brushed under a

[61] Specifically, *Qanun* No.4/2005 on *Geuchik* role in managing agricultural lands and *Qanun* No. 2/2003 and *Qanun* No.4/2003 on *Mukim* governance.

neoliberal, post-disaster discourse that drew inspiration from de Soto's vision of property and failed to consider the larger problems of property registration across Indonesia.

McCarthy (2005b) argues that reconfiguration of relations between scales, creation of new scales, and reconfiguration of relations within scales are actually all simultaneous processes that cannot be easily disaggregated – in fact, this is his primary critique of Brenner's (2001) suggestion that we focus on either a ''scale politics of spatiality'' or a ''politics of scalar structuration' The introduction of new Islamic courts and *adat* institutions at several levels of government reconfigured relations within scales and represented a shift in relations between scales as well. While most mediation occurred at the neighborhood (between households), village, or sub-district levels, elevation of property disputes into courts also occurred. Mobile sharia courts were deployed throughout the province to assist these lower levels in interpreting and implementing Islamic law, though some property disputes escalated to the more formalized Islamic courts at the district level. Noticing that the trust levels in Islamic courts were higher than those of the general courts, experts recommended that Islamic courts be given a wider purview that included not only mediating disputes over inheritance but mediating all land issues (Fitzpatrick 2008a) and published several reports meant to aid practitioner understanding and cooperation with Islamic law as practiced in Aceh (Lindsey and Phillips 2005; Harper 2006). In fact, the growth and formalization of Islamic institutions in Aceh largely resulted from the push for Islamic as part of Acehnese identity, *qanun* legislating power to the Islamic courts, the importance of inheritance in the post-disaster context, and the perception of cost and corruption in the general courts.

Property registration is a process that surveys the unknown frontier converting it into spaces intelligible to government control and often resulting in a powerful grid of governance (Blomley 2003b). This grid of governance relies on the redistribution of specific elements of the property relations to particular scales of governances. The process starts with centralizing property administration and adjudication within statutory law and administration systems while failing to positively recognize *de facto* property relations or coopting indigenous institutions (Morse and Woodman 1988; Unruh 2006). The process results in the creation of the subject citizen who internalizes the rules and codes of the state

in regards to appropriate property relations – often those which facilitate capital accumulation by rendering property intelligible to the state and investment (Blomley 2003b; Elyachar 2005). In particular, *power* and *liabilities* describe property relations that control access in problematic ways within contexts wherein rights, duties, immunities, and disabilities are legally ambiguous and politically debated. The power and liabilities of property relations describe the ability to make rules and enforce them through legitimate authority, obligations, political manoeuvre, and violence. In short, while it is it is important to determine who has rights and how to get rights in post-conflict contexts, it is equally important to determine who decides how to define property (for example, the spatial extent, temporal duration, and type of rights) and how the jural relations of property are allocated. While it is true that property is persuasion through narrative (Rose 1994), it is these relations of property that these narratives seek to reinforce, change, or create.

5.5 CONCLUSION

The cases above show that attention to the scalar politics of property relations in post-conflict contexts is critical for understanding the dynamics of authority and the outcomes of post-conflict natural resource management projects. By focusing on scalar processes and property relations, the RALAS experience as perceived by a rural and a peri-urban neighbourhood point out underlying design issues in the project. While donor reviews described RALAS as a well-designed project with minor flaws in terms of implementation (Deutsch 2009; WB 2010), evidence on the ground indicates otherwise. The implementation of the RALAS land titling project in Aceh presents us with many lessons about scalar politics with regards to land management.

First, rights-based approaches to post-conflict natural resource management are too narrow when rights are extracted from the correlated property relations and defined only as bundle of entitlements recognized by the state. Rights-based approaches need to recognize the jural relations and obligations in both de facto and de jure systems. As well, the tendency to focus on the right of transfer overlooks the importance of documenting other types of interests in property. In fact, this is not isolated to post-conflict scenarios, as Markussen *et al.* (2011) indicate that such a focus on rights of transfer over the 'forgotten rights' of use is a broader problem in the application of law to development problems.

Second, normative pluralism is a multi-scalar phenomenon. Often when discussing normative pluralism, the idea of forum shopping has an assumed spatial component of differentiation. That is, forums are thought to be separate geographic locations or spaces rather than flexible interpretation of principles and rules by a unique authority. In the case of *adat*, hybrid socio-legal configurations are forced to weigh evidence and principles from many sources. In so doing they maintain complex relations to other more clearly delineated authorities (such as state courts) that produce their own forms of evidence and have their own ability to enforce laws. In addition, normative pluralism is not just about choosing evidence or forum, it is also about choosing property – about choosing property relations that describe the rights, duties, obligations, and other relations that are beneficial to the claimant.

Third, legal ambiguity over property relations is a major hindrance to sustainable natural resource management. However, providing legal certainty is not equivalent to the centralization of all property into a statutory system that recognizes only select rights and attempts to document all transfers and all holders in a rapidly changing post-conflict scenario. Decentralized deed-based systems can provide part of the transition necessary towards more centralized systems where appropriate. Indeed, legal certainty and tenure security can be provided by transitional laws that provide gradual changes in the governance of property, opportunities to work through obstacles of recognition between *de facto* and *de jure* systems, and options for land holders throughout the process. In the case of Aceh, such laws were attempted (waiving the registration fee, changing land titling procedures, etc.) but stalled due to the need for presidential decrees to enforce the RALAS community driven adjudication manual and to waive liability for BPN staff. The overall legal framework for rights in Indonesia is ambiguous in many circumstance and some experts recommend using Acehnese *de facto* practices for property conveyance rather than insisting on national standards (Fitzpatrick 2008a). While decentralization was thought to be problematic because there was low state governance capacity on the ground due to conflict, the opportunity to empower existing governance structures and gradually implement regionally specific regulation and laws for natural resource management provides one avenue to escape such conflict traps (Schulze 2007; Fitzpatrick 2008a; Wennman 2011; Aspinall 2012).

Fourth, as suggested above, timing and location matter. Conveying clear criteria for the selection of locations for property registration in consultation with local authorities is an important step towards having local participation in the process. Identifying areas where conflict damage is common in addition to disaster damage should provide for additional resources or rethinking the timing of property registration. While RALAS identified tsunami affected and neighboring regions as priorities, it did not identify conflict damaged regions as overlapping or nearby locations at all. Perhaps, areas that experienced high levels of conflict should be phased in at later dates rather than counted as part of the original push to title hundreds of thousands of parcels. In terms of timing of implementation, allowing consultants to develop educational materials and delivering those materials and education sessions to beneficiaries should precede the implementation of property registration. The World Bank found that the timing of such educational initiatives were off, did not consult local authorities, and failed to provide adequate information regarding dispute resolution or the benefits of registering future transactions (Deutsch 2009).

Finally, in complex political emergencies that involve natural disaster and political conflict, there should be a entity charged with overseeing and integrating the two streams of activities in order to avoid compartmentalization of aid. Neither locals, governments involved in conflicts, nor underfunded NGOs have this capacity, so such an entity needs to arise from donor communities or other international bodies. While the dual disaster in Aceh was rare in its magnitude, an agency that can promote cross training of those involved in peace processes, those involved in disaster recovery, and those involved in natural resource management would offer the seeds of expertise that can truly engage in post-conflict natural resource management for peacebuilding. Recognition of the political dimensions of property registration in complex landscapes of hybrid authorities, ambiguous statutory law, and low capacity or corrupt implementing agencies indicate that attention to the scalar politics of property is critical for the design of post-conflict natural resource management.

CHAPTER SIX: SOCIAL IDENTITY, NATURAL RESOURCES, AND PEACEBUILDING

Chapter Six consists of the third manuscript and corresponds to the dissertation's third objective. The third objective is to develop a policy tool integrating the complexity of the social embeddedness of property into the design of post-conflict natural resource management and peacebuilding policy options. To achieve this objective, I draw from Radin's (1993) idea of 'personhood' or 'constitutive property' to examine how links between social identity, natural resources, and armed conflicts affect peacebuilding and post-conflict natural resource management (PCNRM). I argue that social identities are flexibly constructed and linked to natural resources through both individual agent decisions and elite manipulation of political discourses. I outline ways in which social identities are mobilized in conflicts wherein resources have political and cultural values. Drawing from fieldwork in Aceh (2005-2009) and review of other PCNRM cases (Abyei and Chiapas), I examine the particular challenges that connections between social identities and natural resources create for post-conflict property administration. In summary, I propose a policy tool for assisting land management in post-conflict environments. Edited versions of this manuscript have been published as follows:

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6.1 INTRODUCTION

What do coca growers marching in Columbia, communities struggling over land and property rights in East Timor, and Somali clans disputing over charcoal rents have in common? These diverse struggles are all examples of failures to adequately consider social identity in post-conflict natural resource management (PCNRM). In this chapter, I examine how links between social identity, natural resources, and armed conflicts impact peacebuilding and PCNRM. I argue that social identities are flexibly constructed and linked to natural resources through individual agent decisions and elite manipulation of political discourses. I draw from Radin's (1993) concept of 'personhood' or 'constitutive property' to help conceptualize the importance of social identity-natural resources linkages and to emphasize that separating the management of natural resources from identity issues may result in failed resource management strategies and jeopardize peacebuilding. I propose a PCNRM policy tool for managing land in post-conflict environments in a way that acknowledges the connections between social identities, natural resource management, and peacebuilding.

Natural resources are often affected by armed conflict and implicated in conditions that lengthen or intensify violent conflicts (Ross 2004; Le Billon 2007). In fact, one of the central challenges of managing natural resources in post-conflict settings is identifying if and how resources are linked to social identities and the dynamics of recent or historical armed conflict. These links impact the ways in which PCNRM programs can define and distribute rights to access, own, or otherwise use and profit from natural resources. Failure to manage these links may lead to both unsustainable resource extraction and renewed or continued violence. For example, successful sanctions on blood diamonds show that understanding how the economic rents of natural resources are linked to financing violent conflict is not only important for sustainable resource management but sometimes critical for peacebuilding and disrupting incentives and opportunities to pursue violence (Le Billon 2008).

Many studies have examined how the management of economically valuable natural resources influences the onset and duration of armed conflict and can positively or

negatively impact peacebuilding (Collier and Hoeffler 1998, 2004, 2005; Collier *et al.* 2009; Ross 2004; Weinstein 2007; Bruch *et al.* 2011). These studies indicate the critical role that natural resource rents can play in processes like rebel recruitment and both the destruction and reconstruction of national economies (Ross 2004; Weinstein 2007). When undertaking PCNRM, it is vital to intervene in commodity chains that fund violent conflicts and to consider how economic valuable resources can be equitably distributed or even used to build good governance, fulfill basic needs, or otherwise promote economic development, reconciliation, and reintegration (Jensen and Lonergan 2011). Yet, the role of natural resources in conflict cannot be explained only by resources' economic value or logistical importance. Natural resources also play potent symbolic roles in ethnonational discourses, can be deeply embedded in local social relations, and are sometimes used as a vehicle for identity-based claims that serve strategic political interests. In fact, when group identities are closely linked to natural resources, economic 'conflicts of interest' may become intractable 'conflicts of value' (Aubert 1963; Rothman 1997).

Despite ample evidence indicating the central role of social identity in conflicts over everything from territory to oil and coca plants, much of the recent work on managing natural resources for peacebuilding has focused on how to manage the economic values of natural resources. Less attention has been directed towards understanding how cultural and political values of natural resources must be managed in PCNRM. Indeed, there is currently no analytical framework for understanding how the construction and mobilization of social identities impact and can be managed in PCNRM. However, PCNRM strategies that do not consider these symbolic values and the complex ways in which natural resources are linked to social identity in conflicts may ignore important criteria for successful peacebuilding and resource management.

There is a need for both a clear framework for understanding social identity links to PCNRM and for future research that modifies and develops the practical application of this research. In this chapter, I propose a policy tool for understanding how social identities are linked to natural resources in post-conflict settings and examine how it might be used to understand three cases studies in involving land resources and identity in Aceh (Indonesia), Chiapas

(Mexico), and Abyei (Sudan). At the time of the writing of this dissertation, some of these post-conflict settings could arguably be considered to be ongoing conflicts. However, it is important to include such cases to consider how failure to link social identity claims to natural resources may lead to continuation of violent conflict and undermine natural resource management for peacebuilding. In each of the case studies, I overview some of the policy approaches used and examine what other steps might have been undertaken.

In the following section, I introduce the personhood approach to property, a definition of social identity, and explore how social identity is linked to natural resources and war in contemporary literature. In Section 6.3, I present the methods used to gather data on the three case studies. In Section 6.4, I outline four links between social identity and PCNRM and explore these links via case studies of post-conflict land issues. Section 6.5 provides a policy tool that offers potential policy responses based on the four links between social identity and PCNRM proposed in Section 6.4. In Section 6.6, I conclude by indicating potential directions for future research.

6.2 LITERATURE REVIEW

The ways in which we define social identity affect the ways that we understand the intermingling of social identity and property. Likewise, the ways in which we understand property influence the ways in which we manage natural resources. In this chapter, I draw on Radin's (1993) understanding of 'personhood' and 'constitutive property' to approach PCNRM. I argue that basing PCNRM policy on this approach can lead to useful insights on policy strategies for managing resources for peacebuilding. Below, I outline Radin's approach to personhood and property. Then, I turn attention to the way that social identity, natural resources, and armed conflict have been conceptualized in contemporary literature. I offer a working definition of social identity based on social identity theory (Tajfel and Turner 1979), examine how social identity and natural resources are linked to armed conflict, and examine links between social identity, natural resources and PCNRM. I argue that work on armed conflict that focuses only on the economic value of resources has diminished conceptual approaches to social identity and PCNRM.

6.2.1 Personhood and Constitutive Property

Radin sees property as more than either a material thing or a bundle of rights. Radin (1993, 2) argues that the study of relations between property and personhood "has commonly been both ignored and taken for granted in legal thought." She develops a property theory that is based on a continuum between constitutive property (that which is bound up in a person and makes us who we are) and fungible property (instrumental, monetary, or market). Whereas fungible property can be assessed and exchanged in purely monetary terms, constitutive property is so central to a person's identity that separation would impact the human ability to flourish – or their personhood. Some objects in a person's life are so intimate to the person's identity that the object's value cannot be properly assessed or commodified in monetary terms. She observes that these constitutive connections are often implicitly part of judicial reasoning. She argues that personhood should be an explicit criterion in determining whose claim to property trumps other claims – that constitutive property claims should outweigh fungible property claims when deliberating entitlements in relation to property and desirable social outcomes. The closer one's claim is to the extreme of constitutive property, the more weight the claim should be given in determining outcomes.

In developing a theory of constitutive property (personhood), Radin questions the subject/object dichotomy and reveals that the object of property is part of and constructs the subject of property. The subject/object dichotomy delineates the active and passive parts of property – the subject that owns, manages, or thinks versus the object that is owned, managed, or thoughtless (Whatmore 2003). Radin shows that such dichotomies are false. Contrary to this idea that property consists only of rights or active relations between humans (subjects of property), understanding property requires inclusion of the so-called objects of property and the relations between humans and things. Of course, this is not to suggest that the concept of property can be limited to only the 'objects of property' or relations between humans and things – as these relations are always socially mediated. Understanding how property is constituted through these dichotomies is central to interpreting current trends in neoliberal ideology and resource management strategies. As

Mansfield (2007, 394) describes it, "property has become the central mode of regulating multiple forms of nature" and "efforts to create and impose new private property regimes are remaking ecosystems, livelihoods, and identities..." While the relative consistency of land facilitates an imagination of the 'objects of property' as inert entities, management of dynamic and mobile entities like water, air, and migratory animals reveal challenges to ideas about property and to property relations – especially when private property regimes are assumed to be the most economically efficient and rational strategies but do not produce desired management outcomes (Bruns and Meinzen-Dick 2000; Schmidt and Dowsley 2010).

Radin's work is interesting on a number of levels. First, as described above, Radin argues for a better understanding of property by re-examining the false dichotomies around our notion of property. Second, Radin creates a justification for emotion and feelings of place to be brought into judgments regarding property by arguing that these components are integral to an individual's identity and to property itself. Sociospatial identities grounded in place and spatial arrangements are constitutive of property as it is the everyday working and interpretation of human relations through landscape, land, and the material world that produce property. Third, she sees that fungible property and constitutive property are not static even on a continuum as identification of fungible and constitutive property change over time and in different social and spatial contexts. This has implications for the ways in which social identity frames are linked to fungible property over space and time. Fourth, the links that Radin makes between property and personhood can be applied in interesting ways to the relation between territory or homeland and nation. In the same way that the relationship between a property entity and human may be constitutive to personhood, the relationship between territory and nation can be fundamental in the collective imagination of nationhood and an autonomous 'nation-state.' Indeed, there is a strong parallel between liberal thought about property and individuals as citizens and territories and nations as 'nation-states' (Sassen 2006). While Radin's writings focus on increasing the legal (judicial) and social recognition of the way that property and an individual's personhood are mutually constituted, her approach can be productively applied to individual and group relations with property at different political scales. The parallel of personhood and property to

nations and homelands, territories, and natural resources offers insights into post-conflict property debates, peacebuilding, and natural resource management.

Links between social identity and property may result in positive outcomes in terms of resource stewardship, individual personhood, and group functions. Yet, these same links can cause problems when social identities are implicated in conflicts involving property. In the case of PCNRM, the social identity links to property may undermine peacebuilding – this is particularly the case when land is involved. Land and landscapes function as the spatial containers through which such social constructs as territory, homeland, and home come to be conceptually framed and materially realized (Moore 2005). An understanding of the strong links between social identity and property (and particularly land) might assist planning appropriate timing, locations, and methods for designing and implementing PCNRM policies.

Using a primordialist or constructivist approaches to social identity changes how we understand Radin's (1993) constitutive dimension of property that links the flourishing of individuals to their identity relations with property. Approaching PCRNM with an awareness of property and social identity connections requires conceptualizing social identity as more than a fixed category. It requires thinking of social identity as a framing process. Below, I overview ways in which social identity, natural resources, and armed conflict have been conceptualized and argue that the most common approaches have narrowed understanding of social identity in PCNRM. I then outline how social identity can be understood as a framing process.

6.2.2 Social Identity and Armed Conflicts

There is a well-developed literature linking social identities and armed conflict (Huntington 1997; Kaufman 1999; Fearon and Laitin 2000; Shmueli *et al.* 2006). Much of this literature focuses on ethnicity or ethnic conflict (Nagel 1994; Gurr and Harff 1994; Gurr 2000; Eriksen 2001; Toft 2003), yet ethnicity is only one type of contested identity frame. It is necessary to consider both the broad literature on social identity and the more narrowly framed work on ethnic conflict to understand how social identities have been linked to armed conflict.

Approaches to social identity can be located on a continuum between two ontological stances: primordialism and constructivism. Primordialist approaches conceptualize social identity as a fixed collection of traits that are genetically inherited (in the strong sense of primordialism) or determined by cultural narratives and social structures (in the weak sense of primordialism) (Gurr and Harff 1994). Primordialist approaches are both essentialist and determinist in their understanding of identity as a stable aspect of group and individual psychology. Huntington's (1997) well-known work on the clash of civilizations is a modern example of how a primordialist perspective frames some conflicts as the inevitable result of irresolvable, ancient prejudices and predicts people's behaviors along lines of historical identity categories. On the other hand, constructivist approaches emphasize that identity is not fixed; they recognize the complex ways in which social identity and collective action are simultaneously constructed through social psychological framing, context, and discourse (Bowen 1996; Schmueli *et al.* 2006). Constructivist approaches look more at contextual factors and agents' decisions concerning overlapping social roles, framing discourses, and historical experiences. In other words, constructivist approaches accept the idea that social identity is historically constructed, multi-faceted, and contextually dependent (Gardner 2003). Examples of constructivist approaches to identity include everything from Smith's (1998) perennialism to political opportunity theory (Meyer 2004), social identity theory (Tajfel and Turner 1979a, 1979b; Hogg *et al.*1995), and social movement theory (Tilly 2003).

The choice of a constructivist or primordialist viewpoint influences understanding of how social identity relates to property, natural resources, war, and peacebuilding. For example, a primordialist approach would see the link between identity and homeland territories as a fixed relation. Not only would the relation be fixed, but it would determine the types of possible interactions between identity groups with competing claims for the same homeland and would inevitably lead to conflict. On the other hand, a constructivist would argue that violent conflicts are not inevitable, but arise from strategic interests and political discourses linking identity to territorial or resource claims. For example, irredentist claims of Greece over the southern Balkans (Peckham 2000) and the flexible links between identities and livelihoods in Darfur (Young *et al.* 2009) reveal how territorial claims are

often manipulated or contextually framed as social identity claims. Where a primordialist approach envisages inevitable conflict, a constructivist approach encourages a search for ways to reorder the primacy of identity frames (for example to deemphasize some identity claims and to emphasize the benefits of shared user rights, to point to common interests in maintaining resources, or to create new identity frames) in conflicts in which identities are linked to natural resources or violence.

In this dissertation, the definition of *social identity* is based on social identity theory—a constructivist approach that emphasizes ways that structural factors, group characteristics, and individual actor decisions play a role in framing and choosing identities (Tajfel and Turner 1979; Hogg *et al.*1995; Stets and Burke 2000; Ashmore *et al.* 2001). The emphasis in social identity theory is less on how intragroup roles interact and more on how frames are formed through intergroup interaction. Authors using this approach draw from Tafjel's (1978, 63) definition of social identity as "that part of an individual's self-concept which derives from his knowledge of his membership in a social group (or groups) together with the value and emotional significance attached to that membership". The emphasis in social identity theory is on both the person and the dynamics of groups. This approach is useful for studying the process by which identities relate to intergroup conflict (Ashmore *et al.* 2001).

Brubaker and Cooper (2000) identify some additional key conceptual distinctions that are useful when investigating how types of social identity are constructed. First, does social identity refer to relational or categorical modes of identification? Second, does the act of identification come from an external source or through self-identification? Brubaker and Cooper (2000) recognize that the divisions between relational/categorical and external/self-identification are not always clear, but that these can be analytically useful. For example, identification by positioning in a relational web (such as kinship, friendship, or business ties) may sometimes overlap with identification through categorical attributes (such as race, ethnicity, language, or citizenship) but these represent two very different modes of identification. Likewise, an externally imposed identity (such as legal citizenship) can be incompatible with self-identification. For example in 1933, the Belgian identity cards issued in Rwanda rigidly classified residents into ethnic categories of Hutu or Tutsi and

denied the mixed heritage and self-identification of many residents as something other than what was on their identity cards.

The distinctions of external/self-identification and relational/categorical can be important for understanding how social identity is described in cases involving natural resources and armed conflict. For example, in exploring how economic rents from natural resources are used to recruit soldiers for rebel groups, Weinstein (2007) examined how young men develop identities tied to rebel groups through relational modes of self-identification. Such dynamics are also evident in places like Darfur, where identities often considered as ancient labels for ethnic groups or tribes actually have a more fluid and permeable nature in which political alliances, ecology, and livelihood strategies cause individuals or groups to adopt new identities based on context-dependent opportunities (Young *et al.* 2009). In Southeast Asia, Scott (2009) describes how the flexibility of identities of remote groups may in fact be strategies for escaping oppressive governments' tendency to categorically define and manage communities. In Indonesia, Li (2000, 151) investigates this interplay between imposed categories and self-identification and notes "that a group's self-identification as tribal or indigenous is not natural or inevitable, but neither is it simply invented, adopted, or imposed. It is, rather, a *positioning* which draws upon historically sedimented practices, landscapes, and repertoires of meaning, and emerges through particular patterns of engagement and struggle… the contingent product of agency and the cultural and political work of *articulation*."

Categorical modes of identification are powerful social organizing tools that can be used by actors that are both external and internal to groups to discursively frame property claims, resource access, and political positions. As Li (2000) points out, identity categories are not always internally eschewed as groups and individuals can adopt them for their own political goals. For example, Bowen (2005, 160) outlines ways in which the Acehnese liberation movement is based on the group category of 'Acehnese people' – a category that he argues has been internally generated by a narrative of pre-colonial autonomy and by drawing from international discourses external defining the category of 'indigenous people' to position the movement and consolidate several distinct regional and language groups. Also in Aceh,

Burke and Afnan (2005) point to the risk of such dynamics in complex political emergencies. They outline how the designation of recipients of aid and the timing of aid were affected by ways in which individuals were categorized by external organizations as conflict refugees or disaster refugees. People may strategically self-identify with external categories that better position them for aid. Another example of categorical modes of identification can be found in the negotiations leading to the Permanent Court of Arbitration's redrawing of the borders for historical land claims in the Abyei region of Sudan. As examined in more depth below, these negotiations arguably use an understanding of identity based on imposed categories that bear little resemblance to the actual historical character of communities and kinship networks in the region. The narratives used to frame problems in peacebuilding processes may involve creating categorical modes of self-identification and external identification relevant to establishing political negotiation positions or to gaining access to resources or post-conflict aid.

In summary, the social identity frames formed through externally imposed categories (for example, by the colonial state) are analytically different from and play different social roles than relational modes of self-identification which are central in defining incentives in recruitment processes, serving as ways to resist state power, and defining the contours of armed conflict dynamics. Yet, categorical identities are not always externally imposed as they can also be internally imposed and used by groups for their own political and economic benefit to position themselves in regard to other groups or to eliminate the flexibility of relational identification strategies (Li 2000).

6.2.3 Natural Resources and Armed Conflicts

The literature linking natural resources to armed conflict has mushroomed since the 1990s. Several issues in this field have gained attention in the popular media. One such issue is the resource-scarcity-versus-resource-abundance debate, wherein arguments that resource scarcity triggers armed conflict have been criticized by authors who point out that petroleum and other types of high economic value resource abundance better predict and explain interstate and intrastate armed conflicts (Homer-Dixon 1998; Peluso and Watts 2001). As well, popular interest in global environmental change and its potentially dramatic impact on human societies has inspired a large body of research and some misguided

popular speculation on the potential for future 'resource wars' caused by environmental degradation, scarcity, and migration (Nordås and Gleditsch 2007; Dyer 2010).

One influential model of the links between resources and armed conflict is the 'greed and grievances' model (Collier and Hoeffler 1998, 2004, 2005). The gist of this model is that high-value natural resources provide the incentives (for greedy rebel leaders) or opportunities (for rebel groups) that encourage armed conflict and undermine peacebuilding (Aspinall 2007). While the greed is clear, grievances are simply related to perceived unequal distribution of rents. This model has inspired theoretical work on how the characteristics of resources affect both rebel group formation and conflict types. In addition, this model has driven policy approaches that focus on intervening in resource commodity chains to stop rebel financing and build peace in places like Liberia and Afghanistan (Ross 2004; Le Billon 2008). However, this model has also been criticized by scholars who emphasize that natural resources affect a wider range of economic, political, and cultural factors (Ballentine and Sherman 2003; Ross 2004; Fearon 2005). For example, an abundance of a high-value resource like petroleum has been shown to destabilize governments by causing macroeconomic instability, to undermine the state's ability to govern dissenting groups, to lead the state to adopt policies that encourage oppositional groups to use violence, and to encourage competition over state control when state control becomes equivalent to control of high-value resources (Humphreys 2005). Humphreys (2005) discusses how, in the Chadian case, armed conflict was not maintained through resource rents, but rather alternative revenues could be raised in advance to fight for control of the Chadian state and the future oil revenue that would come with control of the state.

While the symbolic value of resources (especially land property) is often recognized as an important factor in conflict escalation, duration, and intractability (Kahler and Walter 2006), popular models like the 'greed and grievances' model tend to focus on the economic value of resources as the main causal and limiting factor in the escalation and duration of violence. While the model is useful for understanding many groups engaged in modern conflicts and is responsible for policy prescriptions that undermine rebel financing, this

model fails to explain the escalation and duration of armed conflicts over resources that have little economic value. As well, it is inadequate for explaining the ways in which armed conflicts over identity resources (such as sacred forests, fishing rights, and homelands) and locally valuable livelihood resources occur and become intractable.

6.2.4 Social Identities, Natural Resources, and Armed Conflict

Cultural or political values associated with land, sacred forests, fisheries, water, and other natural resources play a role in ethnonational discourses, livelihood struggles, and religious narratives, and link to many identity frames. These links between identity and natural resources are often mediated through property relations that can sometimes be constitutive of both the subject and object of property – especially in the case of the symbolic cultural and political value of land. Of course, these links between social identity and property (in this case, natural resources) exist outside the realm of armed conflict, but this section only focuses on some ways in which the links of social identities to natural resources influence armed conflict.

Theories of armed conflict often under-theorize the complex links between social identities and natural resources (Ballentine and Sherman 2003; Ross 2004; Aspinall 2007). Yet, the overlap between identity and natural resources involves at least four links related to armed conflicts. These links are important in identity formation and mobilization; they do not necessarily lead to armed conflict but they help to understand how armed conflicts occur (Peluso and Watts 2001). These links are not isolated and one or more of these links may be found within any one conflict:

1. How identity claims involving ownership or privileged access to resources lead to armed conflict.
2. How identity influences claims of inequitable distribution of resource rents and leads to grievances and armed conflict.
3. How identities are used by elites and 'ordinary folk' to mobilize collective action in conflicts over natural resources.
4. How identity framing facilitates conflict over natural resources.

The first link includes identity conflicts over the historic use or symbolic value of resources. For example, narratives that influence the legal alienation of Arab lands in Israel draw from

historical claims to the land (Forman and Kedar 2004). The second link is represented in several center-periphery relationships in which rents from high-value natural resources located in peripheral regions are captured by urban elites or states and not equitably distributed to populations in these peripheral regions that often bear the costs of resource extraction. In situations where center or periphery groups can be linked to identity frames (like ethnic groups), identity often becomes one of the primary frames through which claims to equitable distribution are pursued. For example, Suliman's (1999) study and the recent work by the International Crisis Group (ICG 2008) on the dynamics of the Nuba and Baggara conflict over lands in Sudan's Southern Kordofan state indicate how identity has been shaped by center-periphery relations and conflict dynamics. Assal (2006) and Suliman (1999) have argued that the state escalated the conflict and that the conflict itself has heightened the collective sense of a Nuba identity.

> Before the onset of violent conflict in the Nuba Mountains, the diverse Nuba people were fully aware only of their clan affiliations. They neither perceived themselves as a Nuba nation nor actively sought to be one. Their relations with their Arab neighbors, the Hawazma and Misiriya, were tolerable. They exchanged goods and services, and intermarriage was an acceptable practice especially among Arabs and Muslim Nuba. At the beginning of the conflict, many Nuba even sided with the government, because they perceived the conflict to be a political discord, rather than an ethnic or economic strife . . . Most violent conflicts are over material resources—actual or perceived. However, with the passage of time, ethnic, cultural, and religious affiliations seem to undergo transformation from abstract ideological categories into concrete social forces. In a wider sense, they themselves become contestable material social resources and, hence, possible objects of group strife and violent conflict. (Suliman 1999, 219)

The third link (identities are used by elites and 'ordinary folk' to mobilize collective action in conflicts over natural resources) is one often presented in the Collier-Hoeffler ('greed and grievances') line of research wherein greedy political entrepreneurs create or manipulate existing local identities in order to profit from new political and social arrangements or continuing armed conflict. In this situation, case studies of Rwanda have sometimes cited the underlying land conflict as a source of tension and indicated the role of political entrepreneurs in recasting this tension into the genocidal conflict (Percival and Homer-Dixon 1998; André and Platteau 1998). Other authors see perceived grievances against a

community as one of the main ways in which identity becomes a primary mobilizing frame for conflict. Robinson's (1998) study of the role of hydrocarbon extraction in mobilizing collective identity and legitimizing violence in Aceh illustrates such a natural resource extraction - political manipulation - identity grievances - armed conflict causal chain. This chain is also present regarding land property in Indonesia. For example, the 1997 violence in West Kalimantan signaled "a reclamation of the Dayaks' historically occupied spaces, resources, and identities, and to demonstrate the protection of their collective honor. The notion of *kawasan*, or territory, is a crucial part of their collective concerns" (Peluso and Harwell 2001, 86). Here we hear echoes of Radin's (1993) constitutive property as they examine whether the Dayak group can exist and flourish without *kawasan* and, if not, what happens as a result. Examining whether the construction of ethnicity (as a type of identity) raises the likelihood of armed conflict, Fearon and Laitin (2000) propose three pathways through which identity is constructed: (1) through the logic of cultural discourses, (2) through elites' strategic manipulation of identity categories or relational networks, and (3) through strategic action of masses ('ordinary folk') to maintain specific group boundaries and rights. Using case studies from Sudan, Sri Lanka, Ireland, Rwanda, and the Balkans, they suggested that in many armed conflicts, so-called ethnic or identity-based violence is actually a mask for strategic actions by elites or strategic action by individuals in the masses. Thus, cultural and political values are best understood as ways to mobilize groups during armed conflicts in order to achieve strategic gains in resources or power, which supports the concept of rational economic agency described in the Collier-Hoeffler model.

The fourth link is subtly different from the third in that it argues that a specific type of identity frame must pre-exist political manipulation and mobilization of identity frames in armed conflict. Rather than assuming that political manipulation can mobilize any identity frame for armed conflict, this link indicates that specific types of identity frames must pre-exist political manipulation. For example, in discussing Aceh, Aspinall (2007) attempts to go beyond the typical political manipulation – identity grievances – armed conflict causal narrative by arguing that collective grievances and legitimization of violence cannot occur without a specific type of pre-existing identity frame.

> Rather than seeing natural resource grievances as a source of conflict, or as a catalyst or accelerant for the crystallization of identity, I emphasize that it was the

> evolving framework of Acehnese identity that provided a prism through which natural resource exploitation was interpreted in grievance terms. Put more bluntly, one might say that without the identity framework there would have been no grievances, at least no politically salient ones. Instead, natural resource exploitation in Aceh may have been viewed as unfair and irritating, but also as banal and unavoidable, as it arguably was in other provinces. In this view, grievances should not be seen as trigger factors, antecedent to the discourses that motivate violence. Grievances are instead integral to the ideological frameworks though which the social world, including notions like "justice" and "fairness" are constructed and understood. (Aspinall 2007, 957)

Despite arguments between scholars prioritizing different causal mechanisms, identity and natural resource conflicts are not mutually exclusive themes in the study of armed conflict. Property as natural resources is linked in several ways to social identities in armed conflicts. This dissertation focuses on territory and land issues to examine the ways in which social identities are mobilized in resource conflicts and how links between social identities and natural resources might positively or negatively impact PCNRM. Although the literature on peacebuilding and natural resources often refers to the role of communal groups in PCNRM and peacebuilding (Bush and Opp 1999; Bruch *et al.* 2011), there is rarely a theoretical or practical link drawn between natural resources, identity, and peacebuilding. The lack of consideration of such links undermines PCNRM and peacebuilding programs (Webersik and Crawford 2011).

6.3 METHODS

Research for this manuscript is qualitative and draws from Yin's (2003a, 2003b) approach to case study research. Yin defines the case study research methodology as an empirical inquiry to examine a contemporary phenomenon within its real-life context in which multiple sources of evidence are used. The Aceh case study draws from data collected during field research between August 2006 and June 2008 in Aceh, Indonesia. It includes five months direct observation, 68 semi-structured interviews, 17 focus groups, archival research, and analysis of academic literature, gray literature (NGOs and government offices), legal texts, and news articles during the period of 1999-2010 dealing with land issues. The material collected for the two additional case-studies in Sudan and Chiapas was accomplished via literature searches and included gray literature and academic articles.

While I draw many insights from the primary and secondary data collected from Aceh, it was necessary to include other case studies to develop and explore the policy tool which is the outcome of this article. No one case study would suffice to build a policy tool that can be deployed in geographically, politically and culturally diverse post-conflict scenarios.

6.4 Framework Linking Social Identity and PCNRM

Although the literature on peacebuilding and natural resources often refers to the role of communal groups in PCNRM and peacebuilding (Bush and Opp 1999; Bruch *et al.* 2011), there is rarely a theoretical or practical link drawn between natural resources, identity, and peacebuilding. This lack of consideration of such links undermines PCNRM and peacebuilding programs (Webersik and Crawford 2011). Attention to identity framing and the cultural and political values of natural resources would seem to be an essential part of PCNRM, but there are several straightforward explanations as to why these links are currently under-theorized. For instance, due to funding and logistics, PCNRM projects often have a time-limited, practical focus that emphasizes economic recovery – even though these limits and the narrow focus may cause important cultural and political dynamics to be overlooked (Bush and Opp 1999; Paris 2004). Recent theoretical work relies heavily on the Collier-Hoeffler's conflict model and tends to downplay identity claims based on cultural and political values. Finally, elite manipulation of policy, legislative, and political processes might strategically deny links between identity and resources in post-conflict scenarios in order to gain economic benefits (like land claims) for themselves. This strategic denial of linkages between identity and resources is not unique to post-conflict scenarios; evidence in Indonesia indicates that while ethnicity is important for understanding different approaches to natural resource management, it was practically taboo and seen as a detriment to nationalism to speak of, base policy on, or ground resource claims in ethnic identities (Cofler, Newton, and Herman 1989).

Social identities interact with natural resources in at least four ways that should be taken into account when establishing PCNRM programs. Similarly to the four links between violent conflict, resources, and social identities explained in Section 6.2.4, more than one of these links may occur simultaneously within one case study and may evolve over time into

another type of link. As the first link is adequately represented by much of the literature (Collier and Sambanis 2005; Weinstein 2007), the case-studies for this chapter focus on the second, third and fourth links. . The links represent different ways in which constitutive property (as natural resources) comes to either constitute individual and group identities.

The four links are:

1. Economic Convenience: Identity groups are mobilized to fight over a resource that has little cultural or political symbolic significance.
2. Lack of State Control: Social identities can be the main way in which people organize resources in the absence of a centralized territorial authority.
3. Indivisible Value: Resources can have such strong cultural or political meaning to identity groups that they become indivisible and any limits to use or ownership would threaten a group's identity.
4. Saving Face: Winning or losing itself can take on a symbolic significance, even when resource ownership or access is of marginal economic importance.

6.4.1 LINK 1: ECONOMIC CONVENIENCE

The first of these four links occurs in situations in which interest and identity groups intermingle and are mobilized to fight over a resource that has actual little cultural or political symbolic value. Put differently, resources with high economic or logistically value are at the center of a conflict between interest groups mobilized according to historical or contemporary identity frames. For example, diamonds partially funded violent conflicts over political power in the 1990s in Liberia and Sierra Leone (Le Billon 2008). In this situation, the cultural significance of the diamonds was less important than the fact that the diamonds offered a lucrative revenue stream and that control of that revenue stream could offer strategic advantages to different belligerent groups. In Liberia, the National Patriotic Front of Liberia (NPFL) led by Charles Taylor drew many of its original adherents from Gio and Mano groups which had been discriminated against by the President Samuel Doe's appointment of mostly Krahn tribal members to government posts. These identity (ethnic) groups involved in the conflict in Liberia functioned as interest groups in regard to diamonds as there was were no clear cultural or political valences connecting the specific resource base to the identities in conflict. If an alternative lucrative, lootable resource became available (for example a sudden price spike for sapphires) there would have been little hesitation to abandon diamonds in pursuit of alternative revenue streams. In this case,

constitutive property is absent and the policy responses to such a relation between social identity and can be designed in a way that is relatively indifferent to cultural and political values of resources. Eliminating revenue streams through sanctions or other direct interventions and providing alternative livelihoods are often some of the only practical tools available to initiate peacebuilding. Such initiatives undermine the capacity to wage war, though they may not stop all economic flows and can also undermine local livelihoods (Laudati 2013). This link is also descriptive of livelihood conflicts where resources have only economic value and do not have cultural or political value to the belligerent groups. As conceptualized by this link, resources can be at the center of conflicts between groups that have mobilized according to historical identity frames or resources can be at the center of conflicts in which group affiliations have become defined in reference to the resource conflict itself.

6.4.2 Link 2: Lack of State Control

The second link refers to the ways in which communities manage resources in the absence of, or in resistance to the centralized legal order of the state. Unruh (2003) examines how multiple legal and normative orders (normative pluralism) influence land tenure regimes in post-conflict situations where state power is weakened or illegitimate. These competing normative orders are instrumental interest or identity groups that may undermine the state's territorial control or disrupt state-led resource management practices – practices which may or may not be considered legitimate or legal. Work in Columbia, East Timor, Mozambique, Sierra Leone, Angola, and other regions illustrates situations where inadequate understanding and recognition of identity groups and their claims to property, inadequate recognition of these groups' desire and need to use alternative types of evidence (for example, to call upon community witnesses rather than rely on statutory titles or deeds that may have been destroyed), and inadequate recognition of these groups' ability to efficiently and legitimately manage resources have plagued post-conflict efforts to enforce and create state administered real property systems and land laws (Unruh 1998, 2003, 2004; Larson *et al.* 2010). In the next section, I elaborate on this link by discussing the case of the Zapatistas' property issues in Chiapas, Mexico.

Case Study: Chiapas, Mexico

Chiapas, located in the far south of Mexico, shares borders with Guatemala, and the Mexican states of Veracruz, Oaxaca, and Tabasco. According to the 2005 INEGI (National Statistics and Geography Institute) census the region has nearly 4,300,000 inhabitants of which approximately 960,000 (22%) are indigenous Mayan. Of this indigenous population, 81.5% live either in the highlands, the forest, or the northern zone region of Chiapas. Chiapas is primarily inhabited by subsistence farmers who have suffered from both ethnic and class-based structural violence and have long experienced limited access to property rights. In fact, property issues specifically in reference to land access are one of the central bones of contention in the region. The 1917 agrarian reforms that were meant to destroy the *encomienda* system (which was a system of feudal tenure labor and land grants inherited from the Spanish colonialists) with the *ejido* system (which was a system of holding common property in a community trust recognized by the government) never actually impacted many of the large landholders in this region as they managed to hold on to large estates or to re-establish estates by titling adjacent properties to different family members. Issues surrounding land access and the migration of communities into this region caused many indigenous people and migrants to move into the Lacondon forest area in the 1950s. Deforestation and degradation of resources within the forested area caused communities to continue to move within and underlie many property disputes and conflicts in the region. Despite the failure of the 1917 laws, Chiapas currently has the largest amount of *ejidos* of any region in Mexico. These *ejido* lands were protected from future sale by the law of 1917, but were reformed by legislation in 1992 that allowed titling and transfer of *ejido* lands. This new law is considered by some as the trigger event in crystallizing resistance in Chiapas (Harvey 1998).

In 1994, the Zapatista Army of National Liberation (Ejército Zapatista de Liberación Nacional or EZLN) declared war against the Mexican state. While the EZLN declaration of war coincided with the first day of NAFTA and was couched in an anti-neoliberal rhetoric, Harvey (1998, 8) considers the roots of resistance in Chiapas as "ecological crisis, lack of available productive land, the drying up of non-agricultural sources of income, the political and religious reorganization of indigenous communities since the 1960s, and the re-articulation of ethnic identities with emancipatory political discourses." While some authors

believe that the leadership of EZLN comes from the Marxist left of the 1970s that is now using the indigenous rebellion for its own purposes, other authors argue that the Zapatistas constitute an original indigenous rebellion based on demands for land tenure, democracy, and respect for indigenous rights (Harvey 1998; Collier and Quaratiello 2005). Either way, the demands for ancestral lands and statutory recognition of the previous rights of *ejido* and communal lands to avoid transfer and alienation through private sales are consistent concerns among the Zapatista movement. After the declaration of war there were several instances of violence against communities supportive of the Zapatista goals and continued expropriation of *ejido* lands for use and sale by government or private individuals.

The Zapatista struggle in Chiapas is a protracted social conflict that is strengthened by persistent identity group (indigenous) claims to land and property rights. It is a case of a failed PCNRM in that between the periods of episodic violence efforts could have been made to reform the national or regional legal framework for property and land to meet the demands of indigenous communities. Reinstatement and respect of the *ejido* and communal lands were explicitly stated in the five components of the San Andrés Accords (1996):

1. Basic respect for the diversity of the indigenous population of Chiapas.
2. The conservation of natural resources within the territories used and occupied by indigenous peoples.
3. Greater participation of indigenous communities in the decisions and control of public expenditures.
4. Participation of indigenous communities in determining their own development plans, as well as having control over their own administrative and judicial affairs.
5. The autonomy of indigenous communities and their right of free determination in the framework of the State.

This conflict reflects both a failed peace agreement and failed PCNRM. Both categorical and relationally defined identity groups have formed around the resources in question. The identity-PCNRM links in this case are representative of link type two and link type three. Legitimate communal structures that can functionally manage land and property outside of a centralized territorial state government system exist and need to be recognized by the government, reflective of link two. In link three, identity claims to specific spaces and ways of life entail claims of land and property that are violated when the government assumes (as in the 1992 law) the right to expropriate, transfer, and/or otherwise alienate other rights

from the indigenous owners. Integrating Radin's perspective on constitutive property into analysis of these issues, , we see a movement here between link two (wherein fungible property can be effectively managed by groups) towards link three (wherein that property is constitutive of the group's identity). Offers of exchanges for land elsewhere do not meet demands for absolute ownership of ancestral lands. As constitutive property, such lands cannot be exchanged. Moreover, the logic of the territorial state that claims that allodial title resides in the government (i.e. that the territorial state is the preeminent authority that originates, guarantees, and has the underlying power to deny ownership of land property) is often in direct contradiction to claims to ancestral lands and to the way in which land property and group identity are constituted. In rare circumstances, demands for ancestral lands are met by an uneasy recognition of native title as parallel to that of the territorial state claim to allodial title (which may originate from the Crown or other source of authority), but probably less rare is a situation of ongoing disputes and conflict over such lands that express link three unless innovative approaches to identity are integrated into property concepts and natural resource management.

6.4.3 LINK 3: INDIVISIBLE VALUE

This third link refers to the cultural and political embeddedness of resources. A resource may have conflicting cultural or political values for different identity groups. For example, enduring separatist movements (like the ELA in the Basque region of Europe) show that particular places in the landscape have not only economic and livelihood value but also cultural value that cannot be resolved with state narratives of citizenship and territory (Raento and Watson 2000). Moore (2005) offers an example of these conflicting values in Zimbabwe where the division of land and provision of alternative land is in some cases unacceptable to groups whose identity is bound to certain places and spatial configurations. Demands by refugees and internally displaced person (IDP), forced to flee during the war in Bosnia and Herzegovina, to return to their previous settlements reflect both the need for material recovery and the social and psychological value of certain places (Mikelic *et al.*2005). Indeed, the settler dilemma in Israel reflects different identity groups' conflicting, incommensurable values regarding land claims (Kedar 2003; Forman 2006). However, these values are not always static – they are often manipulated and framed by elites or

other actors for strategic political reasons. Elite manipulation and internal group dynamics can help bring about a sudden increase in the political or cultural value of natural resources or territories. For example, an area surrounding the 1,100-year-old Hindu temple Preah Vihear on the Thai and Cambodian border has been contested since at least the nineteenth century. Although the region was awarded to Cambodia by decision of the International Court of Justice in 1962, in times of domestic political upheaval in Thailand, this region is sometimes invaded by Thai leaders who wish to display their patriotic leaning and to distract the population from other political issues. According to interviews of some locals, the politicians bring the conflict over the region to the forefront of political and cultural consciousness and frame the conflict over the temple as a national identity issue in order to advance domestic political strategies (Unpublished Interviews by the author, Cambodian solders in Preah Vihear and along Thai-Cambodia border to the South – June 2010).

Case Study: Aceh, Indonesia

The region of Aceh, also referred to as *Nanggroe Aceh Darussalam* (NAD), is governed as a special territory by the Government of Indonesia (GOI). In 2005, the population of Aceh began recovery from both a 29-year separatist war and the devastation of the 2004 Indian Ocean Tsunami. Property and tenure systems were severely damaged by both the armed conflict and tsunami (Wong *et al.* 2007, WB 2008). The 2004 Indian Ocean tsunami inundated the lowlands of Aceh killing some 167,000 people and leaving 500,000 more homeless. While the tsunami struck the lowlands, the tsunami's impacts changed the region's political, economic, social, and ecological landscape. 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 (Fan 2006: Abidin *et al.* 2006). Of the 300,000 parcels affected by the tsunami, 25% had titles issued by the state and the other 75% were managed under *adat* (customary) and informal institutions (Fitzpatrick 2005a; Abidin *et al.* 2006). While much of the land in Aceh is not registered under state law, the destruction of some 90,000 titles, registration offices, and all field markers for plot identification coupled with the deaths of BPN (National Land Agency) officials threw the system of cadastres and deeds into chaos (Abidin *et al.* 2006). Of course, the Indonesia cadastre is problematic across Indonesia and the state of the cadastre

in Aceh during the conflict was unreliable, partial with a focus on urban areas, and contained many disputed claims (Interview UN-HABITAT, Banda Aceh, August 2006). *Adat* systems, common in rural areas, were more resilient than BPN-administered cadastral systems, but these informal systems also suffered from the loss of human knowledge surrounding use rights and informal arrangements. The massive destruction of the tsunami is thought to have played an indirect role in ending Aceh's cyclically violent separatist war that had claimed 15,000 lives and paralyzed development for some 29-years (Gaillard *et al.* 2008; Le Billon and Waizenegger 2007). The Acehnese separatist conflict was based on a mix of identity, political, and economic themes that drew from a century of violent conflict with colonial powers and the Indonesian state. Yet, eight months after the tsunami, the Helsinki Memorandum of Understanding (MoU) was signed between the rebel GAM (Gerakan Aceh Merdeka or the Free Aceh Movement) and the GoI. With an estimated $8 billion in post-tsunami aid pledges, the region then became one of the largest reconciliation, recovery, reconstruction, and development project in the world (Kenny *et al.* 2006).

While tenure security was not among the central issues identified as problematic for post-conflict demobilization, disarmament, and reintegration (WB 2006a), tenure insecurity was identified as a major concern for many actors involved in post-disaster recovery (Fitzpatrick 2005a). Many international donors, international nongovernmental organizations (INGOs), and state actors perceived the lack of state-issued land titles in lowland areas devastated by the tsunami as a reflection of tenure insecurity and as a central obstacle to tsunami recovery and future political and economic development (WB 2006b). 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).

While RALAS emphasized community participation in the mapping of boundaries and adjudication of claims, the emphasis on the primacy of statutory law, wide-scale state registration (or 'regularization'), and issuance of land titles caused several problems for the program. In Aceh, tenure security is a balancing act between three normative orders (or legal systems): *adat* (customary law), Islamic jurisprudence, and statutory law. Of course,

these three orders represent a dramatic simplification of actual practices on the ground. People sometimes draw simultaneously from the different orders or search for the most favorable forum for their arguments to be heard. The orders are not monolithic bodies of norms and laws. *Adat* practices can change in different communities and over time and state law changes according to jurisdiction, governmental level, and the department with which one interacts. As well, there are arguably other normative orders at work in the Aceh context (like rebel controlled areas or international and transnational discourses involving human rights and environmental stewardship). As one UNDP employee stated, "Sometimes I get the feeling that our advocacy for human rights and property claims just doesn't neatly fit into any of the existing understandings [*adat*, Islam, statutory law] of women and children's property rights" (Interview UNDP, Calang, May 2007). As well, the same UNDP employee went on to question the primacy of private property for mortgages in a post-conflict region that had neither functioning banks willing to give credit or an established and proven land management strategy.

Some of the greatest challenges to designing a program that could support tenure security were clearly in defining what constituted tenure security and then identifying how a program would navigate the multiple legal and normative systems regarding land and property to support tenure security. Despite the recognized need for respecting and working with non-state normative orders, RALAS transformed the need for tenure security into a blanket call for land regularization. Policy makers in Aceh adopted Hernando de Soto's land regularization logic that equates tenure security with statutory land title (de Soto 2000). In fact, BPN and BRR officials explicitly mentioned de Soto's ideas as the basis for the land administration program implemented in 2005 (interview BPN, Banda Aceh, August 2006; interview BRR, Banda Aceh, August 2006). While such a program is often an important part of providing tenure security for peri-urban and urban residents, for households exposed to real estate markets, and for migrants in new regions, in a post-conflict region where the state's legitimacy and capacity were undermined, these ideas need critical evaluation.

This discussion brings us to a second major problem: land is not only an economic asset, but

also a potent cultural and political symbol. Statutory land title was not only irrelevant to many of the rural communities of Aceh Jaya and Aceh Barat that were not exposed to land markets, it was also considered a burden (in the form of future taxes and fees) and land titling was opposed by some of the people who still felt that Aceh deserved more than recognition of special autonomy. One farmer made remarks typical of many interviewees, "Why should I pay tax for my family's land when the [Indonesia] government never did anything for me" (Interview Yuli, Calang, February 2008). Some community members and former GAM rebels even greeted land registration representatives with makeshift weapons hidden on them, indeed "this was not a welcome party" for the land registration project (Interview Muntasir, Calang, February 2008). Interestingly, a lowland tsunami does not wipe out all the political emotions of members of a separatist movement based largely in highland and forested areas. Even members of the UN staff questioned the logic of extending a large land titling program into a region where corruption was the norm and government legitimacy, capacity, and legal frameworks were not sufficiently developed to recognize local property rights. In fact, as of 2009, one of the main causes of tenure security for communities in the region continued to be state (including military, forestry, and other departments) claims to land, the lack of recognition of community maps made by NGOs and not with BPN officials, and the fact that some of the areas that had been targeted by RALAS were left in a legal purgatory because households had only partially advanced through the land titling process when RALAS (BPN officials) left their communities. Additionally, the Aceh Legal Aid Foundation's activities of educating communities about their property rights and mounting legal challenges to property grants and transfers enacted during the conflict years led to the arrest of some of their staff for committing acts against the state (Interview Mukir, Banda Aceh, June 2008).

In this case, the lack of sufficient attention to (1) a clear statutory legal framework for recognizing property rights and alternative tenure systems, (2) local incentives and disincentives[62] to title land with the state, and (3) lingering identity conflict (i.e. separatist

[62] While first time registration fees were covered, future transaction costs and taxes were unclear and usually not explained to registrants. Also, the main targeted benefit of the program was to allow titled holders to "liberate their dead capital" (Interview BPN, Banda Aceh, August 2006). Yet, despite

sentiment in areas of Aceh) led the state to pursue a program that in the end issued less than 30% of its targeted 600,000 titles. Returning to the question of social identity – PCNRM framework, in this case we see a link three (resources with such strong cultural or political meaning to identity groups that they become indivisible and any limits to use or ownership would threaten a group's identity) but also link two (organization in the absence of a centralized territorial authority – interest and identity groups). Recognizing and factoring in the constitutive dimension of property to the policy development stage in Aceh may have helped overcome some of the problems with determining appropriate activities, timing, locations, and forms of property for implementing a tenure security project. It may have at least led to questions about the relevance of private property categories and timing and logic of implementing land titling in or near former rebel regions and areas that had never previously been registered due to lack of community desire to sell land.

6.4.4 LINK 4: SAVING FACE

The fourth link describes when winning or losing itself can take on a symbolic significance, even when resource ownership or access is of marginal economic importance. In these

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anecdotal evidence of business people in Banda Aceh and other urban areas mortgaging their land, most of the people in Aceh have alternative means to access temporary financial assistance through social networks or arrangements involving, for example, forward sales of crop harvests, cooperatives, or mortgage on vehicles (Direct Observation, April-May 2007). 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 wellbeing (their land or home) and cannot extract land that is embedded in social relations and obligations (Interview Mukir, Banda Aceh, June 2008). Several bank representatives expressed hesitation at taking land as collateral even if it is formally titled because the social relations and legal framework surrounding the land may limit its use and because it is difficult to value rural lands where there is no developed market. Deutsch (2009:43) reported that "within the study sample, 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." Yet, he notes the small sample size and does not account for factors like the possible increase in investment and lowering of collateral standards in the region due to the end of the war or the focus of the study on areas where land markets already exist. While there are plenty of examples of how formal registration has allowed investment in urban areas, there is no clear evidence that livelihoods required formal land title or that the process of registering land has allowed the poor to access more resources or encouraged international investment to the benefit from the peacebuilding process.

situations, the act of winning or losing conflicts over resources takes on symbolic value and victory itself becomes a new source of political value whether or not the resource is economically valuable. Most of the below material is drawn directly from the Permanent Court of Arbitration documentation on *The Government of Sudan / The Sudan People's Liberation Movement/Army (Abyei Arbitration)* (2009).

Case Study: Abyei, Sudan

Abyei is located at the center of Sudan in an oil-rich area that has been at the heart of a dispute between communities representing the north and south of Sudan for the past 40 years. The main populations in this region are the *Ngok Dinka* (who are associated with the south and the Sudan People's Liberation Army (SPLA)) and the *Messiria* (who are associated with the north and the Khartoum-based government). Although there has never been a clear and unanimously accepted line dividing this region into north-south zones, in 2005 the Abyei Borders Commission attempted to delineate north and south zones in this region. The results of the Abyei Border Commission were rejected by the Khartoum-based government and from 2005-2009 the region experienced several bouts of violent conflict and mass migrations of thousands of people. In anticipation of a 2011 referendum for the independence of southern Sudan, the Permanent Court of Arbitration (PCA) in The Hague attempted to redefine the borders of the Abyei region on 22 July 2009.

Although, the PCA borders changed control of nearly 45,000 square kilometers of land from the south to the north and also gave a large part of the region's rich oil fields and the area through which the Great Nile oil pipeline runs to the Khartoum-controlled government of the north, the PCA decisions were largely celebrated as a win-win decision. One of the reasons cited for the intractable conflict was the fact that the interests of the different groups had not been clearly defined. While both parties were interested in controlling the oil fields and pipeline, the act of winning (or not losing) in this situation took on a symbolic significance for the *Ngok Dinka*, a significance that went beyond material interests in the allocation of the region's rich oil fields. The PCA ruling resulted in an unequal division of the oil riches but recognized both the territory's significance to the *Ngok Dinka* (a type three link) and the importance of not losing to both parties (a type four link).

> Redrawing the borders of the region, the ruling gives the north uncontested rights to rich oil deposits like the Heglig oil field, which had previously been placed within Abyei. But the decision leaves at least one oil field in Abyei and gives a symbolic victory to the *Ngok Dinka*, affirming their claims to the heartland of the fertile region… "Who controls Abyei has taken on a symbolic importance beyond the traditional tensions over oil," said Colin Thomas-Jensen (Otterman 2009: online)

In addition to the four links just described, larger conflicts may also spill over into smaller resource disputes or undermine PCNRM projects that do not seem to be related to the central problems of the original conflict. For example, land administration programs in Aceh from 2005–2008 did not adequately recognize separatist identity issues and how these issues impacted the legitimacy of the Indonesian state in a separatist region and thus the state's ability to implement a land administration system or the appropriate timing and location of such a program (Direct Observation, April-May 2007). Where existing frames for cooperation and legitimacy do not exist and cannot be created, community participation—especially in land use decisions—may not be forthcoming (Kaufman and Smith 1999). The shadow of identity conflict can be cast over resources not directly involved in armed conflict.

6.5 Policy Responses

Because the four links described above may occur in any combination in a conflict or post-conflict setting, there can be no single recipe for PCNRM in situations where social identity is involved.. To be effective, policies must first simply recognize that social identity plays a key role in PCNRM and that social identity is neither inherited nor static but is rather constructed, either categorically or relationally, through a framing process that must be understood in order to successfully engage in a peacebuilding process. Recognizing how constitutive property figures in identity is also critical in determining what approaches are appropriate for the type of link between identity and natural resources. Where a conflict of interest over economic values exists between groups, economic incentives can often contribute to peacebuilding. However, where conflicts over cultural and political values are entrenched in protracted social conflicts, more intense reframing (away from conflict identities or towards strategies for partial recognition) are required. Several post-conflict policy options for dealing with PCNRM and identity issues are described in Table 5.1.

In examining these links through three case studies, I presented how these links can occur simultaneously and how political and cultural values are not naturally present – they are continually manipulated by elites and other institutions or actors or transformed through alternating contexts and framing processes. Referring back to the case of Aceh, we see clearly typical characteristics of link two and three, suggesting that a more appropriate response would have been state recognition of group property rights, community-based NRM with appropriate legal framework, recognition of the authority of the various identity groups, and a state-led reorganization of property rights. Such approaches are outlined in Table 5.1 which can be applied to each of the case studies to examine possible approaches to PCNRM that might prove to support peacebuilding by recasting identity as a framing process and recognizing that different identity frames are linked to natural resources in different ways. Radin's (1993) idea of personhood and property provides an avenue to recognize and explore which identity frames may or may not be linked to constitutive or fungible property types. In the case of link one connections in Liberia, I argue that PCNRM interventions into managing control over fungible property is critical, but does not necessarily need to implicate complicated social identity relations. In Chiapas, both the ability to manage fungible property in absence of central territorial control (Link 2) and connections that recognize constitutive property and identity connections (Link 3) were present. This situation, like that of Aceh, requires more nuanced approaches to managing authority and identity based claims to resources. Such approaches are presented in Table 5.1. Lastly, in the case of Abyei, simply equitably dividing resources or resource access is not necessarily the resolution to situations where identity is not clearly tied to the resources itself, but to victory in a resource based conflict (Link 4). In such cases, approaches that reframe identity categories to find new ground to work from or that base approaches to resolution on procedural justice victories rather than outcome victories are some of the most interesting and possibly productive approaches to PCRNM and peacebuilding.

Table 6.1 PCNRM Policy Options

Conflict Type	Social identity–natural resource link	Possible policy responses
Conflicts of interest	Resources are at the center of conflicts between groups that have mobilized according to historic identity frames or defined themselves in reference to the resource conflict.	1. Interrupt high-value resource commodity chains, and provide alternative livelihoods. 2. Interrupt relational or categorical modes of identification with narratives from alternative historical periods or interest frames.
	Social identities are the main way in which people organize resources in the absence of a centralized territorial authority.	1. Seek state recognition of group property rights, which use property administration systems oriented toward communal and individual titles.[63] 2. Implement community-based NRM with appropriate legal frameworks. 3. Recognize the authority of identity groups or assign authority to them. 4. Seek state-led reorganization of property rights, where it is possible to equitably implement such programs in accordance with existing rights and obligations.
Conflicts of value	Resources have symbolic cultural or political meaning and may be indivisible.	1. Disaggregate the demands of groups to see if separate rights, timing, locations, or other variables can be negotiated according to identity group. 2. Reframe identity beyond categorical modes of identification using references to alternative historical periods or interest frames.
	Winning or losing takes on a symbolic significance even if the resources themselves are of marginal importance.	1. Disaggregate the demands of groups to see if separate rights, timing, locations, or other variables can be negotiated according to identity group. This approach may reveal that there is no real conflict of value, or at least clarify what the conflict of value is about. 2. Seek agreement on procedural justice standards. 3. Reframe identity beyond categorical modes of identification using references to alternative historical periods or interest frames.

[63] This can be done by advocating for land administration systems and legal frameworks capable of recognizing communal and individuals titles and developing social tenure domains models. A social tenure domain model (STDM) is a type of land administration system that uses alternative representational formats to represent property ownership in situations where strictly defined, parcel-based land administration does not correlate to actual relations on the ground. The STDM is an effort to develop pro-poor, flexible land administrative systems (Lemmen 2010).

6.6 CONCLUSION

The links between social identity and natural resources in violent conflicts affect the strategies that can be used for successful PCNRM. There are four key ways in which identities are constructed in reference to armed conflicts involving resources, and four ways in which social identity and natural resources are linked in PCNRM. The four PCNRM links and the policy responses identified in this chapter provide the beginning of a policy tool for understanding connections between natural resources, social identity, and peacebuilding. Applying this policy tool may provide insights into ways to manage resources for peacebuilding in situations that are considered intractable. While current policy responses frequently focus on fixed social identities and static territorial boundaries, , alternative approaches that engage with constructivist understandings of social identity may provide opportunities for creative solutions. These creative solutions might involve reframing identities in order to disrupt incentives to violence, searching for ways to recognize group rights, establishing procedural justice standards for negotiation, or disaggregating group demands into negotiable subsets.

Further work in this area might focus on which resources commonly accrue high symbolic value and what are ways in which these resources can be managed. Further research is needed to examine how alternative definitions of social identity and different forms of violent conflict at different social and political scales might change the links and thus foundations of the analytical framework identified in this paper. Disaggregating the ways that different types of identity and interest groups link to PCNRM and exploring how specific group characteristics (gender, class, or otherwise) and specific resource types interact would further advance the policy tool I offer in this chapter. Finally, next steps involve applying this or an improved framework to single case studies in order to provide more in-depth understanding of social identity formation, mobilization, and involvement in violent resource conflicts.

CHAPTER SEVEN: CONCLUSION

In this dissertation, I have argued that post-conflict dynamics around property were largely overlooked in the aftermath of the massive natural disaster in Aceh in 2004. The GOI and World Bank moved forward with statutory titling system due to the destruction caused by the natural disaster. Yet, they moved forward in June 2005 before a peace agreement had been reached by parties at war with each other for 29-years and in a region where the state run property system was widely considered as corrupt, expensive, and not relevant to the everyday practices of people on the ground. This dissertation does not argue that RALAS was futile, but rather that in setting aside conflict issues around property, RALAS did not reach its full potential and was inadequately timed and designed for the complexities on the ground. I argue that in promoting a vision of property as only a right to be guaranteed by the state, and specifically the right to transfer, the social embedness of property was overlooked to the detriment of the project and to the people of Aceh. Clearly, there were bureaucratic bottlenecks, but the underlying post-conflict property dynamics were never recognized and this hindered implementation and participation. The ways that social identity is interlinked to property and peacebuilding; the ways that jural relations of property are manipulated over scales of governance; and the ways that narratives surrounding property support specific justifications for and definitions of property all need to be considered in post-conflict scenarios – even those in massive post-disaster settings.

While the links between property and territory are complex, the webs of governance in which people live their lives are clearly influenced by ways in which communities and modern states influence the grid of property relations that define their sociospatial existence (Blomley 2003). Jeremy Bentham wrote in his book *Theory of legislation* that, "There is no image, no painting, no visible trait, which can express the relation that constitutes property. It is not material, it is metaphysical; it is a mere conception of the mind" (1864, 111). The ways in which we approach property reflect how we conceive of our world and our proper place in that world. In post-conflict societies, property thus often means more than just a means to a livelihood or a claim to inheritance. It means taking a stance on specific social relations, specific relations between nations and states, and specific ways of living in the world. If nothing else, this dissertation reveals that in development

circles, the view of Gray and Gray (2009, 87) that "our everyday references to property are unreflective, naïve and relatively meaningless" is not only true but dangerously true in the context of peacebuilding.

The December 2006 elections in Aceh were celebrated as a remarkable event. They were "the first-ever direct local elections in Aceh, the first elections there of any kind after the August 2005 Helsinki peace agreement […] and the first in Indonesia allowing independent (non-party affiliated) candidates to stand" (ICG 2007, 1). The newly elected governor of Aceh (Irwandi Yusuf) was a former GAM member that survived the tsunami by climbing above the water to the roof of the Keudah Prison in Banda Aceh where he was being held for interrogation during the war (Mydans 2007). The stories of his survival of the tsunami and the reemergence of Acehnese society after the conflict represent the success of a resilient people. Yet, an "unfinished reconciliation" haunts the Acehnese recovery and integration into Indonesian society (Jakarta Post, 27 February 2012).

Celebrations over the 2006 elections tended to overlook the internal divisions within GAM; the impact of Governor Irwandi Yusuf's absolute rejection of the separatist agenda and failure to call more strongly for justice for conflict victims; the complex role that Islam played in Acehnese politics and would play in governance; and the ongoing struggle between provincial elites and the GOI over representation of regional political parties (ICG 2007; Aspinall 2009, 2012). Since 2006, there have been several incidents of violence that raise questions about the stability of peace, including kidnapping and beating of soldiers by factions of GAM (Jakarta Post, 29 September 2008). Despite the disarmament, weapons remain distributed throughout the province (Jakarta Post, 27 February 2012). The buildup to the 2012 elections was marred by several deaths, intimidation, and an assassination attempt on Irwandi Yusuf (Bachelard 2012; Jakarta Post, 28 February 2012). While the recent political violence has been categorized as violence between former GAM members, it indicates that a culture and capacity for violence still exist. The Aceh Party's Zaini Abdullah (the GAM negotiator for the Helsinki MOU) and Muzakir Manaf (former GAM guerilla commander) won the governor and deputy governor's seat with over 50% of the provincial

Figure 7.1 Section of the 2012 election poster for Governor Zaini Abdullah and Deputy Governor Muzakir Manaf. Source: Partai Aceh

vote in 2012. Their campaign utilized GAM related symbols, dressed itself in clothing and symbols representative of Acehnese identity, and associated itself closely with Islamic piety (see Figure 7.1 wherein the clothing represents Acehnese traditional garb and *Insya Allah* is the Indonesian spelling of the common Muslim saying "god willing"). The campaign ran under the slogan "Struggle and Peace" (*Perjuangan & Perdamaian*) indicating that the party embodied both the historic battle to liberate the Acehnese and a commitment to peace in the future. Yet, after the inauguration ceremonies for Zaini, the former governor Irwandi was physical beaten as partisans called him a traitor to GAM and Aceh (Arnak 2012).

In August 2012, the *Wali Nanggroe* Malik Muhamad echoed several years of complaints about the 2006 LOGA when he stated that if remaining issues from the 2005 Helsinki MOU were not settled by 2014, "he could no longer guarantee [the absence of] future problems

between Indonesia and GAM" (Partai Aceh, 15 August 2012). In March 2013, the DPRA passed a *qanun* that made the former GAM rebel flag the new provincial flag. Jakarta gave the Aceh government 15 days to "rethink its bylaw" in the context of Indonesian national integrity (Simanjuntak 2013). In April 2013, Amnesty International released a report that acknowledged the great success of economic development and regional autonomy in Aceh, but also outlined the failures of the GOI to acknowledge and remedy the damages to conflict survivors (Amnesty International 2013). Amnesty International argued that these failures to address truth and reconciliation and lingering conflict issues posed an ongoing threat to peace. The Jakarta Post went with the headline "Aceh at Risk of Retuning to Violence" (Dawson *et al.* 2013).

Nearly a decade after the tsunami, the physical and cultural landscapes of Aceh remain marked by the natural disaster and thirty-year conflict. A complex political landscape that combines Acehnese identity, Islamic principles, violence, and territorial control continues to play out through the many levels of government in Aceh. In fact, politics in Aceh might be considered the continuation of war by other means.[64] The control of property and territory has always and continues to play an important role in determining the strength of authority.

A geography of peace is not simply the absence of violent conflict. A geography of peace is a recognition of justice in the sociospatial processes through which we make our world. At the heart of many of those sociospatial processes is our personal relationship with land, as mediated by the social relations of property. In this dissertation, I have explored several ways of moving beyond conceptualizing property as a simple bundle of rights. This dissertation goes beyond rights-based approaches to advance understanding of how the social embeddedness of property impacts PCNRM and peacebuilding by critically examining experiences and debates regarding property in post-disaster, post-conflict Aceh, Indonesia. Each of the three objectives in the dissertation was examined in three manuscripts that make theoretical and practical contributions to the fields of property, PNCRM and peacebuilding, legal geography, and social identity.

[64] Carl von Clausewitz famously said "War is the continuation of politics by other means."

Chapter Four addressed the first objective and identified how the framing of property issues by individuals and organizations active in post-disaster/post-conflict recovery and reconstruction (stabilization and transition) impacted the design, implementation, and outcomes of the land titling project RALAS. In investigating how property issues were framed in Aceh, I used Rose's (1994) work on the narratives of property. Drawing from the concepts of 'propertied landscape' (Blomley 1998) and 'evidence landscape' (Unruh 2006), I argued that narratives that framed property issues as post-disaster problems led to policies that failed to consider the nexus of property, land, social identity, and political authority in a separatist region; impacted the success of RALAS in issuing land titles; and led to missed opportunities for post-conflict land management to contribute to peacebuilding. This chapter concluded with a number of lessons learned regarding improvements to legal ambiguity, appropriate timing and geographic locations for property registration, linking community participation to administrative transparency and accountability in order to improve confidence in the registration process, and integrating post-conflict and post-disaster activities when dealing with land issues in complex political emergencies.

Chapter Five addressed the second objective and examined the interaction of political authority, scalar politics, and property. I outlined a framework for understanding property based on Hohfeld's (1913) work on jural relations, Singer's (2000) work on obligations, and scalar politics in relation to property (Sikor 2004; McCarthy 2005a, 2005b; Mackinnon 2011). I examined experiences of property registration and land titling in a rural village and a peri-urban neighborhood in Aceh, Indonesia. In both cases, the process of formalizing property rights in statutory systems fundamentally changes ways in which property is defined and enacted on the ground. The research results showed that the consolidation of political authority and the outcomes of post-conflict natural resource management strategies were dependent on the interplay of property relations and scalar politics. I argued that recognition of the way scalar dimensions of property relations interact with authority provides insights into the appropriate timing, location, and procedures for land titling in post-conflict scenarios. In addition, I used the links between scalar politics and property relations to suggest that theories of normative pluralism and understandings of legal ambiguity need to include a better understanding of sociospatial scale. In conclusion, I

argued that an international body that has the technical and theoretical skills to integrate approaches to mixed natural disaster and conflict scenarios might be able to provide the oversight necessary for integrating different streams of aid. The framework in this chapter is a novel approach to combining property relations and scalar politics.

Chapter Six addressed the third objective and developed a policy tool integrating the complexity of the social embeddedness of property into the design of post-conflict natural resource management and peacebuilding policy options. Using Radin's (1993) idea of 'personhood' or 'constitutive property' I examined how links between social identity, natural resources, and armed conflicts affect peacebuilding and post-conflict natural resource management (PCNRM). I argued that social identities are flexibly constructed and linked to natural resources through both individual agent decisions and elite manipulation of political discourses. I outlined ways in which social identities are mobilized in conflicts wherein resources have political and cultural values. Drawing from my fieldwork in Aceh and review of other PCNRM cases, I proposed a policy tool for assisting property management in post-conflict environments that embody a number of different possible social identity, natural resource, and conflict connections outlined in the text.

While the above chapters make contributions to theory and practice in the field of PCRNM, there were limitations to my research. In addition to the typical challenges of research in international areas (e.g., learning a new language, recruiting translators, dealing with logistics, the cost of travel, and learning new administrative systems) the research in this dissertation occurred in a post-conflict context where informant information is sensitive. It was often difficult to gain access to political elites and former combatants. Although, I promised local interviewees discretion with their information as to avoid any repercussion for their cooperation with this research, inevitably the written text of the dissertation provides clues to some of the people that I interviewed. I have done my best to change names when appropriate so as not to jeopardize the safety of respondents. Other researchers in the region have released long lists of all people contacted in the field that I personally do not feel comfortable releasing given the commitment I have to maintaining confidentiality of my informants.

As a non-Muslim, I was occasionally denied access to some areas. As a man, I did not have access to interviews with many women to gain their insights and experiences regarding property, especially in rural areas. Finally, as my research took place over several trips and several years, sometimes the people I interviewed one year would be gone by the time I came back to check on how their story was evolving in following trips. While this is to be expected in any longitudinal study, it was difficult in Aceh for me to obtain follow up information to contact people that had moved on to other cities or back to villages.

This dissertation is a springboard for a number of future research projects. While of great interest to me during my data analysis, I was unable to integrate the approach to recognition between socio-legal systems that Morse and Woodman (1988) outline due to the complexity of the field in Aceh. In literature on normative pluralism, much has been written about the competition between normative orders but less about their hybridity (Santos 2006). Morse and Woodman's approach might provide some interesting insights into legal hybridity that inform both how statutory systems treat evidence and how political activists might approach property issues.

In normative pluralism literature there is an opportunity for new analyses that examine types of normative orders (Tamanaha 2007b) and whether different types of normative orders use similar types of evidence, property narratives, and dispute resolution mechanisms. Such research is not limited to post-conflict scenarios, but could be applied to a number of situations in industrializing and industrialized countries.

As mentioned in both Chapter Four and Chapter Six, more work needs to be done on (1) establishing appropriate timing of interventions for tenure security in post-conflict scenarios, (2) understanding how to create legal frameworks that can integrate multiple approaches to property in regional systems while avoiding legal ambiguity, and (3) investigating how to create temporary statutory laws that promote phased transitions to unified property administration systems – where appropriate. Likewise, social tenure domain models (STDM) might provide some unique tools for recognizing the social embeddedness of property and I believe that more exploration of such models in post-conflict scenarios can be an important practical contribution to the field.

In Chapter Five, I propose a policy tool but also call for more research on how to approach social identity and different types of violent conflicts and natural resources. Work on the characteristics of natural resources has already shown that the geographic location and characteristics (e.g., market value, spatial diffusion, and 'lootability') of natural resources play a role in determining the connections between conflict and natural resources (Ross 2004). Likewise, such characteristics should be factored into understanding PCNRM for peacebuilding.

As we come to the close of this dissertation, I hope that the reader takes a way a keen sense that the philosophical and legal approaches to property used in development are often missing some key ingredients; namely, awareness of the narratives, emotive connections, and actual jural relations that constitute property. Approaches to property management in post-conflict scenarios around the world reflect these biases. In pointing out these biases and exploring alternative ways of approaching property, I hope that this dissertation opens up new ways of understanding property and hearing what justice truly means to people dispossessed of land and property in post-conflict scenarios.

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APPENDICES

APPENDIX I: RESEARCH ETHICS BOARD APPROVAL

McGill

Research Ethics Board Office
McGill University
1555 Peel Street, 11th floor
Montreal, QC H3A 3L8

Tel: (514) 398-6831
Fax: (514) 398-4644
Ethics website: www.mcgill.ca/researchoffice/compliance/human/

Research Ethics Board I
Certificate of Ethical Acceptability of Research Involving Humans

REB File #: 236-1208

Project Title: A geography of peace: land reform and conflict transformation

Principal Investigator: Arthur Green **Department:** Geography

Status: Ph.D. student **Supervisor:** Prof. Jon Unruh

Funding agency and title: United States Indonesian Society; McConnell Fellowship(McGill Major)

This project was reviewed on 7 JAN 2009 by

Expedited Review ✓
Full Review ____

Catherine Lu, Ph.D.
Chair, REB I

Approval Period: January 7, 2009 **to** January 6, 2010

This project was reviewed and approved in accordance with the requirements of the McGill University Policy on the Ethical Conduct of Research Involving Human Subjects and with the Tri-Council Policy Statement: Ethical Conduct For Research Involving Humans

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*All research involving human subjects requires review on an annual basis. A Request for Renewal form should be submitted 3-4 weeks before the above expiry date.
*If a project has been completed or terminated and ethics approval is no longer required, a Final Report form must be submitted.
*Should any modification or other unanticipated development occur before the next required review, the REB must be informed and any modification can't be initiated until approval is received.

APPENDIX II: APPROVAL FROM PUBLISHER TO USE ARTICLES IN DISSERTATION

Gmail by Google

Arthur Green <arthurgreen4@gmail.com>

Chapter Waiver for Arthur G Green

Carl Bruch <bruch@eli.org> Wed, May 30, 2012 at 7:57 AM
To: Arthur Green <arthurgreen4@gmail.com>
Cc: "Jon Unruh, Prof." <jon.unruh@mcgill.ca>, Marion Boulicault <boulicault@eli.org>

Hi Gill,

Please see my comments below.

Warm regards,

Carl

****

Carl Bruch

Senior Attorney

Co-Director, International Programs

Environmental Law Institute

2000 L Street NW, Suite 620

Washington, DC 20036

Tel: (202) 939-3879

Fax: (202) 939-3868

****

From: Arthur Green [mailto:arthurgreen4@gmail.com]
Sent: Tuesday, May 29, 2012 6:06 PM
To: Carl Bruch
Cc: Jon Unruh, Prof.
Subject: Chapter Waiver for Arthur G Green

Hi Carl,

How are you doing? I have a few questions for you when you get a moment.

First, I need to get a copyright waiver from you. I am using the material in the two chapters that I wrote for ELI volumes as part of my dissertation. McGill requires that I get a copyright permission waiver from the publisher. Since I signed copyright papers with ELI, I thought it would be best to get the waiver from you or that you could direct me to the best person to talk with about getting the waiver.

For the waiver, all that is necessary is a response via email saying that I have permission to use the following chapters in my dissertation.

Green, Arthur. 2012. Social Identity, Natural Resources, and Peacebuilding. In *Strengthening Post-Conflict Peacebuilding through Natural Resource Management: Livelihoods and Natural Resources in Post-Conflict Peacebuilding (v.4)*, edited by H. Young and L. Goldman. London: Earthscan.

Green, Arthur. 2012. Title Wave: Land Tenure Security and Peacebuilding in Aceh. In *Strengthening Post-Conflict Peacebuilding through Natural Resource Management: Livelihoods and Natural Resources in Post-Conflict Peacebuilding (v.2)*, edited by J. Unruh and R. Williams. London: Earthscan.

CB: Yes, you have our permission to use those two chapter in your dissertation. We would appreciate recognition of their appearance on the two books. The following would be our proposed citation formats:

Green, Arthur. 2012. Social Identity, Natural Resources, and Peacebuilding. In *Livelihoods and Natural Resources in Post-Conflict Peacebuilding*, edited by H. Young and L. Goldman. London: Earthscan.

Green, Arthur. 2012. Title Wave: Land Tenure Security and Peacebuilding in Aceh. In *Land and Natural Resources in Post-Conflict Peacebuilding*, edited by J. Unruh and R. C. Williams. London: Earthscan.

Second, are the page numbers for these different chapters established? I need it for the official citation in my dissertation. On the book's webpages, I can see the order of chapters, but I can't find the pages.

CB: We almost have the page numbers for the land volume established, but it will probably be a month. Is that too late to send them to you? If so, do you want us to guess as to the pages?

Third, can someone send me a final copy of the edited versions of these chapters in Word format or pdf format? I need to clarify where there are any differences between the published chapters and the dissertation chapters (the PhD chapters are typically more in-depth).

CB: Marion, could you please help on this?

Thanks!

Gill

APPENDIX III: CALENDAR OF FIELDWORK AND PUBLICATIONS

Dates	Activity
2006 May-August	Language Training in Yogyakarta, Indonesia.
2006 August	Scoping visit to Aceh: Initial field site visit, semi-structured interviews in Banda Aceh.
2007 April	Aceh arrival and prep.
2007 May-June	Aceh: Focus groups and semi-structured interviews in Banda Aceh, Aceh Jaya, Aceh Barat.
2008 February	Aceh: Focus groups and semi-structured interviews in Pidie, Aceh Barat, Aceh Jaya, and Banda Aceh.
2008 April	Boston: Presentation of initial results at 2008 AAG (Boston) Montreal: Surgery for leg injury limits mobility.
2008 May	Scoping visit to East Timor: collected semi-structured interviews and archival data to see if comparative case study could be done with Aceh.
2008 May -June	Aceh: Focus groups and semi-structured interviews in Pidie, Aceh Barat, Aceh Jaya, and Banda Aceh.
2008 September-2009 December	Data Analysis: East Timor, more work on Aceh data (coding and content analysis).
2009 March	Presentation of results at 2009 AAG (Las Vegas).
2009 December	Submission of Chapter Four and Chapter Six for publication.
2010 April	Presentation of Chapter Five 2010 AAG (Washington).
2010 June	Presentation of Chapter Six for edits at CAPRi (Siam Reap).
2010 July – 2013 April	Full-time college professor at Okanagan College and lecturer at UBC-Okanagan.
2010 August – 2013 January	Data Analysis: Aceh. Dissertation writing.
2013 April	Submission of Chapter Five for publication.
2013 April	Initial submission of dissertation.
2013 May	Publication of Chapter Four (book released).
2013 September	Publication of Chapter Six(book released).

APPENDIX IV: EXAMPLE SEMI-STRUCTURED INTERVIEW

Oral Consent Text

English:
"Hello. My name is Arthur Green. I am from Canada. I am student at McGill University. Can I ask you some questions?

Today, I would like to ask you some questions about community priorities for development and any experience you have with land management. This process should take about an hour. All information shared in this [focus group/interview] will be securely stored and if published will be anonymous. Your names will not be included in this information. No one will be able to connect this information to you in the future. Information will be used to evaluate your experience with land registration and I may provide some information to ICRAF to help them evaluate potential needs for farmer and commercial training in this region.

If you would not like to participate or answer, please feel free to decline to answer, to leave the meeting, or to inform me that you would like to stop the meeting.

Do I have your oral consent to start with our questions?"

Bahasa Indonesia:
Nama saya Arthur Green. Saya dari Kanada. Saya mahasiswa di McGill University. Dapatkah saya mengajukan beberapa pertanyaan?

Hari ini, saya ingin mengajukan beberapa pertanyaan tentang pengembangan masyarakat dan pengelolaan lahan. Proses ini akan memakan waktu sekitar satu jam. Semua informasi yang dibagi dalam [focus group / wawancara] akan disimpan dengan aman dan jika dipublikasikan akan menjadi anonim. Nama Anda tidak akan disertakan dalam informasi ini. Tidak ada yang akan dapat menghubungkan informasi ini kepada Anda di masa depan. Informasi ini akan digunakan untuk mengevaluasi pengalaman Anda dengan pendaftaran tanah dan saya dapat memberikan beberapa informasi untuk ICRAF untuk membantu mereka mengevaluasi kebutuhan potensial bagi petani dan komersial pelatihan di wilayah ini.

Jika Anda tidak ingin berpartisipasi atau menjawab, jangan ragu untuk menolak untuk menjawab, untuk meninggalkan pertemuan, atau untuk memberitahukan bahwa Anda ingin berhenti pertemuan.

Apakah saya harus persetujuan lisan Anda untuk memulai dengan pertanyaan? "

Contact:
Arthur Green
Tel: +1 514 839 7479
Email: arthur.green@mcgill.ca

1. Date
2. Location
3. Context of interview (setting)
4. Interviewee position (for interview) and other positions/affiliations (political, social, etc.)
5. Number of people and who in presence?
6. Gender
7. Themes (not necessarily presented in this order during the focus group)
    1. Conversational Talk About Them
        1. Talk about them
        2. Their experience of tsunami
        3. Let them express any other personal/political things they want
        4. Any questions they have
        5. Let them tell story about the GOI-GAM conflict
    2. Area of work/livelihood
        1. Where is area of work?
        2. If agency, how many people served and demographics?
        3. If individual, ask information about household size and composition?
        4. What are the activities the interviewee participates in?
    3. Livelihoods
        1. Name main livelihoods in community
        2. What are most common regional products
        3. Commodity chains description: who produces, who buys, who transports to market, who buys in market, prices, quantities, storage areas, anything else.
        4. Finance relationships with intermediaries
    4. Development needs in the area of work
        1. Rank 3-5 top priorities (not vague, need clear actions)
        2. How is their work involved with these priorities?
        3. More in depth understanding of their institutional priorities and activities
    5. Resource tenure
    6. Resource tenure
        1. Main land use types in area?
        2. What laws do they use to manage land/resource ownership?
        3. How are disputes over ownership settled?
            1. disputes resolved
            2. disputes have not been resolved
        4. How did the tsunami change land ownership?
        5. How did 30 years of conflict change land ownership?
        6. Do women own land or other property?
        7. What are the major changes ownership over last 5-10 years?
        8. What are future plans for developing?
    7. RALAS
        1. Do you want to have state title certificates for the land?
        2. Why or why not?
        3. Have RALAS representatives come to this community?
        4. How many?
        5. What are their experiences with the RALAS staff?

1. Community land mapping
2. Community driven adjudication
3. Dispute examples and resolution methods
4. Official documentation available?
5. Was land all titled?
6. Was joint titling of women and men accomplished?
7. Were any errors in titles made?
8. What role did the community leaders play (geuchik, tuha peut, other)?
9. How about other officials (Sek des, Camat, Bupati… etc.)
10. Suggestions to make the RALAS process better?
11. How many people have mortgaged land? Why? Why not?

6. Any other comments about property registration?

8. What are some suggestions for my work in this area?
9. Further contacts (snowball)?
10. Any additional information they would like to share?
11. Open comments to all present.

Contact: Arthur Green, arthur.green@mcgill.ca, +15148397479

APPENDIX V: EXAMPLE FOCUS GROUP AGENDA

Oral Consent Text

English:
"Hello. My name is Arthur Green. I am from Canada. I am student at McGill University. Can I ask you some questions?

Today, I would like to ask you some questions about community priorities for development and any experience you have with land management. This process should take about an hour. All information shared in this [focus group/interview] will be securely stored and if published will be anonymous. Your names will not be included in this information. No one will be able to connect this information to you in the future. Information will be used to evaluate your experience with land registration and I may provide some information to ICRAF to help them evaluate potential needs for farmer and commercial training in this region.

If you would not like to participate or answer, please feel free to decline to answer, to leave the meeting, or to inform me that you would like to stop the meeting.

Do I have your oral consent to start with our questions?"

Bahasa Indonesia:
Nama saya Arthur Green. Saya dari Kanada. Saya mahasiswa di McGill University. Dapatkah saya mengajukan beberapa pertanyaan?

Hari ini, saya ingin mengajukan beberapa pertanyaan tentang pengembangan masyarakat dan pengelolaan lahan. Proses ini akan memakan waktu sekitar satu jam. Semua informasi yang dibagi dalam [focus group / wawancara] akan disimpan dengan aman dan jika dipublikasikan akan menjadi anonim. Nama Anda tidak akan disertakan dalam informasi ini. Tidak ada yang akan dapat menghubungkan informasi ini kepada Anda di masa depan. Informasi ini akan digunakan untuk mengevaluasi pengalaman Anda dengan pendaftaran tanah dan saya dapat memberikan beberapa informasi untuk ICRAF untuk membantu mereka mengevaluasi kebutuhan potensial bagi petani dan komersial pelatihan di wilayah ini.

Jika Anda tidak ingin berpartisipasi atau menjawab, jangan ragu untuk menolak untuk menjawab, untuk meninggalkan pertemuan, atau untuk memberitahukan bahwa Anda ingin berhenti pertemuan.

Apakah saya harus persetujuan lisan Anda untuk memulai dengan pertanyaan? "

Contact:
Arthur Green
Tel: +1 514 839 7479
Email: arthur.green@mcgill.ca

1. Date
2. Location of community (include location in travel time and distance to regional capital)
3. Context of meeting (setting)
4. Number of people and who in presence (gender count, ages, other details)
5. Note the position/affiliation of those present if possible
6. Themes (not necessarily presented in this order during the focus group)
    1. Conversational Talk About Them
        1. Talk about them
        2. Their experience of tsunami
        3. Let them express any other personal/political things they want
        4. Any questions they have
        5. Let them tell story about the GOI-GAM conflict
    2. Population movement
        1. Migration into and out of village?
        2. Demographic changes over last 5-10 years?
    3. Livelihoods
        1. Name main livelihoods in community
        2. What are most common regional products
        3. Commodity chains description: who produces, who buys, who transports to market, who buys in market, prices, quantities, storage areas, anything else.
        4. Finance relationships with intermediaries
    4. Development needs in the area
        1. Ongoing activities
        2. Rank 3-5 top priorities (need specific items/actions):
            1. Brainstorm priorities in small group
            2. If large group, break into groups of 2-3 and get them to identify top 3-5 priorities then bring together
            3. Rank in consensus
        3. How would these changes affect their lives?
        4. How would these changes affect the lives of people around them?
    5. Resource tenure
        1. Main land use types in the village area?
        2. What laws do they use to manage land/resource ownership?
        3. How are disputes over ownership settled?
            1. disputes resolved
            2. disputes have not been resolved
        4. How did the tsunami change land ownership?
        5. How did 30 years of conflict change land ownership?
        6. Do women own land or other property?
        7. What are the major changes to land or forest ownership over last 5-10 years?
        8. What are future plans for developing land or forest in the community?
    6. RALAS
        1. Do you want to have state title certificates for the land?
        2. Why or why not?
        3. Have RALAS representatives come to this community?

4. How many?
5. What are their experiences with the RALAS staff?
    1. Community land mapping
    2. Community driven adjudication
    3. Dispute examples and resolution methods
    4. Official documentation available?
    5. Was land all titled?
    6. Was joint titling of women and men accomplished?
    7. Were any errors in titles made?
    8. What role did the community leaders play (geuchik, tuha peut, other)?
    9. How about other officials (Sek des, Camat, Bupati… etc.)
    10. Suggestions to make the RALAS process better?
    11. How many people have mortgaged land? Why? Why not?
6. Any other comments about property registration?

7. Open comments for all present.
8. Invitation to speak privately for any additional information they would like to share.
9. Field site visits (often farmers want to show us examples of what they were just explaining... plantations of fruit trees, areas damaged by tsunami, damage to water sources and wells, etc.)

Contact: Arthur Green, arthur.green@mcgill.ca, +15148397479

APPENDIX VI: CODING TREE

Interviews, focus groups, observations, archival research, and texts were analyzed using content analysis procedures. Content analysis follows Krippendorff's (2004) model of data organization. The approach to coding data follows Hsieh and Shannon's (2005) definition of directed content analysis – wherein theoretically informed codes are used to begin coding but inductively derived codes are also generated, added, and used through reiterative processes of working with the data. There were many challenges in coding. The reiterative process led coding and data analysis to be very time consuming. While I had intermediate language training in Bahasa Indonesia, many of the interviews were conducted in Acehnese and translated to English. Where I was unable to translate materials, I used automatic translation tools that did not always capture the nuances of texts. I did not have budget to allow intercoder reliability tests, though I distributed my coding manual to several colleagues for comments and changed the procedures and codes based on their input.

I used NVIVO to aid my coding. I coded in two phases: open coding and relational coding. Open coding required multiple sessions. In a first session with a document, I coded using the first level codes (the broad codes of "Time", "Location", "Tenure Issues", etc.). In a second session with the material, where appropriate I expanded on first level codes to specify a second level or third level code. For example, I might apply the first level code "Tenure Issues" on the first go around; on the second go around I would specify a second level code like "Conflict with State" or "Adverse Possession" or "Resettlement" or "Property Registration". If "Property Registration" is chosen as a second level code, I can go further with third level codes that specify whether registration deals with deeds or titles.

In relational coding, I tried examined how different authorities might be linked (or even created) to different practices involving property. This was a time consuming process that I think would have been better framed by theory generating several hypotheses which could then be tested against the data coded in the open coding session. I attempted to use autocoding procedures through NVIVO, but found that such an approach lost most of the nuances of the texts and did not work well on texts in Bahasa Indonesia due to my use of automatic translators to supplement by own ability to translate texts.

The below the codes used for the dissertation are presented by level:

1. Time (of activities in question or of issuance of legislation/policy)
    a. Before conflict
    b. During conflict
    c. Post-conflict (recovery, reconstruction, development)
2. Location (of activities in question or area targeted by legislation/policy)
    a. International Borders
    b. Local Regional (laws or activities focused on one region or locality – a municipal bylaw or national legislation that focuses on a region)
    c. National (laws or activities focused on the entire nation – national legislation)
    d. Periurban
    e. Rural Agriculture (rural regions that may be intensely settled by agricultural communities)
    f. Rural Remote (remote regions)
    g. Urban
    h. Other
3. Narrative
    a. Conflict
    b. Disaster
    c. Women
    d. Orphans
    e. Mortgage
    f. Human rights
    g. Environmental risk
4. Tenure Issues
    a. Conflict - State (conflict with a government office or authority)
    b. Conflict – Non-state (between private actors/non-state organizations/informal communities)
    c. Property registration (and land administration/information systems)
        i. Deeds registration
        ii. Title registration (Torrens title system)
    d. Indigeneity - Citizenship
    e. Land mines
    f. Evidence (of claim)
    g. Adverse Possession or Squatting
    h. Resettlement
    i. Restitution and/or Compensation
    j. Violence (death reported in relation to land disputes)

k. Inheritance
l. Gender
m. Adjudication
n. Conveyance
o. Mortgages
p. Taxes
q. Lease
r. Other

5. Land Tenure Regimes (types and characteristics)[65]
    a. Formal – State (statutory or official-legal)
        i. Private
        ii. Communal
        iii. State or Public Property (this includes parks)
            1. National (federal, this includes military)
            2. Sub-national (province, state, county, or district/sub-district)
            3. Local (city, village, "community", etc.)
        iv. Open-Access (abandoned)
        v. Other
    b. Formal – Non-state organizations
        i. Religious organization (non-state)
        ii. NGO (domestic NGOs)
        iii. INGO (CARE, Oxfam, Red Cross, diaspora organizations, etc.)
        iv. IGO (inter-governmental associations: UN agencies, ILO, etc.)
        v. Other
    c. Informal
        i. "Customary"
        ii. Refugee
        iii. IDP
        iv. Squatter
        v. Armed groups (holding territory)
        vi. Former combatants
        vii. Corruption or black market

[65] While we normally draw a distinction only between state and non-state orders, my dissertation research shows that we need to incorporate an understanding of other not quite informal land tenure regimes. For example, the policies that the UN pursued between 1999-2005 in East Timor do not count as state or as informal but are consistent with the idea of a normative order and a land tenure regime. The "Formal-State" section divides up major classifications under state law; the "Formal-Non-state" and "Informal" section do not address estates or classifications as they are simply descriptive of groups involved in land tenure regimes.

        viii. Other
    d. Gender
        i. Male
        ii. Female
    e. Age: mark only for "youth" groups
    f. Size of Regime Membership
        i. Small: Involving less than 100 households or 400 people
        ii. Medium: Between 100-500 households or between 400-2000 people
        iii. Large: Involving more than 500 households or 2000 people
    g. Other
6. Legal Mechanisms (linking land tenure regimes) (based on Morse and Woodman)[66]
    a. Positive (one-way)
        i. Admission as fact
        ii. Incorporation as law
    b. Negative (one-way)
        i. Prohibition
        ii. Denial of Validity
    c. Mutual Acknowledgement (two-way)
        i. Parallel functions: regimes function on same matter in same space and recognize their different outcomes as valid.
        ii. Collaboration: regimes collaborate with other regimes through special commissions (for example, mixed appointees on a committee).
        iii. Insertion: regime constitutes a level of another regime (for example, communal courts must be either recognized by or appointed by state government).
        iv. Substitution: a regime acts as another regime (state courts act in lieu of customary institutions).
7. Property Types
    a. Land
    b. House/Buildings
    c. Plants (Crops or Trees)
    d. Subsurface minerals
    e. Animals
    f. Water
    g. Other
8. Property Signifiers (evidence and representation of title or claim)
    a. Paper documents

[66] Since there are a variety of legal mechanisms, this framework is meant to classify major legal mechanisms – not list all of them.

        i. Title certificate
        ii. Sales receipts
        iii. Tax receipts
        iv. Church documents (parish documents)
        v. Documents issued by community
        vi. Other
    b. Images (satellite, aerial, drawings, etc.)
    c. Signs (worded signs in wood, plastic, metal, etc.)
    d. Oral Testimony or Witness
    e. Plants (Crops or Trees)
    f. Rocks
    g. Fence
    h. Natural Barriers
    i. Other
9. Property Rights[67]
    a. Possession: the right to possess (as different from ownership – such as a lease) or to gain other rights through possession (adverse possession).
    b. Passage: the right to enter a defined physical area and enjoy non-subtractive benefits (such as an easement or hiking, canoeing, camping, etc.).
    c. Withdrawal: the right to obtain resource units or benefit from them (usufruct, covenant, profits a prendre, etc.).
    d. Management: the right to regulate internal patterns of use and transform the resource (to create limits on passage and withdrawal rights).
    e. Exclusion: the right to determine who will have access to other rights.
    f. Alienation: the right to transfer rights.
10. Property Rights GOI
    a. Hak Milik – ownership (freehold)
    b. Hak Guna Usaha – cultivation only
    c. Hak Guna Bangunan (HGB) – building only
    d. Hak Pakai – use only
    e. Hak Pengelolaan – land management only
    f. Hak sewa – lease
    g. Hak membuka tanah – opening land
    h. Hak memungut hasil hutan – collecting forest products Hak milik
    i. Hak milik adat –individual, customary
    j. Hak ulayat –community, customary
    k. Hak tanggungan – mortgage

[67] There are several ways of dividing up rights. This is based on Dekker (2003).

11. Conveyance:
    a. pusaka (inheritance)
    b. penghibahan (presenting as a gift)
    c. publoue (selling)
    d. gantoue peunayah (compensation)
    e. peugala (pawning)
    f. mawaih (sharecropping)
    g. peuwakeuh (grant as wakaf land)
12. Governance
    a. Gampung
        i. geucik
        ii. religious leader
        iii. committee
    b. Mukim
        i. Imeum mukim
        ii. committee
    c. Kecamatan
        i. Camat
        ii. Secretary
    d. Kabupaten
        i. Bupati
        ii. Secretary
        iii. Legislature
        iv. Administrative Courts
        v. General Courts
        vi. Islamic Courts
    e. Province
        i. Adat institution (non-judicial)
        ii. Islamic institution (non-judicial)
        iii. Governor
        iv. Legislature
        v. Military Courts
        vi. Administrative Courts
        vii. General Courts
        viii. Islamic Courts
    f. National
        i. Presidential
        ii. Legislature
        iii. Military Courts
        iv. Administrative Courts
        v. General Courts

vi. Islamic Courts
vii. BPN
viii. MOF
ix. BRR
x. Other agency
xi. Other

g. Other

13. Other