

Human  
Settlements  
in Crisis

# A POST-CONFLICT LAND ADMINISTRATION AND PEACEBUILDING HANDBOOK

Volume 1: Countries with Land Records

UN  HABITAT

**From emergency to reconstruction**

**A POST-CONFLICT LAND  
ADMINISTRATION AND  
PEACE-BUILDING HANDBOOK**

**SERIES 1: COUNTRIES WITH LAND RECORDS**

**April 2007**

Copyright (C) United Nations Human Settlements Programme (UN-HABITAT), 2007

### **All rights reserved**

United Nations Human Settlements Programme  
P.O. Box 30030, GPO Nairobi 00100, Kenya  
Tel: +254 (20) 762 3120, Fax: +254 (20) 762 3477  
E-mail: [infohabitat@unhabitat.org](mailto:infohabitat@unhabitat.org)  
Website: [www.unhabitat.org](http://www.unhabitat.org)

### **Disclaimer**

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning delimitation of its frontiers or boundaries, or regarding its economic system or degree of development. The analysis, conclusions and recommendations of this publication do not necessarily reflect the views of the United Nations Human Settlements Programme, the Governing Council of the United Nations Human Settlements Programme, or its **Member States**.

HS/945/07E  
ISBN: 978-92-1-131921-7

## Foreword

Throughout history, conflicts have been waged over land. Confrontations over territory, border disputes, the illegal occupation of the territory of one state by another or grievances stemming from inequitable access to land resources invariably have had dramatic consequences for human settlements. Never before has this been truer than with today's very different types of conflict which tend to take place within nations rather than between them. While the humanitarian response of the international community to internal conflict is constantly improving, the question still remains of what we can do to help the victims to restore their homes and livelihoods.

The answer lies in large part in sustainable human settlements planning and management. But, the rapid restoration of homes and livelihoods so that normal peacetime processes of sustainable planning and management can operate is complex and difficult to achieve. In particular, it requires that humanitarian relief operations be conceived from the very start as a bridge to development.

Internal conflicts have had an especially profound impact on housing land and property (HLP) rights. Terrorising civilian populations through processes such as "ethnic cleansing" have become an almost routine strategy for armed protagonists seeking control of territory, which typically includes scorched-earth policies, land grabbing and discrimination.

HLP rights are in fact human rights under international human rights law. They are also increasingly recognised as such within the domestic laws of many countries, not only through official regulation under statutory rules or but also through recognised customary land arrangements.

When conflict strikes, what once may have formerly been a formally enshrined land rights regime in conditions of peace can be transformed into a tangled web of bitter claims and counterclaims. Indeed, HLP disputes are often a primary cause of recurring conflict.

In this context, the rationale for UN assistance in HLP is nation re-building, which is essentially a development activity. To do this, the citizenry in conflict-affected countries needs an enabling framework to resolve HLP disputes in the search for sustainable peace. This means giving special attention to promoting security of tenure, women's inheritance rights and other questions often left out in post-conflict peace-building. It is essential that these matters begin to be addressed during humanitarian actions so that they can become an important component of the previously-mentioned bridge to development

To assist in creating this enabling framework, UN-HABITAT is producing a series of handbooks in a series entitled, Post-conflict Peace-building: From Emergency to Reconstruction, of which this handbook is the first. This series combines UN-HABITAT's expertise in human settlements and the lessons it has learnt from recent emergencies and post-conflict activities.

It is my sincere hope that this handbook will serve as a valuable tool towards safeguarding and upholding internationally recognised housing, land and property rights.



Anna Tibajjuka  
Under-Secretary-General of the United Nations,  
Executive Director  
UN-HABITAT

# Contents

Foreword.....	3
<b>Introduction</b> - Promoting rights-based approaches to land administration and secure tenure .....	8
<b>I. THE EMERGENCY PHASE - PREPARATIONS FOR EFFECTIVE ACTION .....</b>	<b>12</b>
1.1 Peacebuilding, land administration and UN-HABITAT.....	12
1.2 Assessing immediate HLP problems, needs and risks.....	14
1.3 Developing projects, agreements and procedures.....	16
1.4 Early fieldwork - land records .....	17
1.5 Assisting in the resolution of land disputes .....	20
Preventing illegal occupation .....	24
1.6 Assessing land records and institutions.....	2
<b>II. REFORMING SYSTEMS, MANAGEMENT AND THE LAW .....</b>	<b>30</b>
2.1 Reforming systems and management.....	30
2.2 Personnel and equipment .....	33
2.3 Setting up an interim database.....	34
2.4 Critical functional and legal arrangements.....	36
2.5 Building bridges from emergency to reconstruction .....	39
<b>III. THE RECONSTRUCTION PHASE - MAPPING OUT STRATEGIES AND OPERATIONS.....</b>	<b>40</b>
3.1 Developing a strategic action plan: the 22 steps.....	40
Setting up a Steering Committee for the project.....	42
3.2 Developing work plans, activities, outputs, indicators and deliverables .....	43
3.3 Administration and management .....	43
Coming on Stream .....	45
3.4 Involving the population .....	45
National reconciliation.....	45
3.5 Determining priorities and pilot areas .....	47
3.6 Legislative approval and legal clarity .....	48

3.7	Continuous assessment of land record validity.....	50
3.8	Entrenching due process in administrative procedures .....	51
3.9	Registration and adjudication .....	52
3.10	Adjudication and clarity: Practical recommendations.....	53
3.11	Delivering services to users and the market.....	54
3.12	Supply and purchase of equipment .....	55
3.13	Land information, taxation and monitoring.....	56
3.14	Record reconstruction .....	57
<b>IV.</b>	<b>LONG-TERM CONSIDERATIONS .....</b>	<b>58</b>
4.1	Adjusting institutions.....	58
4.2	Adjusting functional arrangements .....	59
4.3	Local capacity building.....	60
4.4	Enforcement and other legal issues .....	62
4.5	The broader picture and the longer term.....	64
<b>V.</b>	<b>GENDER AND POST-CONFLICT LAND ADMINISTRATION.....</b>	<b>66</b>
5.1	Why is gender important in post-conflict land administration systems? .....	66
5.2	Addressing basic questions and identifying basic principles.....	67
5.3	The Emergency Phase .....	68
COMPONENT 1. Assessing immediate housing,		
	land and property problems, needs and risks: .....	68
	Critical Questions .....	70
	Hurdles, pitfalls, solutions .....	71
COMPONENT 2. Increasing security of tenure		
	and access to housing, land and property .....	72
	Critical Questions .....	72
	Critical Questions .....	74
	Critical Questions .....	76
COMPONENT 3. Building gender-sensitive		
	data and information systems .....	77
	Critical Questions .....	77
	Critical Questions .....	78

5.4	The Reconstruction Phase .....	80
	COMPONENT 4. Reforming legislation .....	80
	COMPONENT 5. Strengthening institutions and developing capacity for gender equality .....	81
	Critical Questions .....	81
	COMPONENT 6. Ensuring participation and inclusive design .....	83
	COMPONENT 7. Broad-picture monitoring and evaluation .....	86
5.5	Conclusions on gender in post-conflict land administration .....	87
<b>VI. FINAL RECOMMENDATIONS .....</b>		<b>89</b>
6.1	Land administration in a post-conflict situation:.....	89
6.2	UN-HABITAT's role in post-conflict land administration: .....	89
<b>VII. ANNEXURE .....</b>		<b>90</b>
7.1	International Standards on Housing, Land and Property Rights.....	90
	Resolutions .....	91
<b>VIII. REFERENCES.....</b>		<b>95</b>

“

People have fought over land since the beginning of recorded history. Population growth and environmental stresses have exacerbated the perception of land as a dwindling resource, tightening the connection between land and violent conflict. Land is often a significant factor in widespread violence and is also a critical element in peace-building and economic reconstruction in post-conflict situations. – From a report of the USAID Office of Conflict Management and Mitigation (2004) entitled, Land and Conflict –

”

**A Toolkit for Intervention, Washington DC.**

# INTRODUCTION -

## Promoting rights-based approaches to land administration and secure tenure

This handbook is intended as a functional tool to facilitate rights-based approaches to the administration of land in post-conflict environments, in countries with land records. It takes in the fresh insights, lessons, and experiences that have recently come to bear on the integrated approach to the protection of housing, land and property (HLP) rights. This work is drawn from UN-HABITAT's field work, expertise and lessons drawn from our mistakes and successes.

This handbook focuses primarily on the fundamental question of land administration, and the pivotal role played by the administration of land in the broader enjoyment of housing, land and property rights – in particular, the right to security of tenure. Security of tenure is a core component of the right to adequate housing, land and property. Just as land administration is crucial to security of tenure, so too is security of tenure indispensable for access to housing, land and property rights. Without security of tenure, these rights cannot be considered to be fully in place. All of the various housing, land and property rights, each of which includes security of tenure as a prerequisite for their full realisation, are enshrined in a wide range of international instruments and laws.<sup>1</sup> The activities discussed in this handbook are thus grounded in the rights and principles set out within these many diverse international instruments. Work leading to an improvement in methods of land administration within post-conflict environments, therefore, can make a valuable contribution to the enjoyment of human rights within the context of peacebuilding.

It is virtually impossible to develop guidelines for all aspects of housing, land and property rights as they pertain to all countries and scenarios simultaneously. Instead, it focuses on land administration in post-conflict countries which have a fairly good land records. It will do so within the framework of housing, land and property rights because housing, land and property are integral to each other. It recognises, however, that housing, as an issue, will have to be addressed separately within the HLP cluster in an upcoming handbook. Similarly, this handbook takes race, gender and ethnic relations, into account, along with transparency and non-discrimination.

Conflicts over the past decade have seen a growing understanding of the need for the restitution of rights for returning refugees and displaced people, the rights of women, emergency shelter provision and housing repair and reconstruction, the linkages between broader peacebuilding initiatives and HLP questions, and the importance of a rights-based approach in helping countries build new homes, new lives and peace after conflict. The handbook also examines core housing, land and property problems that confront UN agencies in most post-conflict environments. For information on some of the other key rights, this handbook carries a useful glossary of other recent publications on the subject. It is important to reiterate that as vital as land administration may be, it remains but one of the many pieces of a larger post-conflict rights solution, each element of which will require its own strategic action plan to ensure that a comprehensive and integrated approach.

---

<sup>1</sup> See Annex 1.

There are many reasons why land administration needs to be addressed following conflict, with perhaps the most obvious being the fact that every conflict - no matter how small or limited in time or scope - negatively affects land administration. Increasingly, those involved in post-conflict peace-building are recognising that for peace to take root, land administration needs to be treated as seriously as the administration of justice. Arguably, land administration should form a key element of any efforts designed to rebuild administrative justice systems following crisis. Indeed, land administration arrangements cannot work effectively and fairly unless the entire judicial system is either reconstructed or repaired. Both sectors - justice and land - are mutually inter-dependent.

The links between land administration and the building of stable and economically viable economies are also increasingly clear. It is difficult to have economic growth, rule of law or good governance, if these are not underpinned by and formally linked to effective land administration and housing, land and property rights. Consequently, using land administration as a starting point for what will invariably become more comprehensive policy approaches to all these rights issues emerging in post-conflict situations makes practical sense. When efforts to improve post-conflict land administration succeed, they provide a useful bridge towards more expansive approaches to housing, land and property rights in the future.

When UN teams first assess housing, land and property issues in countries emerging from conflict, it is likely that one or more of the following facts will require the attention of the international community together with local partners:

- The lack of an appropriate land policy;
- Discriminatory land laws which structurally undermine the rights of various social, ethnic and gender groups;
- Dysfunctional land management and administration systems that serve only a fraction of the population;
- Illegal land grabbing and failure to remedy it;
- Parallel land systems within one legal jurisdiction, eg. customary land arrangements governing some of the territory and statutory arrangements in place elsewhere;
- The impact of a law and order breakdown;
- The secondary (and often politically motivated) occupation of land, homes and properties by the those displaced during the conflict, returning refugees, landless families, etc;
- No effective means of resolving land disputes;
- Insufficient arable land for returning refugees and displaced persons;
- The large-scale destruction of residential and public buildings; and
- Serious gaps in the land regulatory framework.

The recognition by the international community that housing, land and property rights are critical elements in post-conflict peace-building is steadily on the rise, even though much remains to be done to ensure that these concerns are built into peace operations from the beginning of the peacebuilding process<sup>2</sup>. This growing embrace of the need to address housing, land and property rights is a part of broader efforts to improve peace-building operations by the UN and other agencies. The 2005 Report on Integrated Missions: Practical Perspectives and Recommendations (Independent Study for the Expanded UN ECHA Core Group), for example, notes that even though the overall performance of peace operations may be improving, rates of long-term stability within post-conflict countries served by UN peace-building missions remains distressingly low. They attribute some of the responsibility to an absence of "strategic, coordinated and sustained international efforts"<sup>3</sup>. The UN Secretary-General's 2005 report, *In Larger Freedom*, echoes these sentiments with the rather critical view. It says, "No part of the United Nations system effectively addresses the challenge of helping countries with the transition

from war to lasting peace".<sup>4</sup> The new UN Peace-building Commission is one of the several initiatives currently underway to address the need to ensure that international efforts are better designed and equipped to assist in the building of a just peace.

We need, therefore, to place efforts in support of more concerted attention to housing, land and property rights, in particular land administration, within the larger question of improving peacebuilding measures as a whole. Though sporadic attempts have been made, housing, land and property questions are still generally excluded from the central planning objectives of peacebuilding. Most publications on post-conflict peace-building still ignore housing, land and property rights and land administration. Likewise, at the time of going to press, in 17 UN peacekeeping operations, none were comprehensively addressing land administration problems. A survey of peacekeeping operations since 1990 confirms the very limited emphasis placed on housing, land and property rights, and the problems that arise. (See box 1).

### **Box 1 - Lessons learned from UN approaches to post-conflict housing rights**

Incorporate housing, land and property rights in peace agreements and UN Security Council resolutions, voluntary repatriation agreements and other policy documents, peace operations and administrative structures:

- Ensure that housing, land and property rights are essential features of any peace operation. Plan early, appropriately and Integrally;
- Determine the applicable legal and policy framework in the planning process;
- Establish housing, land and property standby network;
- Peacekeepers are important rights guarantors;
- Recruit local lawyers and housing experts at the outset;
- Resolve housing, land and property disputes promotes economic and social stability;
- Reverse HLP rights violations is invariably difficult but not impossible;
- Treat HLP rights as human rights can promote reconciliation;
- Peace operations do not need to build all new housing to take HLP rights seriously;
- Prepare for a long-term process;
- Create an enabling environment at the community-level;

Source: Leckie, S. (2005) Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework, Legal and Protection Policy Research Series Report PPLA/2005/01, United Nations High Commissioner for Refugees, Department of International Protection, March 2005.

<sup>2</sup> It is interesting to note that while official UN responses to HLP concerns in post-conflict settings is relatively new, the 1991 civil society initiative resulting in the York Charter for Reconstruction After War was seemingly ahead of its time in advocating for the HLP rights of those affected by conflict. The Charter outlines nine entitlements of the civilian, non-combatants suffering from war damage to their physical environment: 1. The restitution of his/her property or the equivalent; 2. The right to recover his/her personal possessions from an abandoned home; 3. The right to an appropriate temporary shelter; 4. The right to be consulted over the form of reconstruction; 5. The right to draw on skilled help in reconstruction where needed; 6. The repair and reconstruction of his/her dwelling in an ethnically sympathetic manner to standards no less than previously and with appropriate hygienic facilities; 7. The re-establishment of the local community in a manner no less adequate than before; 8. The provision of a means of livelihood and workplace; and 9. The provision of essential community facilities in terms of medical support, water and fuel supplies, drainage and waste disposal.

<sup>3</sup> Eide, E.B., Kaspersen, A. T., Kent, R., and Von Hippel, K. (2005) Report on Integrated Missions: Practical Perspectives and Recommendations (Independent Study for the Expanded UN ECHA Core Group), p. 3.

<sup>4</sup> UN Secretary-General (2005). In Larger Freedom (A/59/2005).

At present, therefore, it is probably too much to expect that all housing, land and property rights are taken into account in every post-conflict situation. Nonetheless, our experience, as laid out in this handbook, clearly shows that they should be taken into consideration as far as possible to avoid problems in the future. Taking housing, land and property issues seriously could be one way by which the 'responsibility to protect' takes concrete form<sup>5</sup>. A comprehensive method is suggested in a 2005 paper that lays out detailed proposals for a new, UN-wide institutional and policy framework for addressing the full scope of housing, land and property rights concerns during all future peacebuilding operations<sup>6</sup>. It proposes the appointment - in all future UN peace-building operations - of a Special Representative to the Secretary-General on housing, land and property and the establishment of housing, land and property directorates that can be bolstered as needs be by international experts. While recognising that fixed templates are unlikely to always yield the best results, most who have analysed these proposals clearly support the need for a new policy by the UN to ensure that housing, land and property rights finally get the systematic attention they deserve, notwithstanding where a particular conflict may have taken place.

UN-HABITAT and its partners have been actively seeking support for improving housing, land and property rights in their work in Somalia, Kosovo, Uganda, East Timor, Sudan, and Crimea, among others. It has discussed this widely with the United Nations High Commissioner for Refugees (UNHCR) in 2004, in Geneva<sup>7</sup>, at the 2005 New York International Peace Academy, at another 2005 meeting in Providence, Rhode Island - convened by the Watson Institute at Brown University, another meeting the same year in Geneva co-chaired with UNHCR, and in August 2006 in Chiang Mai, Thailand (convened by the Centre on Housing Rights and Evictions).

---

<sup>5</sup> ICISS (2001) *The Responsibility to Protect (Report of the International Commission on Intervention and State Sovereignty)*, IDRC, Ottawa. This report delineates three types of action to be pursued in addressing the consequences of conflict: (1) responsive action: 'any activity undertaken in connection with an emerging or established pattern of abuse and aimed at preventing its recurrence, putting a stop to it, and/or alleviating its immediate effects'; (2) remedial action: 'any activity aimed at restoring people's dignity and ensuring adequate living conditions subsequent to a pattern of abuse (through rehabilitation, restitution, compensation and reparation)'; (3) environment-building action: 'any activity aimed at creating and/or consolidating an environment - political, social, cultural, institutional, economic and legal - conducive to full respect for the rights of the individual', pp. 11-12.

<sup>6</sup> Scott Leckie (2005). *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework*, Legal and Protection Policy Research Series Report PPLA/2005/01, United Nations High Commissioner for Refugees, Department of International Protection.

<sup>7</sup> UN Habitat and the United Nations High Commissioner for Refugees sponsored: *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for their Integration into UN Policy and Operational Frameworks*, Expert Meeting, 10 and 11 November 2004, Geneva.

# **I. THE EMERGENCY PHASE - PREPARATIONS FOR EFFECTIVE ACTION**

## **1.1 Peacebuilding, land administration and UN-HABITAT**

### **Placing HLP Rights on the core agenda of UN emergency operations**

Historically, land administration issues have not figured prominently in UN emergency and peacebuilding operations. While some UN missions (including cases when the UN exercised transitional governing functions, such as those in Kosovo and East Timor) developed capacities for addressing land administration problems in post-conflict areas, most such missions either did not address these issues at all, or if attention was paid, this was generally ad hoc, limited and short-term in nature. While there is now a growing momentum from many UN agencies, civil society groups and national governments to change course and begin to more systematically enshrine housing, land and property competencies in these operations, the traditional failures to address questions of land has left an indelible mark in many countries which could have been far better served following their respective conflicts if the difficult land challenges facing the international community had been courageously embraced rather than almost summarily ignored. Indeed, of the 17 UN peace operations currently in place, few if any, have the human and financial resources in place to effectively address land administration concerns in a comprehensive manner.

This frequent lack of attention to housing, land and property issues by UN peace operations in the past is giving way to what is now a widespread recognition that these problems plague all post-conflict countries to one degree or another and that addressing these fundamental challenges is no longer a choice by the UN, but a core responsibility of effective peacebuilding. Moreover, as the legal stature and enforceability of individual housing, land and property rights continue to expand, ignoring or side-lining housing, land and property rights concerns in peacebuilding operations has become that much harder to justify.

There are many possible ways by which housing, land and property rights can become key functions of broader peacebuilding efforts. Of all of these, the new UN Peacebuilding Commission provides the most promising entry point for sustained action. In Kofi Annan's In Larger Freedom the then Secretary-General outlined what he sees as the six key functions of the Peacebuilding Commission: 1. To improve United Nations planning for sustained recovery, focusing on early efforts to establish the necessary institutions; 2. To help to ensure predictable financing for early recovery activities, in part by providing an overview of assessed, voluntary and standing funding mechanisms; 3. To improve the coordination of the many post-conflict activities of the United Nations funds, programmes and agencies; 4. To provide a forum in which the United Nations, major bilateral donors, troop contributors, relevant regional actors and organisations, the international financial institutions and the national or transitional Government of the country concerned can share information about their respective post-conflict recovery strategies, in the interests of greater coherence; 5. To periodically review progress towards medium-term recovery goals; and 6. To extend the period of political attention to post-conflict recovery. Each of these six objectives form a solid basis for justifying the systematic inclusion of housing, land and property rights competencies in future UN peacebuilding initiatives as a matter of common sense.

Arguably, whenever a resolution authorizing the United Nations to undertake peacekeeping

operations in a country or territory is prepared, the UN Security Council should incorporate housing, land and property competencies within the terms of reference of the peace operation concerned, including in particular, a coordinating role in addressing the key challenges in the land administration sector. Finding viable solutions to ongoing land disputes, dysfunctional land registration systems, disparate institutional arrangements concerning land and other such challenges should become integral to the peacekeeping process and should feature in the peacekeeping budget. Peacekeeping forces, police and the civilian personnel should be given formal responsibility for securing and protecting land records from damage and alteration as soon as possible. This would help to ensure financial support for land-related activities, which donors often fear are too politically sensitive for them to sponsor directly. Furthermore, in certain circumstances, evicting criminal elements from public property should be one of the UN peacekeeping force's responsibilities. Most critically, once land administration issues are placed on the core agenda of UN emergency and peacebuilding operations, it will also feature high on the agenda of the government, including when the UN itself is acting as the transitional governing authority. Detailed proposals for improving UN peace operation responses to the housing, land and property challenges that face all post-conflict countries have been put forward, including the proposal of developing a locally appropriate Housing, Land and Property Directorate in all countries where peacebuilding operations were deployed. These and related proposals should be given close consideration by the UN Peacebuilding Commission and other UN agencies interested in assisting in taking housing, land and property rights seriously by prioritising work on land administration as a core adjunct to sustainable peace<sup>8</sup>.

## **The need to bring in UN-HABITAT**

Given UN HABITAT's now considerable, and in many respects unique, experiences in both post-conflict and post-disaster environments, the Peacebuilding Commission, the United Nations Department of Peace-Keeping Operations and the UN Secretariat should consider incorporating UN-HABITAT as a specialised agency into all major peacebuilding efforts. Doing so will ensure that the often neglected housing, land and property issues, including land administration, will form a key part of all future peace undertakings. When co-ordinating projects in countries in the emergency phase, UN missions assess their contribution to immediate peace and stabilisation of the country. Once it is understood that housing, land and property issues may trigger secondary or tertiary conflict, it is important for peacebuilding missions to become aware that proposals related to land management in post-conflict situations are an integral part of efforts to restore peace and stability.

Directly involving UN-HABITAT as the lead agency/focal point on these issues will provide an additional level of support to the peacekeeping operation, and will develop forms of collaboration that ensure that the land administration system will be restored and improved, that security of tenure will be expanded in the country and the law, order, stability and governance are strengthened through these actions.

If possible, the peacekeeping budget should provide earmarked core funding for UN-HABITAT's role in future UN peacebuilding operations to ensure that UN-HABITAT's competencies in land administration issues are treated as core activities of post-conflict peacebuilding. UN-HABITAT's Disaster Management Programme and the Disaster, Post Conflict and Safety Section have developed a strategic outline of activities that are relevant to the post-disaster or post-conflict

---

<sup>8</sup> See, for instance: Scott Leckie (ed)(2007). *Improving UN Peace Operation Responses to Housing, Land and Property Rights: Proposals for Reform*, Cambridge: Cambridge University Press. See also, Scott Leckie (2005). *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework*, Legal and Protection Policy Research Series Report PPLA/2005/01, United Nations High Commissioner for Refugees, Department of International Protection.

agenda; it is actively pursuing resources and contacts within both the inter-agency forums and with bilateral and multi-lateral donors. One immediate task for staff is to undertake institutional mapping for the deployment and activities of the UN, NGOs and donor representatives. This will ensure that project formulation processes integrate and generate support from those sectors, as well as the authorities or other counterparts in the post-conflict country or territory.

During this preliminary period leading up to the peacebuilding process, donor appeals should include specific requests for land administration activities. Proposals can emphasise efforts focusing on: the cadastre; housing, land and property rights; restoring land records; the development of a legitimate legal framework and adjudication; the protection of women's land rights; and the potential for the project to deliver early results. The early results of such projects must include:

- Addressing current land and property disputes, evictions and discrimination;
- Developing proposed institutional and normative frameworks, including housing, land and property Directorates;
- Allocation of land use for temporary purposes;
- Identifying and securing the land records;
- Supplying remotely sensed imagery (aerial or satellite photography) for the purposes of clearing landmines;
- Servicing and management of the emergency;
- Supplying information to those who have lost their property rights;
- Assessing the state of the land records, institutions and problems.

Some donors, under certain situations, may be open to funding projects that will cover both the emergency and reconstruction periods. Any proposals put to them should then be able to deliver outputs for both phases, with some even building bridges between the two, as it were. At this stage, one must keep in mind that land policy development and establishment of Stakeholders' Forums are not considered feasible in the first 12 months of an emergency.

## **1.2 Assessing immediate HLP problems, needs and risks**

Early needs assessment teams can expect to find the following types of housing, land and property-related user needs, risks and issues:

### **Shelter and reconstruction**

- Need for immediate shelter where land is required for temporary shelter and settlements (e.g., designated for returnees displaced by conflict).
- Need to rebuild houses that have been partially or completely destroyed.
- Allocation of building permits to reconstruct destroyed houses, which requires evidence of ownership of the land and agreement from the owner.
- Identifying abandoned houses or apartments, with a management system to allocate such dwellings on an interim/temporary basis.

### **Land rights**

- Assistance to people evicted from their houses or land and who require evidence of their rights to the property concerned.
- Invasion of public land and property, which may be justifiable in emergency circumstances, but which may need to be carefully regulated.

- Allocation of temporary land use rights for drawing water, harvesting, etc.
- Allocation of temporary land use rights for peacekeeping or military operations.

## **Restitution and eviction of secondary occupants**

- Illegal evictions of women (especially widows and children) from family property by relatives.
- Illegal evictions and subsequent invasions of homes and land by one group against another group as part of the conflict.
- The informal (and at times violent) recovery of property illegally occupied during the conflict.

## **Information and records**

- Need for land information for the establishment or restoration of services.
- Risk of theft or illegal alteration of land records describing users' property rights.
- Problems with the emergence of previously unrecorded contracts or data, carrying evidence of land rights and emanating from parallel/informal structures.

## **HLP Disputes**

- Risk of minor warlords or gangs allocating land or properties – either government-controlled or stolen from the rightful owners.
- Problem of people deprived of any security of tenure for any reason.
- Need for some basic legal framework and administrative infrastructure to record disputes and claims and give information and assistance.

## **Landlessness**

- Need to determine the scale and causes of structural landlessness caused by or worsened as a result of the conflict concerned.
- Large numbers of landless/homeless families and individuals in need of land.
- Absence of effective land/housing policy designed to protect the rights of the landless/homeless.

Ideally, representatives of UN-HABITAT should form part of the pre-mission needs assessment carried out prior to all peacekeeping/peacebuilding missions. A two-person team could be invited to join the needs assessment missions to the post-conflict country or territory to quickly assess the population's needs in relation to housing, land and property rights issues and security of tenure. Working closely with NGOs with expertise in these areas should be considered. Such assessments would take place within the framework of the international human rights principles and conventions, particularly with regard to possible discrimination against women and ethnic and other minorities. It is upon the basis of this early assessment that initial proposals can be generated as to the shape and content of a national housing, land and property Directorate in the country concerned.

In addition to identifying user needs, the preliminary assessment team should procure a rough background of the country with regard to housing, land and property rights as well as to the broader political, economic and historical issues that may affect the enjoyment of housing, land and property rights. The team should address user needs against this backdrop, as even a basic background guide can make a big difference to a land specialist with broad-based country experience.

The early assessment team should also map out existing land-related institutions such as the surveyor general's or cadastral office, the land registry, the courts, the municipal property offices, the national planning office, and the structure of government. This is an important adjunct to any subsequent search for land records and knowledgeable officials; it will also supplement efforts to identify the areas of the system where intervention will be most useful.

The information thus collected should inform the choices of strategies and priorities to address the situation, as well as the size and nature of the human and financial resource requirements. With early post-conflict situations typically in a state of flux, it is often difficult to get an accurate early picture, especially with regard to the scale of a particular problem, such as secondary occupation, previous forced evictions and so forth. It may also happen that once the preliminary assessment team gathers more information, it has good reason to change the initial analysis as understanding deepens and the picture becomes more clarified.

## **1.3 Developing projects, agreements and procedures**

### **MOU's and Grant Agreements with Government and/or the UN**

Once the initial needs assessments have been completed, the next step is for donors, the UN and the authorities or other counterparts in the post-conflict country or territory to formalize agreements between them. Where there is a counterpart or partner in the post-conflict country or territory, the UN will need to come to a formal memorandum of understanding or agreement (MOU/MOA) with them regarding its activities and methodology. This applies even when the partner is an occupying or custodial administration, and must conform to UN legal conditions. These agreements are activity-specific and come in addition to, and under, any global agreements undertaken between the UN Missions and governments. When the UN is performing a governance role (as it did in Cambodia, Kosovo, East Timor, etc), UN-HABITAT should strive to be brought into the governance structures and formally placed in charge of all land administration activities.

### **Emergency administrative procedures between field operations and UN-HABITAT**

Because urgent needs call for prompt responses in the fluid and often confusing immediate aftermath of conflict or disaster, rapid results argue against the usual administrative procedures of the UN system. UN-HABITAT and the United Nations Office at Nairobi will need to develop special administrative procedures for these circumstances. Some of these already exist, and systems are in place within other UN agencies (the United Nations Children's Fund, the , and the United Nations High Commissioner for Refugees the United Nations High Commissioner for Refugees). But others must be developed in the field in response to local conditions. These special administrative procedures must then become standard and all field staff must be trained in them.

#### **To be most effective, these procedures should facilitate:**

- Ready access to cash and cash reserves for the purchase of vehicles, security equipment and supplies, portable office equipment including computers and generators, cell phones, temporary accommodation, fuel, etc.
- Delegated authority to undertake procurement, recruitment of local staff, payroll for local staff, and establishing banking facilities either in the country or nearby.

- Rapid recruitment of international experts and staff to undertake urgent tasks such as planning, formulation of funding proposals, and programme or project management.

## **1.4 Early fieldwork - land records**

### **Bringing in a core group of international survey and registry experts**

Some of the actions required in the immediate aftermath of a conflict call for the presence on the spot of a small core group of international experts as early as possible in the relevant area. Their immediate tasks will include:

- Retrieving and assessing land records.
- Determining the degree of validity of the land records.
- Getting the registry and cadastral services functioning again.
- Launching mechanisms for the resolution of land disputes.
- Understand the extent to which customary land arrangements are in place and how these relate to formal land administration structures.
- Informing the population about these activities.

These tasks require expertise in land records from the twin points of view of land registries and cadastral registries or maps. More specifically, such expertise ranges from legal-administrative to survey-technical; it also includes an understanding of registration procedures, subdivision and consolidation, mapping and, especially, databases (IT). Depending on the country of origin, the experts should be land surveyors, cadastral staff, registry staff, specialized land lawyers, notaries, conveyancers or land administration experts. Although data recovery is of great importance in the initial phase, early action also requires experts with an understanding of the legal aspects of land administration. This is particularly the case with due process in relation to land and the assessment of legal evidence, in order to ensure reliable assessment of legal evidence and data from the very beginning.

Although results are better when these activities take place as early as possible after a conflict has ended, it is also important to keep the reconstruction phase in mind from the outset. In the emergency phase, every step dealing with land and property should also, as far as possible, serve as a building block for the reconstruction phase. This is because security of tenure rests on long-term horizons.

There are two reasons for bringing international experts in at this early stage. Firstly, they will take a more holistic and objective overview of a given situation, and, secondly, they will be independent of the various parties involved in the conflict. On the other hand, local experts are necessary because of their familiarity with three distinct elements: (1) local procedures; (2) the location of likely storage facilities; and (3) the language. Their involvement is also a major building block for reconstruction. A unified team of internationals and nationals will invariably provide the best and most immediate results in many post-conflict environments.

### **Finding the land records**

Land issues are often one of the causes, if not at the heart, of violent conflict. Therefore, finding, securing and preventing the manipulation of land records are of vital importance for three main reasons: (1) a return to normality; (2) conflict management and dispute resolution; and (3) the prevention of discriminatory or otherwise unfair practices. Finding the current land records is very critical in the immediate aftermath of a conflict; such records include:

- the land registry
- cadastre
- maps
- possession lists
- survey field records
- text and graphic evidence
- digital backups
- paper maps

Land records can contain information that is in the interest of some parties but not of others. A dominant group losing power over an area may be prone to taking the land records with them when they withdraw, so as to have proof of the land rights situation (usually beneficial to them) that existed just before they left the area. They may also be inclined to destroy earlier information dating from before their group was the major beneficiary of the system. Furthermore, they may destroy or manipulate any up-to-date data to prevent a rapid return to normality in land issues for the incoming group.

The group taking control immediately after the withdrawal of the previously dominant one, particularly if previously the victim group, is likely to have a specific set of strategies regarding any land records that are still available. They may want to destroy details of the situation prevailing just before their arrival, particularly if these are seen as beneficial to the group previously in power. They may want to preserve older data from an earlier period, insofar as such data is beneficial to them. They may also want to alter the records they find in the land administration system in favour of their group. To formalize alterations they may turn to 'instant' tribunals, or to information emanating from previously informal and or parallel structures outside government. Returned exiles or staff with appropriate skills may quickly take over the offices and land records, and either prevent abuse of the land records as much as possible, or actually be instrumental in altering the records to suit their purposes.

## **Preventive action**

It is possible to prevent some of these actions during an emergency post-conflict phase. However, in order to do so, the location of land records needs to be established as quickly as possible following arrival in the country. Land records are usually found in a number of different locations depending on the institutional arrangements and regulatory framework in place. The courts or separate land registries may keep some of them. In some situations, these records can overlap with the textual part of the cadastre, which may be kept by a national, regional or local cadastral authority. Such an authority may be part of general tax-related or municipal structures, or stand on its own. Cadastral authority or surveyor general's offices or lands department may keep the graphical part of the cadastre (boundaries) and the underlying survey documents. In some countries, certain private practitioners (notaries, conveyancers, surveyors) keep copies of documents prepared by them before registration, but usually this only includes certain cases within the area. This is why institutional mapping is a critical first exercise when planning the recovery of land records.

The extent to which land institutions are computerised varies greatly across different parts of the world. Increasingly, the textual part of the cadastre or the registry is computerised. This will also occasionally be the case with the graphical parts. Digital data is easier to copy and, short of specific back-up facilities, specialised companies are likely to have kept copies of such data (at least for as long as the computerised system has been in place). Although not usually up-to-date, at the very least data from these sources will reflect the situation at a certain point in time (which may not be the same across different areas). Identification of digital copies or

back-ups at electronic data processing companies will depend on local intelligence or the such data being volunteered by the companies.

In some countries, registry information may be stored on microfiche, on paper, or in electronic format, or all three, depending on the nature and longevity of the information.

Unless the pre-conflict system is well-documented, international experts will need assistance from their local counterparts to identify all the different locations where they can find certain subsets of the land records.

## **Securing the land records**

Once staff have identified the whereabouts of land records and have a reasonably accurate idea of what portion of the records are not available, they should transfer the land records to a secure location as soon as possible or arrange for their protection at their current site(s). Throughout the fluid, immediate post-conflict period, it may be wise to keep them under physical protection. Either security services can guard the premises, or the records can be physically moved to a more secure location, such as international compounds. If records are available in digital form and the necessary equipment is still operational, staff should make a back-up copy and keep it secure at an international compound. Where land records are in the hands of a group that took them away as they withdrew, every attempt must be made to recover them.

As soon as feasible, the team should prepare an inventory of the newly secured land records. Those in charge of keeping the records must then sign the inventory. Once the situation has become more stable, the inventoried land records must return to their original offices or storage facilities, unless a different or emergency institutional structure is in place. Under certain circumstances, it may be wise to make copies of the most vital land records (such as the title/land register, parcel/person indexes, cadastral register, cadastral index maps), especially where one cannot rule out the risk of data tampering. International staff should keep the copies in a secure location.

Once some form of normality has returned, the updating of the land records must resume as soon as possible, otherwise people will transfer their land outside the land administration system. For these purposes, land record offices and any agencies dealing with land dispute resolution must establish effective co-ordination and information flows between them. They must update the records automatically or regularly in batches, to show any decisions the dispute resolution agency has made. Relevant staff must put in place routine technical processes and administrative procedures as early as possible, with proper checks and balances to ensure professional handling of the records.

## **Acquiring high-resolution satellite imagery or undertaking aerial photography**

Many countries lack up-to-date large and medium-scale mapping, even prior to any conflict. In a large number of countries, land administration is carried out following customary rules which if often not subject to the same degree of mapping as land administered under formal systems. Both of these realities can be the source of new challenges in many land-related policy development, land management and land administration functions in peaceful times, which a post-conflict situation is only likely to exacerbate.

Depending on the size of territory, the intensity of land use and the ratio between urban and rural areas, the UN initial assessment team should develop a strategy to create and update maps as early as possible. Beyond prompt responses to user needs, up-to-date maps have a role to play in a variety of functions such as landmine clearance, rapid planning, land management and land use allocation. Thanks to continuous improvement and enhanced capacity for detail, satellite imagery (Ikonos, Quickbird) can deliver the kind of information required for post-conflict civil administration within very short time-frames.

Aerial photographic-based products are useful for smaller territories and (main) urban areas. Unless terrain is very flat, these photographs must be processed into orthophotos. However, aerial photographic missions are only possible once the security situation is sufficiently stable. Both airspace and airports must be open. Moreover, safety on the ground must allow indispensable fieldwork to complement photo-flights, with landmines a particular concern that needs to be addressed. On the other hand, lack of safety and security in a territory or country does not affect satellite imagery.

The major benefit of making detailed geographical or mapping information available shortly after a conflict is that it can also provide evidence of some aspects of the land rights situation on the ground at the time of the photo-flights. The information will also show damaged dwellings and other structures, together with some forms of environmental degradation or pollution. It can be used to plan any reconstruction, and as a baseline to measure any future illegal construction.

Although aerial photographic data is expensive, it can also become a source of income for the survey department or cadastre office. It is also likely to be of interest to many other organisations and for other functions such as:

- landmine clearance
- general peacekeeping
- government policy development regarding spatial planning and land management
- (re)-construction and maintenance of transportation links and utilities
- local activities, such as urban planning and eventual housing development

## **1.5 Assisting in the resolution of land disputes**

Establishing an office to address land disputes and public campaigns on land issues

Where a conflict has resulted in the acquisition of territory along ethnic lines, changes in the demographic composition of parts of a country, ethnic cleansing, mass displacement and other struggles over land, it is likely that the local population will ask the UN peacebuilding authorities to intervene in helping to resolve land disputes. The UN may be specifically requested to play an independent role in securing housing, land and property restitution rights to those displaced during the conflict and building the case and institutional basis required to ensure residential justice for all.

To assist in effectively carrying out these functions, the UN peacebuilding mission should include funding and human resources within the initial planning documents leading to the establishment of the mission. As a core part of the mission, UN-HABITAT should be entrusted with organising the institutional and procedural arrangements required to resolve land disputes. This will invariably involve setting up a secure office environment, staffed with both local and international staff, to act as the focal point for land dispute resolution processes. The office will need to be officially recognised by both the UN mission and the local Government and be

based on a clear legal framework grounded in national law, and fully consistent with prevailing international standards on housing, land and property rights.

As the national focal point for land dispute resolution and restitution efforts, the office will need to move quickly to diagnose the land dispute and land administration conditions in the country, and rapidly develop the capacity to assist in resolving disputes. This work can take a variety of forms ranging from the establishment of new institutional frameworks specifically designed to achieve these results, such as the Housing and Property Directorate in Kosovo. It may also play a support role to ongoing national measures designed to resolve disputes, as was the case in Bosnia-Herzegovina. Or it could assist in identifying abandoned public buildings, issuing interim occupancy permits and developing proposals for the resolution of outstanding land claims as was the case in Timor Leste. Though such an office may not have the capacity during the early part of a mission to actively resolve land disputes, particularly those of a more complex or sensitive nature, it should nonetheless act as a depository for receiving disputes and claims, which will subsequently be examined once the legal, administrative and adjudicative mechanisms are fully in place.

**Some of the key functions that will need to be carried out by staff from the outset will include:**

- assessing the legal position and any applicable international conventions;
- assessing the type of violations and possible responses; and
- the reporting and claims process.

Once an office is established, it should provide the media (radio, television, web, etc) with reliable information about individual land rights provisions in the country and the existence of remedial options for those whose rights have been or are being infringed. The office should ensure that such information posted on bulletin boards, public notice sites and buildings which the population are likely to visit to ask for assistance (e.g., UN offices). The office must inform public relations departments in government as well as political parties and movements of any ongoing developments. As new information becomes available, the dedicated office must disseminate it. Where appropriate, staff should organize a media campaign, involving press kits, public announcements, posters, briefing papers for officials and news conferences.

## **Identifying and addressing disputes**

When land is a cause of the conflict, and when there are population movements, including forced displacement (internally displaced persons, refugees, returnees), disputes are likely to arise over the ownership or occupation of housing, land and property. During the emergency phase in most post-conflict settings the institutional and legal framework is not capable of equitably resolving such disputes. Moreover, many institutions are not running properly which prevents governmental institutions from carrying out the usual duties of prevention, monitoring and enforcement of the illegal occupation of land. Emergencies create often unique opportunities for the unlawful grabbing of land, land-use rights (e.g., mineral rights) and abandoned property by many segments of the population, including the poor, the rich or criminals. Political patronage involving land concessions is widespread during most conflicts, and great care needs to be exercised by UN peacebuilding missions to halt the unlawful transfer of land as quickly as possible after arriving in the country. This should form one of the first objectives of the office established to address land issues. A clear signal needs to be sent to the local population that this type of behaviour is unacceptable. Efforts must be made to contain the illegal confiscation of land, as once land is occupied it can be increasingly difficult to return the land to the rightful owner, even once the situation has stabilised.

Land disputes can take many forms and be based on a range of factors. Some of the more prevalent sources of tension, include:

## **Discrimination**

Where discriminatory legislation, regulations and policies have been in force either before or during the conflict, this can often result in violations of various housing, land or property rights. After a regime change, groups that have faced discrimination may seek vindication or try to recover lands lost during the conflict by extra-legal means. This may involve violent evictions of secondary occupants or forcing the current occupants or owners to sell under duress. It can also be the case that groups that have been discriminated against may never have had access to any formal land rights and may have been living in informal settlements at the time the conflict in question broke out. During the conflict, these informal settlements may have been destroyed, effectively leaving these groups with no formal rights to the land, nor any documentation to substantiate claims; claims which may in many jurisdictions be perfectly legal and legitimate based on rules of long-term occupancy, adverse possession and related rules. Consequently, they will have great difficulties asserting their rights/claims to land and property. They may not be able to claim housing reconstruction grants, either, as these typically require legal evidence of ownership or possession.

## **Claims and disputes**

A key function in most post-conflict peacebuilding operations will be the need for some administrative structure to collect land claims, draw an inventory of abandoned dwellings and allocate both temporary and permanent building permits. It may be necessary to establish a specialised tribunal or claims commission to deal with the disputes and allocation of permits for at least one of four reasons:

- The judicial system is incapable of handling a large volume of claims presented within a short time-frame, and may be insufficiently legitimate in the eyes of large portions of the population.
- Government structures are not perceived as wholly impartial when administering justice.
- The large number of cases involved will require special capacity to deal with them. Massive claims call for special (administrative) arrangements.
- The cases call for special hierarchies of legal evidence.

Such situations create an urgent need for appropriate, non-discriminatory mechanisms that will provide due process without being overly bureaucratic. This will probably require development of innovative hierarchies of legal evidence, rather than abiding by standard civil law procedures. UN staff will also need to make judgements regarding the magnitude of a given situation and the different types of claims that can arise.

In a post-conflict situation, the parties involved in a claim should be assisted in finding an amicable solution to their dispute through appropriate forms of mediation. Prompt access to (alternative) dispute resolution mechanisms will often be required, and should be facilitated by the UN mission. Within the office responsible for land administration matters, there should be two distinct agencies; one for the allocation of building and other permits, and the other concentrating on dispute resolution. These dual functions, of course, must share a single set of guidelines and must closely co-ordinate activities. The 'permits' unit must be as decentralised as possible. Clear guidelines must delineate the relationship and the distinct functions between the courts and the tribunal for land disputes, in order to ensure both legal clarity and the safety of court officials.

If members of all groups must be in a position to make claims for infringements on their land rights, it may be advisable to facilitate the lodging of such claims in neighbouring territories or even third countries where refugees are present. This is especially important where these groups cannot return to the area for security reasons. Short of this alternative, some groups involved in the conflict are likely to find themselves at a serious disadvantage in achieving residential justice.

## **Disadvantaged groups**

Keeping any infringement of the land rights of disadvantaged groups under check during the physical reconstruction of damaged buildings calls for careful monitoring. This is of special importance when distributing housing reconstruction grants or building permits. A wider than usual range of legal evidence about land and use rights must apply as far as possible. Moreover, (potential) victims must be made aware of where they can safely file complaints either before or during encroachment of their land rights.

## **Interpreting types of claims**

Once the claims are lodged, they can on occasion show that early assessments of the nature and scale of claims were incorrect. It is important to understand why this has happened, as it may be an indication that at least one of three types of event has occurred:

- Properties have been legally sold across the groups after the conflict, since one group does not feel safe to return.
- People are used to selling their property between conflicting groups outside of the legal system. This is especially prevalent in countries where this was the norm before the conflict.
- People fail to make claims to avoid taxation.

## **Eviction**

Following the completion of the claims and dispute resolution processes in a given case, once a claim is settled against a secondary occupant of a dwelling or land, it may be necessary that an eviction order is prepared and ultimately enforced. If the occupier is unwilling to abide voluntarily by the eviction order, then the police or security services must be called in to enforce it. Every effort must be made to ensure that persons so evicted are fully protected by all procedural guarantees held by them under international human rights law, and that they are provided with direct assistance in finding alternative accommodation. Under no circumstances should secondary occupants be forced into situations of homelessness. Generally speaking, forced evictions are only needed occasionally, as their purpose is to show the population at large that eviction orders are a serious matter. If, however, eviction orders are not enforced, few people will abide by them voluntarily. This will damage the credibility of the entire process of dispute resolution. The mandate of the international security forces should therefore include assistance in evictions, where they are based on eviction orders from reliable dispute resolution agencies. This is a key aspect of re-establishing government and the rule of law as a normal part of life.

# Preventing illegal occupation

## Abandoned dwellings

Dwellings and land plots that have been abandoned (when occupiers have fled or taken refuge elsewhere) should be protected against unregulated secondary occupation. UN staff should inventory abandoned properties (which would include housing, land and other real property) as soon as possible to prevent occupations both by those in need or by criminal elements. The rights of those - both owners and others with legally recognised rights such as tenants, leaseholders, etc - who had to abandon their properties must be respected and protected. Since conflict almost invariably results in large-scale housing shortages, inventoried abandoned dwellings can provide a valuable housing resource that can be allocated for the temporary use by those unable to return to their original homes. Prior registration with the United Nations High Commissioner for Refugees or other UN agency may be made a condition for delivery of such temporary occupation permits. On the other hand, effective protection of absent owners is often quite poor for lack of strong legislation or enforcement. This is why people who have fled or been forced out are likely to be at a disadvantage. Therefore, additional care must be taken to protect their rights in the immediate post-conflict period.

## Secondary occupation and eviction

The secondary occupation of land, homes and other property should be monitored and prevented as much as possible. When the rule of law is functioning normally, judicially ordered evictions after secondary occupation is a standard procedure in most legal systems. But within the chaos of post-conflict it is often not possible to obtain court orders, nor necessarily always best policy to immediately consider eviction, particularly when secondary occupants have no other place to live than in abandoned properties. On the other hand, when it is clear that criminal elements have illegally occupied homes and lands for nothing more than financial or related reasons, it is important that the appropriate authorities move (preferably within one or two days) to express concerns about such activities.

## Adverse possession

In the medium- to long-term, adverse possession rules must be handled with sensitivity, especially when limitation is short (5-10 years). If the laws on limitation allow those in occupation to claim land rights in a short period, groups who have been forced out of the territory or country can lose their rights. Therefore adverse possession claims should not be dealt with until land dispute claims have been settled. In any case, those being evicted must not end up homeless. To this effect, the authorities also need to co-ordinate their actions with organizations such as the United Nations High Commissioner for Refugees. Care must be taken with 'double occupancy' situations, where people claim that they have no place to go if evicted, even as they secretly have one somewhere else.

## Monitoring developments

In a post-conflict situation where massive building works can often mushroom in peri-urban areas it is possible that land rights (public and private) are being infringed due to the illegal occupation of the land concerned. In these situations, the UN mission and local government should act swiftly to determine whether these developments are consistent with the basic legal framework governing the country concerned. Short of rapid action, the situation becomes increasingly irreversible and may well contribute to frustration among the group(s) that are

on the losing side of the conflict, and whose rights are being infringed. Such construction activities can also be seen as undermining the rule of law and the interests of civil society in general. Enforcing orders to pull down constructions (especially if nearly finished) and evicting (would-be) users is harsh under any circumstances, let alone in a post-conflict situation where reconciliation is only just beginning and where housing shortages are commonplace.

## **1.6 Assessing land records and institutions**

### **Assessing the comprehensiveness of land records**

UN staff responsible for land administration matters should undertake a thorough assessment of the scope of available land records, using the inventories made previously for the purposes of securing the records. The primary objective will be to gain an overview of the data as it stood just before the conflict broke out. The nature of the overview will depend on the types of land records available, but as a general rule any assessment must take in both administrative/descriptive data (“lists of rights holders”) and geographic/geometric data (“maps or plans”). Critical data includes:

- the title or land register
- data on parcels or person indexes
- the cadastral register
- cadastral index maps, and
- registry plans or maps.

The assessment should also take in any relevant records, area by area, depending on the administrative and/or judicial units in place, such as cadastral units or municipalities. The main objective of the assessment is not to reach a statement whereby, for instance, 58 per cent of the data is available. Rather, the objective must be to draw up the most up-to-date overall status of the legal evidence still available for each relevant unit. If the overview data for any given judicial unit is not available up to the point the conflict broke out, then further assessments may be required. These must focus on subsidiary documents and books or logs testifying to changes. This can include (certified) contracts, deeds or administrative decisions by local or central government bodies, as well as survey notes, fieldwork and parcel plans.

As UN staff carry out the assessments, they are likely to find large discrepancies in data across different areas, depending on their location in the conflict and the actual degree of conflict-related activities that took place there. However, there can be discrepancies even in data kept in the same office. This can be a result of fires, quick theft, or deleting of data. Any data that has been removed from the country or territory must be assessed if and when possible. It is likely that only international experts will have access to this data.

### **Ultimately, the points to establish are:**

- what data exists?
- was any data destroyed?
- what is the likelihood of this data being returned to the territory or country?

### **Tampering with land records**

When examining land records relating to certain periods, such as just before, during and after the conflict, as well as to earlier periods building up to the conflict, a healthy dose of suspicion

is in order. These records carry the highest risk of having been tampered with. Examples of tampering include:

- Unusual numbers of transactions of a certain type in a short lapse of time, or even on the same day.
- Transfers between members of different groups in the conflict.
- Transfers from public, common or communal properties to private persons, often in the form of privatisation.
- Periods with few transfers, if any. This may signal that certain parts of the transaction records have been removed (e.g., pages taken out).
- An absence of transfers, where data relating to the situation just prior to the conflict is missing, or a new group have come to power.

Assessing the different subsets of the land records is a critical step in two respects: (1) in the short term, it paves the way for well-founded judgements about the validity of the legal evidence behind land rights; (2) this assessment also exposes the gaps that the future system of land administration needs to remedy in a medium to long-term perspective. Assessing the data is also crucial for the purposes of advising the courts (and other forums responsible for any land dealings) as to the most appropriate hierarchies of legal evidence that should be admitted. In other words, based on this information, it must be possible to advise individuals buying and selling land on the security of the rights attached to a particular plot. In post-conflict societies, it is likely that the hierarchy of evidence must extend beyond conventional models.

## **Assessing existing institutions**

Institutions associated with land rights and land use allocation and management tend to have long histories in their country or territory of location. These can be formal institutions, such as a land registries or courts, or involve customary arrangements organised by tribal elders and village headmen. These institutions - both formal and customary - hold a variety of recorded legal evidence about land rights. Oral agreements made before witnesses and upheld by institutions or social structures within society, both at the group and household levels (e.g., many agreements about rights to the land/house within marriage are oral agreements) may also be recognised as sources of land rights. Therefore, staff must assess existing institutions with a view to identifying:

- The stakeholders in land use allocation and management.
- The institutions normally involved with land and the people currently involved.
- Individuals and professional associations with relevant knowledge and skills.
- All existing land records.

Relevant institutions include the surveyor general's office, cadastral agency, land registry or court. They can be found at any level of government, including at the municipal level. They are concerned with land rights, land use and justice (dispute resolution), spatial planning, valuation and tax records. They can also be customary institutions, which in many countries are statutory, and customary land administration and courts are not rare occurrences. They can also be informal institutions where government has not recognised those of a customary nature, or where the institution has developed in an informal settlement outside a customary framework. Religious institutions can also be involved in land, and this is especially important in Islamic societies with regard to both management and inheritance of land.

Some of these institutions may have existed only before the conflict or disaster and may have been transferred out of the territory or country. Some of them may be parallel structures that are in competition with the previous or the current official structure.

## **1.1.7 Legal issues**

### **Assessing the regulatory framework**

Any comprehensive understanding of the situation requires at least a modicum of awareness of the regulatory framework. This must include policy, legislation, rules and regulations, administrative guidelines, religious, customary and informal law, and an overview of the various types of tenure. Most important is an understanding of the regulatory and institutional framework in place just before the conflict broke out. Any changes introduced afterwards – either during the conflict or by the post-conflict administration – will also matter, of course. This well-rounded understanding of the framework requires assistance from local expertise, especially in the areas of law and government policies. Experts are also needed in religious, customary or informal rule systems where they exist.

### **Translation**

One of the first activities of any peacebuilding mission, therefore, will be the immediate collection of all relevant national and local laws affecting the enjoyment of land rights and those governing the rule of land administration. This legal code should be augmented with a collection of all relevant international human rights and related treaties binding on the country concerned. The rapid collection and publication of these materials will be a vital first step in any efforts to understand, and possibly reform, the normative framework governing land relations.

Staff must identify any key statutes and regulations with an impact on the land sector and arrange for their translation into a commonly understood language. This also applies to basic documents describing policies or applicable rule systems, insofar as they are documented. If no documents are available, they should be created, based on interviews with the relevant representatives (from tribal, informal or religious communities). Legislation most likely to require translation includes:

- The constitutional framework, including relevant housing, land and property rights
- The civil and land code
- Legislation on transactions in real estate and land
- Legislation on land or real estate registration
- Cadastre and surveying legislation
- Legislation on subdivision or land use control
- Spatial or land use planning legislation
- Legislation on transfer tax/stamp duty
- Legislation on land and property tax
- Legislation on land consolidation

All relevant human rights treaties are available in English and all other UN languages. It may be important to translate any national legal understandings or jurisprudence/case law that may be relevant to the application of international law within the national legal order of the post-conflict country concerned.

### **Local knowledge**

Interviews with local experts will shed light on how land-related activities (land delivery, land transactions, subdivision, planning, building permits, allocation of public land) were performed in practice. Staff must assess the extent to which these activities took place outside the law, for instance, through parallel structures. In this respect, it is more important to understand the law as enforced than the law in the statute books.

## Security of tenure systems

Staff must also arrive at an overview of the different types and systems of land tenure. They should identify any major discrepancies across different areas. Their focus must extend beyond ownership/freehold/property rights. It is possible that the majority of the land and dwellings are held under rights of use or possession, which may have restrictions on transferability attached. Moreover, titles to land or dwellings may be held under customary, informal or religious law, which all lie outside statutory books.

## Discrimination

As they review the legislation, staff should assess whether the law discriminates against any groups. It is possible that at some point in the history of the country, land transactions and allocation favoured certain groups over others. This could involve subtle or blatant discriminatory procedures, such as:

- Rules demanding prior approval of transactions (or certain types thereof) by a certain authority ahead of completion. This can easily be used for discriminatory practices, such as blocking transfers from a member of one group to another group.
- Non-completion of the technical process or administrative procedure. Staff should assess land transfer activities (e.g., allocation and transactions) to establish three critical points: (1) whether transfers were completed in keeping with appropriate procedures for verification, notarisation, recording and registration; (2) whether these procedures were complemented by the updating of the registry/textual cadastre; and (3) whether these included subdivision procedures, such as surveys, preparation of plans and updating of the index/cadastral maps. These conditions may differ across various areas (urban/rural, inhabited by different groups, very mixed areas) and across different countries.
- Unrecorded transfers: Staff must identify the reasons for any unrecorded transfers of land. Has there been a tradition of recording or registering land rights? Has registration been avoided? Did people try to avoid payment because of taxes or processing fees? Did people try to avoid the lengthy and uncertain procedures required to get permission for the transfer? Were the transfers in violation of the law? Did the transfers go unrecorded because of discrimination issues?

## Further steps

Understanding the regulatory framework in any depth is invariably difficult, particularly for international staff, and may happen only in incremental steps. However, improving understanding is a prerequisite for several of the further steps to be taken during the emergency phase, such as:

- Understanding what has been going on, and is still going on, with regard to what is legal or otherwise accepted, and what is illegal and or otherwise unacceptable.
- Rating the validity of the land records.
- Developing hierarchies of legal evidence to provide guidance on what is a secure land right.
- Designing appropriate mechanisms for dispute resolution.

Far from being only a 'technical' legal exercise, such an understanding must extend to the previous and current state of society insofar as it relates to issues of land administration.

## **Addressing legal ambiguities**

A thorough assessment of the regulatory framework will likely expose legal ambiguities and contradictions. Clear-cut rules have probably not been applied in the past. Staff must pay special attention to human rights issues, especially housing, land and property rights as these are found in international laws and standards, access to mechanisms for dispute resolution, and basic rules of due process. Steps may need to be taken urging the amendment of local legislation. Extensive lobbying by international UN staff and local staff on the need for legal reform is also likely to be in order if those controlling administrative power are to grant them the required high degree of priority.

Prompt repeal of legislation may be required where it is clearly discriminatory. The pre-existing regulatory framework may also need adapting. Moreover, post-conflict situations typically attract many foreign consultants who often prove all-too keen to introduce new legislation modelled on foreign statutes, instead of assessing and adapting existing laws. Internationally-inspired legislation can be associated with three main problems:

- Implementation of new laws can be far more problematic for local staff;
- Co-ordination problems and contradictions with pre-existing (and continuing) laws and regulations can be expected; and
- Acceptance/ownership may be poor as local staff or (groups of) the population consider the law alien.

Insofar as possible, any new proposed legislation must respond to local circumstances and be supported by and developed in close co-operation with local experts (or be drafted by local experts with international assistance). This will improve the actual import which the legislation or regulations will have in the short term as well as their sustainability in the longer term.

## **Local politics**

Drafting laws and regulations is one thing, but getting them approved by the appropriate institutions is another. The process is always time-consuming, and lobbying is in order at an early stage, including explanation of the bills coming up for review and all the good reasons for turning them into law. There is no underestimating the time this can take, especially where the constitutional framework itself is under development, or is made more complex by a dual structure involving international administration. At the same time, often in these situations one needs to make a careful assessment as to when the 'time is ripe' for certain actions, in view of priorities and the ambient degree of awareness about land issues.

## II. REFORMING SYSTEMS, MANAGEMENT AND THE LAW

### 2.1 Reforming systems and management

#### Creating flexible hierarchies of legal evidence and adjudication

Resolving land claims in the post-conflict emergency phase will probably require flexible hierarchies of legal evidence based on a range of legal elements. The same holds for land market transactions. 'Flexibility' means that the hierarchy must extend beyond conventional legal evidence held in the land register and cadastre or other formal documents. On the other hand, any rules regarding evidence must also probably integrate the fact that some documents have been tampered with because of the conflict.

In many cases, ordinary legal standards relating to land administration will have only limited import during the emergency phase and the immediate aftermath of a conflict. As noted, land records may be missing, incomplete or out of date. They may also be incomplete, including only certain transfers while consciously leaving out others. Some of the records may have been tampered with just before, during or immediately after the conflict. In general, it will not be possible to rely solely on the land records to determine who holds which property rights. To a certain extent, one can compare the situation with a process of adjudication.

#### Adjudication

Adjudication normally occurs when someone brings land rights onto a land register for the first time. This process delineates rights in a plot of land. Based on various types of information available (official documents, other written documents, witness reports, etc.), a rights-holder is registered in the 'draft list'. This list is then put up for public inspection for a certain period (ranging from a few weeks to a few months). This enables right-holders whose rights are not shown, or whose rights are listed under someone else's name, to file objections. As early as possible in the emergency phase, staff must try to introduce adjudication in the technical processor administrative procedure. In the reconstruction phase, adjudication should be routine

#### Due process

To ensure adequate protection of land rights, due process mechanisms based on conventional adjudication approaches must become part of the existing technical processes and administrative procedures associated with land market transfers in post-conflict societies. Due process must also be introduced in any occasional or systematic data transfer from manual to digital systems, or when deeds systems are changed to title systems.

However, when introduced in the adjudication mechanism, due process must be so designed as to facilitate mass conversions, short of which it will freeze the entire land market for years. Tinkering of a purely technical nature will too often result in loss of land rights for ordinary people for three main reasons:

- There is no due process mechanism.
- The body responsible for adjudication does not meet.
- The due process mechanism is not designed to deal with mass claims.

## **Types of evidence**

Where land registration systems operate along conventional lines, they are likely to do so based on a rigid hierarchy of legal evidence as dictated by statute. However, in a post-conflict situation, such rigidity must give way to a more flexible approach. To start with, a flexible hierarchy must take in different types of legal evidence. An appraisal of the elements of every such type of evidence must determine its relative weight, taking into account the societal, legal and political situation before and during the conflict period. The types of legal evidence to be used include: possession lists, copies of cadastral plans, notarised contracts describing the transfer of real property, contracts on use of apartments, public housing records, building permits, permits of use, evidence of tax payments, utility bills and (oral) witness reports. For the sake of due process, any decision must rely on a combination of sources of evidence (including some secondary evidence), rather than a single one. In other words, alternative types of legal evidence, rather than just the land records, can play a crucial role when determining property rights. Not only can legal counter-evidence play a role alongside the land records, but also accepting land records at face value (until proven differently) can amount to negligence in certain cases or areas. Where land records are taken at face value, they may well benefit the group in power over other groups, especially those not currently in the area (e.g., refugees).

## **Rules of legal evidence**

Rules of legal evidence must be developed which do not discriminate between the different groups in the conflict. They must allow for the likelihood of previously unregistered transfer documents, and permit the use of alternative documentation such as utility or tax bills, information from customary, parallel or informal structures as legitimate sources of evidence. Oral witnessing must be accommodated. For disputed cases where different individuals claim the same land rights, an appropriate hierarchy of legal evidence is in order. This is important when people belong to different sides in the conflict. In these circumstances, UN staff must take a critical look at the methodology of land records; they must pay particular attention to documents signed by individuals that are in the area at the time, and especially when power-of-attorney is used to transfer land rights away from absentee owners. Moreover, individuals will often demonstrate use of a property with evidence of utility or tax payments in connection with it; but this does not prove what type of right they held (owner, possessor or tenant).

## **Special protection**

Protecting the rights of individuals who have left the area wilfully or otherwise will most likely require some steps with regard to land market transfers. This may include offices for the lodgement of claims located in other areas or countries. Those individuals may also need assistance when faced with transfers, whether they object to a forthcoming registration of 'their' land rights in the name of someone else, or whether they need some time to object even after the registration has taken place. The latter case may result in some kind of qualified title. At the same time, these protective steps will make registration more difficult and stand in the way of a revival of the land market.

## **Inheritance**

Reviving the land market in a post-conflict situation often faces complications related to individuals who have been killed or gone missing. Problems also frequently arise in connection with the inheritance of land, which post-conflict situations only exacerbate, and with the frequent recording of land rights in the name of a deceased person. There are six reasons for this:

- Discriminatory legislation.
- Legislation on intestate inheritance is often at variance with customary or religious rules.
- Bureaucratic procedures for processing a transfer upon inheritance can be too lengthy or costly or must take place in the capital city.
- Evasion of inheritance taxes.
- Unsuitability (or even illegality) of the subdivision of the property between heirs.
- A few heirs use the property, but more live elsewhere (e.g., large conurbations, abroad), and still retain their rights. Such circumstances make it difficult to register the correct situation and even harder to transfer the rights, especially where rules require all parties to be present to sign documents.

As mentioned earlier, in a post-conflict situation both dispute resolution and land market transfers require trails of legal evidence as well as a flexible hierarchy thereof. This type of legal evidence is likely to suit a deeds-based (preferably with a parcel-based (cadastral) index) better than a title-based registration system (which revolves around the notion the main records (land book) are not defensible).

## **Creating an early management system for public land and properties**

Post-conflict situations create opportunities for theft of land, housing or other property left behind by individuals who have had to leave the area, or of public land and buildings.

Post-conflict environments also typically trigger construction booms. The resulting buildings can fall short of relevant rules and regulations on three major counts:

- Absence of the required building, or other, permits.
- Location outside the relevant spatial or land use plans.
- Location on land not owned by those undertaking the construction.

Moreover, buildings previously used by currently dysfunctional public bodies or enterprises may be occupied for the purposes of (temporary) housing or small-scale businesses. Sometimes this may be perfectly legitimate in assisting in addressing humanitarian needs. In other situations, however, criminal elements may take over buildings. It is likely that representatives from the UN peacebuilding mission will neither be aware of the exact location of the public land and buildings, nor that the properties are being invaded. Even when the administration becomes aware that this is happening, for instance, when construction is taking place in road reserves, parks, or on sidewalks, squares or parking lots, it is often difficult to respond appropriately.

## **The most appropriate initial system for public property management involves:**

- Collecting data on public property and keeping it on a simple database.
- Making sure that a basic legal framework is in place to facilitate the protection of public property.
- Determining as soon as possible whether the construction or the occupation is illegal or in an illegal location.
- Notifying the builder or user of their infringement, with a request to stop construction and remove what is already there or vacate the building.
- If the builder or user do not comply, prepare a demolition or eviction order.
- If necessary, once the order has been filed, the appropriate authorities must physically

remove the user or the construction. Usually this requires a (specialized) construction company, and the process may include (forcefully) removing the occupants. Those executing a demolition order may need the protection of security services. In some cases, the UN peacekeeping forces may have to carry out eviction orders against criminal elements.

The local level is most appropriate for those types of land management functions. The monitoring and notification must take place at local level as soon as institutional capacity has been (re-) established. Depending on the socio-political make-up of the local authorities, they may have to shift the decision to file an eviction (or demolition) order to a higher level of government. The police or security services must back up the execution of eviction orders.

If action with regard to illegal construction or occupation is prompt, public and happens soon after the conflict, then the message to the public is clear, and this will stymie further illegal construction, occupation and invasion of public land and buildings. Short of prompt action, the possibility of dealing with these illegal developments will become more remote and instead authorities will have to regularize them at a later date. Where an invasion involves public buildings, any form of regularisation will come at an enormous cost to the authorities. Regarding the invasion of public land by ordinary people, blanket regularisation strategies have been implemented in the past and are increasingly used as a routine tool in urban development.

## **2.2 Personnel and equipment**

### **Assessing the amount of qualified personnel and their skill levels**

Most activities related to the cadastre, land registration and land management are performed by persons with specialised skills and knowledge. The key areas of expertise are surveying, land law, planning, land economy, information technology, valuation, land management and land administration. It will take an assessment of the pool of expertise and skills available to identify what kind of system can be quickly re-established, as well as the number, and areas of expertise, of international staff required.

Skills assessment will identify the numbers of people in each of the disciplines, as well as their levels of skills and knowledge and to what extent these skills are up to date with regard to global trends. All groups involved in the conflict must go through a similar assessment. The exercise must also produce disaggregated gender figures. Also in need of basic assessment is the amount of education or training available in these fields, including type and levels, in the country itself. At times, some types of education are not available in a country, but many individuals may have access to it in another one (or may be actually studying there). Some skills may only be found in one ethnic group that happens to have lost power or is not acceptable to all sides in the emergency phase.

### **Assessing available equipment**

Land survey requires specialized equipment. This may not be available in the country, either because it has been looted or because it was not a modern system in the first place, or because the amount of equipment is inadequate. Compared to modern implements, old-fashioned equipment requires more experts or other staff. The type of equipment needed will include:

- theodolite, Electronic distance measurement s or total stations
- GPS equipment
- Special read-out and adjustment software, which requires a certain level of computer facilities
- Computers to access and update the (low-level) database of land records
- Computers with above-average specifications to handle the (digital) satellite imagery or orthophotos
- GIS applications
- Networks, servers
- Generators and uninterrupted power supply
- Radios for the transfer of data and the monitoring of transfers

Staff must assess any available computer hardware and software, especially with regard to their appropriateness for the tasks required.

## **Expanding the number and range of international experts**

As the land administration activities during the emergency stage progress, the initial core group of international experts will need to be expanded. Recruitment must focus on consultants with experience in registry, survey, valuation, general land law, land policy development and information technology. International experts must be able to provide the whole range required, from legal-administrative to survey-technical skills. Experts are also needed in other areas, including:

- setting up modern financial and project management systems;
- managing public awareness campaigns;
- contributing to reconciliation, conflict management and dispute resolution;
- understanding the human rights framework and gender issues.

At an early stage after the first 12 months, the focus must broaden to include land policy development and to set the project in the broader context of land administration and land management. This will require experts in land economy, land use planning, land valuation and sector expertise (urban development, agriculture, regularisation of informal settlements, finance, etc.), as well as political economy. As the reconstruction phase is about to begin, some consultants that had been hired for the emergency phase may have to give way to others whose skill sets are more oriented to the medium and long terms. In general, the types of professionals involved in land-related issues are better tailored to the reconstruction than to the emergency phase.

## **2.3 Setting up an interim database**

At a very early point in the post-conflict period, a variety of functions will involve information about (administrative) property rights. These functions include:

- granting building permits;
- subsidies for the repair of damaged dwellings;
- monitoring land and dwelling invasion;
- temporary assignment of dwelling space for the needy.

The supply of such information will also help restore normality to the land market (at least for undisputed properties). Therefore adequate databases are necessary.

Where the land records have been stolen, misplaced or are in disarray, and there is no well-rounded, up-to-date overview data up to just before the conflict, then the database need not be sophisticated. Where the complete records are only available on paper, loading them onto a database will help with rapid dissemination of information. A range of different administrative functions will also require a simple database with only the key data, which also help deliver services to clients. Such databases must use general spreadsheet software (Access or equivalent).

When setting up low-level databases, staff must take into account the quality of the data. As already mentioned, the quality may have suffered from the removal or theft of data sets, unrecorded contracts, parallel structures, discriminatory transactions and illegal or unfair processes and recordings that have occurred just before, during and immediately after the conflict.

In most cases, staff will have no alternative but to use the data, for all its limitations. It will be a rare situation when merging two or more data sets is feasible. Generally, this will involve the application of generic rules as to which set takes precedence when data fail to match.

## **Step One**

When creating a low-level database, the first step is to supply offices/structures at municipal level with read-only CDs of the data in their area of responsibility. Computer equipment, including a printer and software, must be available as soon as possible. Two different methods are available to reduce opportunities for illegal alterations to the data: recording them on CDs through automated processes, or employing non-cadastral data entry personnel.

## **Step Two**

The second step in the creation of a low-level database is to set it up in a format that allows updating. This includes logging functions showing the time of change to the data and the authorized user making the changes. This format will allow the recording of routine land transactions. The amounts of time and money it takes to create such a database will depend on how comprehensive the overview data is and on the extent of computerisation before the conflict. Staff will need to assess whether the creation of such a low-level database adds value in a post-conflict situation. If it does, then its format must be such that it can also serve as a building block for a modernised registry or cadastral system in the subsequent reconstruction phase.

## **Step Three**

Once the updateable format has come on stream, the third and final step in the creation of a low-level database is the development of a flexible hierarchy of legal evidence to be applied when processing transactions.

In this low-level database, staff must neither update nor change any land rights that are in dispute and under review by any adjudicative body that has been put into place or by the courts. Once a dispute is resolved, staff must enter this information into the database. Moreover, staff must treat with additional caution any transactions that remove land rights from persons not present in the area. Any transactions which staff consider as suspicious must go through adjudication to ensure that due process takes place.

Ideally, all transfers in a post-conflict situation must include some form of due process mechanism. However, this approach would probably lead to a deadlock in the formal land market. For the same reason, it will not be possible to undertake adjudication of all properties

when setting up the low-level database. This would imply a systematic adjudication process, which would take years to complete for a whole territory or country. The development of alternative mass dispute-resolution approaches would be needed. Staff must also screen relevant laws and regulations for anything that makes it difficult for women to have land registered in their name or to hold occupancy rights. (See chapter five)

## **2.4 Critical functional and legal arrangements**

### **Inter-relations and information flows between land institutions**

At the beginning of the emergency phase, a single team led by international experts is likely to deal with issues such as existing land disputes, securing and reconstructing the land records, law, order and reconciliation in land, restitution measures, and any other housing, land and property issues that may arise. However, it is likely that over time, there will be a separation of functions within the team. For instance, management of claims and disputes may go to a separate agency staffed by international experts, or alternatively, and with appropriate capacity-building, to the judiciary or a dedicated government department. Creation of a separate agency is likely for the registry/cadastral. This may begin only as a project, if no government agency already exists. The project must transform into an embryonic agency as soon as possible. Moreover, although the allocation of building permits may be entrusted to the land-dispute agency, this function is better allocated to municipal authorities.

It is likely that the registry/cadastral and dispute resolution agencies will diverge over time during the emergency and reconstruction phases, as the technical and legal experts in each institution focus on the details of implementation rather than the overall picture. However, given the germane nature of the functions, special efforts to co-ordinate the different land agencies are required from the outset. Short of this, the agencies cannot share legal knowledge and interpretation, nor can they formalize land information flows between them. Given the pressure of emergency work, such co-ordination is unlikely to be considered an immediate priority, but quite wrongly so: the later it happens, the less efficient such inter-agency co-ordination will be in the short, medium and long terms.

In practice, co-ordination means that the land dispute agency shares any information and land records it produces with the separately established registry/cadastral agency, and preferably as cases are settled, or in any case at the end of its own life. Short of integrating disputed claims into the registry/cadastral, the security of tenure of the disputed land will be limited and even decrease over time. The agencies in charge of dispute resolution and of issuing building permits will also require land record information from the registry/cadastral at every stage of their own operations.

### **Improving land records**

The low-level database described above will be a good starting point for systematic land-record improvement. This effort includes administrative records (registry or cadastral), which must be further improved with any available and reliable information. Systematic improvement can only happen in a piecemeal way, as new transactions occur at the relevant offices. This will generally come in the form of individuals looking to transact actual (or putative) property rights.

Frequently in post-conflict environments, when people wish to transact property rights it is not possible to rely solely on the registry or cadastral records. Other types of legal evidence may also be required. Moreover, one must make sure that the property is not the subject

of a claim at the land dispute agency or court. Best practice here is to attach a caveat, or written instruction, on the registry/cadastral records that a property is subject to a claim. This approach relies on the proper use of consistent and unified property identifiers, and would benefit from computerisation.

There is an alternative way of ensuring that land and property transactions concerning land or property under consideration by the dispute resolution agency do not proceed prior to a decision by the body concerned. This would involve systematic checks for possible claims with the relevant courts or agencies before the registry/cadastral or courts record any transaction. But then this would prove too much of a burden not just on individual transactions but on the courts and the land dispute agency as well, even where only a few properties are actually subject to a claim. For this and other reasons, the registry/cadastral must process any decision made by the courts or dispute resolution agencies as early as possible. Where properties (or land parcels) are not well defined or where rights holders wish to transfer rights to only parts of their property, research into survey records or cadastral maps is in order during the course of the transactions. Short of this, the risk is that yet another party will become involved in the dealings over particular pieces of property. When the loser in the claims registry/cadastral procedure sells their 'right' to an unknowing buyer and there is no way of checking that the claim has been resolved, there is a fair chance that the new buyer becomes another claimant with a reasonable case.

## **Map reconstruction**

Further improvement of land records will also require map reconstruction efforts. The collation and assessment of land records discussed above should serve as an opportunity to develop a graphical overview based on the data (cadastral/index maps). By that time, staff must be well aware of the availability, currency and quality of the survey records.

Unless the maps are complete or very nearly so, land record improvement will likely require quality map reconstruction organised by area and by period. Such reconstruction can resort to aerial photographic material as a foundation. The effort will require new or additional equipment. First to be undertaken is the day-to-day task of boundary determination, resolution of boundary conflicts and requests for subdivisions. The next step is to embark on a systematic, time- and resource-consuming project to create high-quality maps. Just as with the descriptive records, the focus must be not just on official documents; it must extend to other types of evidence such as terrain features, (aerial) photos and even oral witnesses.

Property development

Any subdivisions must be carried out responsibly, in accordance with agreed and approved plans, to keep in check both illegal development of public land and informal development outside the planned urban areas. Whereas surveyors can refuse to undertake subdivision in such situations, in an emergency phase this could force those activities even more into the extra-legal sphere. Monitoring development requires good co-ordination with the authorities responsible for urban planning and the management of public land. At the same time, there must be new ways of accommodating genuine and pressing needs for land that can be developed, whilst preventing long-term problems through the loss of public land and random development on the urban fringe.

## **Staff and safeguards**

Improving the quality and scope of land records requires well-trained land office staff with appropriate professional ethics. The procedures must feature built-in safeguards to ensure quality. Staff must be able to re-trace any alterations or changes to the land records, with logs showing the time and user on computerised records. Any changes to the records must be based on the correct documents, which in turn must be checked according to certain protocols. Both the underlying documents (or a copy thereof) and the protocol should be archived, including mentions of the date, time and name(s) of processing officer(s). Some procedures will require a certain degree of expertise, and it is better for two individuals to sign the completed protocol before any change is finalised. Moreover, if one person creates the file, another person should be responsible for checking it and another for filing it, wherever possible. However, staff must find the right balance between the time and resources required to run the system, and clients' need for expediency.

## **The private sector**

Apart from government, the private sector often plays a major role in transactions involving property rights. Conveyancers or legal professionals (lawyers or notaries) often support transactions. Private/licensed surveyors perform subdivisions. Often when the government sector is under-resourced, private sector professionals may obtain access to large parts of the land records to collect, research or check information. Adequate safeguards must prevent the private sector from illegally altering the records, or removing them.

## **Translating existing laws and repealing discriminatory legislation**

Translation of existing laws and the repeal of discriminatory legislation must be a continuous process. As mentioned earlier, both are required early in the emergency phase, but these processes should continue in later stages as well. UN staff must examine the entire legal framework over time to identify any laws with discriminatory impacts. Once identified, any discriminatory legislation should be brought to the attention of the relevant legislative or judicial body with a view to repealing the law as early as possible under the new or interim administration. Translation of the legislation and comparison with international human rights conventions, with special regard to housing rights and security of tenure, are essential prerequisites before staff reach any conclusions. The comprehensive review must result in the recording of any infringement of the rights of the weaker groups in society; these include women, minorities and those who were members of the 'wrong' group during the conflict. Staff must address instances of past injustice through supporting measures to protect the housing, land and property restitution rights of displaced persons and refugees.

Monitoring discrimination is also in order when government-owned enterprises and assets are privatised, either prior to, during or after the conflict. When property is privatised and awarded to those who lease an apartment or are employed by an enterprise, the effects of earlier discriminatory rules in the allocation of dwellings or job opportunities (including mass redundancies) will have an influence over who benefits from privatisation.

The effects of discriminatory legislation and the discriminatory implementation of neutral legislation, must be redressed to the greatest possible extent. Where victims are scarce, the claims system can deal with reparation. However, both the person making the claim, and the person in possession, may have a reasonable case to be the right holder. Some kind of compensation may be required (e.g., cash, government bonds, allocation right to unclaimed

or reserve land or property). Specific restitution legislation will likely be required. Central and Eastern Europe's transition countries, South Africa, Kosovo, Bosnia and other countries have some experience in this regard.

## **2.5 Building bridges from emergency to reconstruction**

It is important to note that of the 20 or so key activities listed for the emergency phase above, the majority act as building blocks for the reconstruction phase. Only three in the whole list do not need to outlive the emergency phase, namely: (1) raising funds for this specific phase of the project; (2) developing specific procedures within the UN for emergency operations; and (3) liaising with other agencies during the emergency phase. Therefore, treating land management as only an emergency issue is not recommended. This is because of the very nature of conflict and land issues. To start with, conflict is often endemic in society and land issues are a key factor in potential conflict over decades. Moreover, land issues and conflict typically take years to resolve, and there is no 'quick fix'. Thirdly, projects are only worth starting if they move on to the reconstruction phase and up until the point where a credible institution takes over their functions, otherwise the input is probably wasted. Finally, the land sector is so politically sensitive that short of appropriate resources, it may be better not to engage with it at all, except at the most rudimentary level, eg. to ensure the protection of basic housing, land and property rights.

# III. THE RECONSTRUCTION PHASE - MAPPING OUT STRATEGIES AND OPERATIONS

## 3.1 Developing a strategic action plan: the 22 steps

With everything in a state of flux in an immediate post-conflict or post-disaster situation, the strategic action plan in the early phase of reconstruction requires 'soft' systems (i.e., centred on human behaviour) as opposed to the 'hard' (i.e., purely technical) systems favoured by those conventional approaches typically used in stable situations. While every post-conflict country will require a specifically tailored plan suited to local conditions, a generic land administration strategic action plan should include the following 22 steps:

1. Think before acting. It is better to have a fair notion of what can be implemented prior to setting goals and devising plans; therefore, staff must spend time devising a practical strategic action plan. In an environment defined by seemingly overwhelming numbers and varieties of demands, it is critical to identify priorities and what can be delivered in view of available (human and financial) resources, especially as handling land issues can prove expensive. Development of a work plan, along the lines suggested in the Annex 2, must begin at a very early stage. The strategic action plan will identify different critical elements, which it is then crucial to convert, in a balanced sort of way, into specific activities in the work plan. The typical land administration work plan includes the following six areas of activity: financing, information systems, legislation, management, organization, and technology. There is a significant risk that the 'hard' activities will receive more attention than the 'soft' issues where quantitative indicators are included in the work plan, whether these are activities in their own right, or components of one or more of the main categories. 'Soft' activities are not easy to describe in terms of deliverables and measurable indicators, and are even harder to monitor and evaluate. Nevertheless, the real impact on society, and the long-term sustainability of the project, are both dependent on the 'soft' activities.
2. Avoid functional gaps and overlaps. Prior to the development of a strategic action plan, staff must carry out a review of UN and international agencies, government institutions and projects to assess which land-related functions are envisaged and underway, in order to ensure that gaps and overlaps remain limited. This exercise must also identify the extent of co-ordination required with the UN and other agencies as well as government and donors' projects. Staff must clearly identify the functions to be undertaken and the roles and responsibilities allocated to the project, to UN agencies (especially those in charge of governance functions in post-conflict societies) and to the, as well as the methods of co-ordination. Developing a plan for the establishment of a Housing, Land and Property Directorate could be one means of comprehensively addressing these issues.
3. Planning and financial management is a key aspect of reconstruction projects, as these typically make heavy demands on resources. These activities should take place within the country, with knowledge transfers to local staff as early as possible.
4. An assessment of local population needs from the point of view of the agencies involved and of ordinary citizens from all parties/groups. Staff will determine operational priorities on the basis of these assessments and of available resources.

5. Set up and staff offices, drawing on the local and international staff that worked in the country during the immediate post-conflict emergency phase. Every effort should be made to ensure that offices of balanced with local staff members in proportions representative of society as a whole.
6. Deciding which land functions to prioritise and which type of agency to set up. For instance, is a cadastral agency a priority, or must the registry records come first? Should the agency in charge of handling land disputes be separate from the registry office, or from government?
7. Reconstruction of cadastral records. This aspect of the operational plan calls for specific supporting action, including (1) a scoping exercise to identify problems, (2) initial development of hierarchies of legal evidence to assess the value of the records, (3) starting discussions about the entrenchment of due process or adjudication mechanisms into the technical/administrative process, and (4) the technical options for record reconstruction.
8. Working out, as best as possible, the sequencing and timing (phases) of activities, knowing that everything will take longer than expected, and that the legal aspects will likely experience the longest delays, whereas the technical aspects will be the easiest to implement.
9. The development of immediate plans for the improvement of mapping, including satellite imagery/orthophotos.
10. Setting the strategic action plan within a technical/legal policy framework through key decisions with regard to certain approaches, namely: privatisation, land consolidation, land delivery, title deeds or other approaches to secure tenure, systematic or piecemeal approaches, unfinished pre-conflict legacies e.g. distribution of social ownership, pending court cases, type of cadastre (fiscal, legal, planning, technical), integration between registry and cadastre, and cadastral accuracy. Setting the strategic action plan within a technical/legal policy framework involves further decisions regarding priorities, such as modernisation or an emphasis on post-conflict issues, and the link to reconciliation or holistic land policy development. This also includes identifying ways of mainstreaming UN-HABITAT principles into the plan, including decentralisation, good governance, gender, non-discrimination, etc.
11. Approaches for the development or re-structuring of the institutional framework, especially with regard to moving from a project approach to an institution-wide approach, placement of functions within government, decentralisation, allocation of some functions to the private sector, and running a UN-HABITAT programme in conjunction with the development of an institution.
12. Capacity building plans, including general management, technical, legal, conflict management and language. The transfer of knowledge and skills is a key area, and requires both intensive training and hands-on experience.
13. Methodologies to bring about legal certainty and address the legal ambiguity that is an integral part of post-conflict situations.
14. Enforcement options and approaches to ensure that policies, laws and regulations are implemented over time.

15. Public and media campaigns to inform the public about their land rights and responsibilities, and developments in these areas.
16. Identifying pilot projects and approaches for scaling-up, with a focus on projects most likely to play positive and catalytic roles in improving all aspects of the land administration process.
17. Identifying and meeting key stakeholders. There will likely be a wide variety of stakeholders. Staff must identify the major stakeholders and meet them periodically to collect information about users' needs and to keep society informed about the project. This is especially important in post-conflict societies where lack of trust and of structured information is widespread.
18. Adopting, or developing, policy on affirmative action or quotas with regard to ethnic, religious, racial and other minority groups and women.
19. Risk assessments are needed on a routine basis, in particular as a means to prevent the altering of land records. In addition, such situations provide fresh opportunities for corruption and even criminal behaviour. The plan should consider this, as must the monitoring and evaluation functions.
20. The introduction of land policy development at an appropriate time, as well as the development of a Stakeholders' Forum.
21. Monitoring and evaluation of the land sector, both in terms of detailed activities and of the broader picture, including the project or agency and its linkages to, and role in, the land sector in a post-conflict environment.
22. An exit strategy for the project must be developed from the outset to include phasing out of international staff, phasing in of local staff with appropriate training, mainstreaming of the project, as well as availability of adequate financial and human resources to carry out functions that will maintain peace in the medium to long term. The exit strategy must also be such that the records from the agency set up to handle land disputes can be integrated either from the outset, or when the agency merges into government.

## **Setting up a Steering Committee for the project**

A Steering Committee responsible for implementing the 22 steps should be set up as early as possible. It should bring together management responsible for the project (technical, local, UN-HABITAT), politicians under whose mandate the project falls (UN agencies, local) and donors involved in the project. The role of this Committee is likely to change over time as the activities involved develop into a stand-alone institution or as reconstruction proceeds and government becomes fully operational. The committee will also need to change relative to UN-HABITAT's own role, as the agency moves away from operational activities and focuses on broader-picture monitoring and evaluation as well as land policy development. Whether the Steering Committee tries to behave like a management board for the embryonic institution, or the various political forces bring their respective agendas to Committee meetings, both situations will call for some diplomatic handling.

The Steering Committee will need a secretariat. It is also likely to have some responsibility for the management of certain resources (such as short-term consultancies). The Steering

Committee may also be used to manage a Stakeholders' Forum for land policy development, in which case its composition may have to include representatives of other stakeholders.

## **3.2 Developing work plans, activities, outputs, indicators and deliverables**

Often the objectives for the project or programme are set during a Logical Framework Analysis exercise. This analysis forms the basis for the strategic action plan, which converts the objectives into prioritised, sequenced and phased actions. The strategic action plan in turn informs the overall work plan of the project or programme, which must include an overview of the estimated timing of each activity, milestones, and a plan for the project period.

The Appendix includes a list of activities forming a typical overall work plan. Based on this work plan, one can draw a number of conclusions:

- Staff must work out the critical path of activities. They must identify those activities that require completion before they can start others.
- The nature and timing of activities must be flexible. Circumstances may change more rapidly than expected in post-conflict situations, and priorities must be revised accordingly over the course of a project or programme.
- It is crucial for the work plan to include many meetings with local people to collect and transfer information and, most importantly, to build trust within post-conflict society .
- The technical activities related to reconstruction or computerisation of the land records, boundary maps and other geographical data sets, must be clearly identified as sub-activities, for which measurable outcomes can be defined. Many comparable projects can provide examples of valid benchmarks and indicators.
- Wherever possible, staff must identify and quantify measurable indicators. However, they must leave out of the work plan those activities for which they cannot set measurable indicators. They must use output and outcome indicators to facilitate both process and product.
- There is a difference between a work plan for a post-conflict country and one for other countries in the region that otherwise are at a similar stage of development (like post-communist transition or post-dictatorship developing countries). Activities in post-conflict societies deal not just with modernisation, but more importantly with reconciliation and the restoration of law and order .
- A work plan is a general summary, not a comprehensive list of the detailed activities that staff must carry out.
- Staff must break the overall work plan down into annual work plans. This leaves open the possibility of changing priorities, integrating lessons learnt or adjusting to ongoing developments.

## **3.3 Administration and management**

### **Creating efficient and transparent administration and budgeting**

Efficient administration with regard to all aspects of administrative, budgeting, planning and financial management is vital to the success of the operation and to the reputation of UN-HABITAT in this environment. Swift and decisive action is expected in a post-conflict environment and expectations are often high. New rules and regulations from UN-HABITAT and United Nations Office at Nairobi should specifically allow for emergency/reconstruction field

operations, as inefficiency in this area can discourage donors and create suspicions among the local population. International agencies compete in this type of environment, and already in the past slow administration has undermined the ability of UN-HABITAT to generate fresh funding and put itself in a better position to deliver on its mandate.

The land registry, and especially cadastral surveying and mapping, are resource-consuming activities that require expensive staff, equipment and a long-term time frame. These are also highly specialized operations. The planning and financial management of these kinds of projects can only take place in the country, rather than from Nairobi. Those in charge of in-country financial planning and management, especially in this environment, must work in close co-operation with the project manager who has the specialized knowledge and skills, and they must share responsibility with her/him.

It is critical that the delivery of this type of project is as transparent as possible; to ensure that local staff and partners build capacities in such activities as planning and budgeting. This approach will enable the management team to assess the affordability of the design (including equipment).

Short of such an arrangement, it is impossible to gain an overview of the total budget, activities and expenditure of the operation, including budgets and activities of all donors – an overview which donors in this field consider as standard operating practice.

In these types of operations and because post-conflict societies are in a state of flux, activities identified in a work plan may have to change over the course of a single year. Some mechanism must make it possible for staff to revise agreed activities and budgets in a structured sort of way as time goes by, using the standard operating procedures for budgets and activities outlined above.

Procurement must be transparent and help build local knowledge, in order to avoid a situation at a later stage where the local institution would not know how to undertake this critical activity. In this environment, part of procurement has to do with the development of an asset register. Since the assets from the project will become part of the assets of the government institution being created, the UN system must not register them in a way that will make their transfer difficult from an administrative point of view.

Part of standard operating procedures for donors in post-conflict societies is to get the land institutions to the point where the management team have created and managed a structured and transparent budget that is linked to a strategic action plan and programme activity lines. This makes monitoring easier and ensures sustainability in these types of operations. Short of reaching this objective before UN-HABITAT withdraws from a post-conflict operation, the land rights protected by such an institution will be jeopardised.

# Coming on Stream

## 3.4 Involving the population

### National reconciliation

Where conflict is land-related, ensuring sustainability in the land sector calls for nation/territory-wide reconciliation with regard to land needs. Some form of inclusive stakeholders' forum must be set up as soon as the time is ripe to undertake land policy development. Staff must make sure that the forum contributes directly to negotiations between groups where land is a core reason for the conflict.

### A Stakeholders' Forum for land policy development by civil society

It is unlikely that land policy can be developed in the first 12 months of the post-conflict phase. However, given its central importance to the reconciliation process, work should begin as soon as the country or territory is ready for it and under the form of a Stakeholders' Forum. Effective land management requires the presence of at least three factors:

- information about the land,
- clear policies on how it should be managed, and
- the participation of everyone with an interest or stake in the land. Stakeholders are interest groups or dependent groups, i.e., categories of people or institutions who share a common interest in a piece of land, be it an individual plot, the territory of a community, or a natural conservation area in a region or country.

The Stakeholders' Forum must be inclusive and must not exclude certain stakeholders, otherwise it will not be possible for all the decision-makers involved in the conflict to reach consensus.

### Stakeholders that must be involved include:

- The different parties to the conflict, including the peacekeepers.
- Representatives of minority groups.
- The public sector – central ministries and departments of Finance, Lands, Agriculture, Community Affairs, Health, Education, Forestry, Urban Planning, Transport, Justice, Local Governance, Housing, Environmental Affairs, Public Works, Mines, Planning, Central Statistics, International Co-operation; representatives of regional government and local authorities, both urban and rural, Deeds/Titles Registry or Record Office, Valuation office, Surveys, Mapping, National Land Information System, government utilities, government research institutes.
- Specialized land tribunals or agencies dealing with land disputes or the privatisation of government-controlled land/socially-owned land.
- Embryonic government institutions dealing with land.
- UN agencies.
- Government institutions dealing with land at all levels of government.
- Representatives of customary authorities (formal or non-formal).
- Representatives of informal settlements.
- Representatives of religious institutions, where they have a land management role.
- The private sector: utility companies, property developers (formal and informal),

professional associations of surveyors, planners, lawyers/notaries, valuers; financial institutions, private sector research institutions.

- Representatives of NGOs and Community-based organisations, including women's groups.
- Donors and development partners, bilateral and multilateral co-operation organisations.

The precise mix will vary across situations and countries as not only will departmental functions differ, but there will also be differences as to which functions are carried out by the public and private sectors (formal and informal), and these will change over time.

At national level, a Steering Committee must head the Stakeholders' Forum. The Committee must bring together representatives from government and key stakeholders' groups.

### **The role of the Stakeholders' Forum is to:**

- Contribute to any peace talks between warring or conflicting parties where land is a major factor of conflict.
- Develop land policy.
- Oversee the development of the land market and land management institutions, as they change over time from emergency to reconstruction.
- Ensure that the land issue is a core part of the reconciliation process, and for this purpose involve the key politicians as stakeholders or keep them informed. This is a critical component of such a forum, given that power relations are often the greatest institutional problem in the land sector, and land management/administration systems fail to get off the ground more often because of institutional rather than technical problems.
- Bring about a vision for the land management/administration system, which should build ownership of the system across both the sectors and the groups involved in the conflict, and facilitate the sharing/exchange of experiences.
- Maintain a client-oriented perspective. The focus should be on the end-user (citizen) when designing policies and procedures and allocating responsibilities to different institutions.
- Identify, and advise government/UN on reducing, overlapping responsibilities across government departments in relation to land functions, information flows or the technical processes associated with land. This should pave the way for law and order and a stable land market, on top of reducing gaps, duplication and institutional conflict.
- Address the problems caused by centralisation and institutional fragmentation. One of the solutions is to establish effective partnerships between different institutions, both vertical and horizontal.
- Address the problem of land management conflicts and advise on solutions. This must lead to the inclusion of a number of stakeholders who were previously excluded from such forums.
- Create sustainable systems through capacity building among local staff (e.g., training) as well as work incentive programmes to combat the 'low pay, low motivation' syndrome.
- Design any future changes in the land management/administration system in a gender-sensitive way.
- Design guidelines for Users' Requirements Assessments. The Stakeholders' Forum must undertake or commission an assessment of user requirements at a very early stage. Far from being a one-off exercise, this must be the first in a continuing string of user needs assessments.

## **Continuous large-scale publicity campaigns**

The project office must develop an ongoing relationship with the press (including radio and television) and routinely provide reliable information about peoples' land rights and their options, where these rights have been/are being infringed. The project office must keep public relations departments in government, parties and political movements informed as a matter of routine.

Staff must also continually disseminate information booklets/pamphlets about peoples' land, housing and property rights. Awareness campaigns must be a permanent feature of public information.

The project office should organize regular campaigns or media 'blitzes', involving posters, press kits, public announcements, briefing papers for officials and news conferences for the media. Wherever possible, these activities must highlight everything that can facilitate reconciliation in the community with regard to land.

## **3.5 Determining priorities and pilot areas**

### **Setting priorities in the post-conflict framework**

In post-conflict societies, the role of mechanisms for the resolution of land disputes is at least as critical as land record reconstruction or development. These two activities must be linked as early as possible.

Given where most conflicts have taken place in recent years, it is likely that the territory or country concerned does not have a fully functional, regulated updated modern land registry and cadastral system in place covering the entire country/territory concerned. When undertaking reconstruction of the registry and cadastre, it is important to remember that for the sake of sustainability, post-conflict issues remain the major priority, and one must not just focus on modernisation. Keeping this longer-term outlook in mind is often difficult for the three main following reasons:

- International advisers often bring with them approaches and business plans suitable only for societies that have not just experienced conflict.
- Technical/legal experts often focus on practical details rather than the broader picture, as this is where project implementation takes place.
- One must distinguish between what is 'urgent' and what is 'important'. Although this is the reconstruction phase, the spirit of urgency that prevailed in the previous emergency phase tends to linger on, especially as many of the same personnel are still in charge. As a result, challenging tasks such as land policy development linked to reconciliation, often take second place behind technical implementation, no matter how unsustainable in view of the potential for renewed conflict. Compounding this risk is the way projects are set up, designed and evaluated, with their typical strong emphasis on quantifiable deliverables. One must not lose sight of the broader picture, namely, reconciliation, conflict management and dispute resolution mechanisms with regard to land, appropriate land policy development, plausible hierarchies of legal evidence and the production of reliable sustainable land records.

Those in charge must repeatedly ask themselves, 'How trustworthy is the information the handling of which we are now upgrading?' They must also make sure to build safeguards into

the modernised registry/cadastral name, including with respect to the ability to trace of any changes to the records (date, time and user attached to every change) and to cross-checks. The more general objective of modernisation for staff to keep in mind is sustainable peace, law and order, and systems upgrading is only the means to this end, rather than an end in itself.

## **Setting up pilot projects**

Many of the activities related to land registry/cadastral are quite complex to implement and require careful adaptation to the (pre-existing) specific circumstances of the country/territory, including available capacity. In many situations and even with a combination of international and local experts, laying out a work plan for implementation on a national/territory scale is impossible if the activity is not tested in a pilot project in the first place.

Therefore, the project office must test most types of activities in pilot projects to begin with. Such activities may include:

- Improved operating procedures.
- Management handbooks.
- Customised procedures for basket cases.
- In some situations, a re-assessment of certain basic assumptions.
- A demonstration effect to convince stakeholders (and possibly donors) of the benefits of a particular activity.
- Building capacity among local staff, including for management tasks.
- Building training capacity among local staff prior to scaling up an activity.
- Appointing local staff to lead pilot projects in order to assess local management abilities.
- Monitoring the transfer of technical and management skills.

The selection of pilot areas is very important for cadastral work and property registration activities. The characteristics of the terrain and land use patterns have a large impact on cadastral work. Variations in the underlying tenure systems can be quite significant, because of customary, religious or other informal land-holding patterns. In post-conflict situations, the physical and social damage caused by the conflict, and its impact on different groups, are likely to vary widely across a single territory. Therefore, pilot projects must, insofar as possible, reflect local circumstances but at the same time be capable of replication. Prior to replication in other areas, staff must thoroughly assess any conclusions drawn from a pilot project. Staff can use pilot projects in those areas that, for various reasons, require attention as a matter of priority.

## **3.6 Legislative approval and legal clarity**

### **Legislative approval**

If land issues are not at the core of the UN peacekeeping mission, then amending or proposing the development of new regulatory frameworks will likely be extremely difficult and time-consuming. From a political point of view, land is always a very sensitive issue, even in societies that have not just undergone internal conflict. Politicians (whether they are local or UN representatives) and many donors along with them will want to avoid the issue altogether if they can. Consequently, it will prove much easier to support technical reform rather than any legislative changes that may court political trouble.

New legislation is likely to be time-consuming as well as difficult to pass. In post-conflict situations, bills may need to go through several successive institutional steps for approval,

such as the local Assembly of Representatives, the local UN legal office and even UN headquarters in New York for final approval, to make sure that the bill does not discriminate against other groups involved in the conflict.

Moving through these three institutional layers can take an inordinate amount of time. Beyond this and during the legislative process, lawmakers may have edited the experts' original bill without referring back to those who will have to implement it. This can cause major problems when implementing the legislation once parliament passes it into law.

For this reason, the regulatory framework in a post-conflict society is unlikely to be supportive of many of the activities that must be carried out in the reconstruction phase. Two additional factors will make the situation more complex: institutional confusion and competition. The allocation of functions and responsibilities within and at different levels of government, including the judiciary, is likely to be fraught with legal ambiguity and lack of clarity. And as they carry out land-related functions, government agencies, dedicated project units or think-tanks, parallel structures of conflicting groups, NGOs or the informal private sector are likely to be locked into competition, all jostling for space and opportunities.

## **Legal clarity**

The high degree of complexity surrounding any changes to land registry and cadastral laws extends beyond legislative approval and reaches into implementation, where inadequate local capacity is likely in a post-conflict situation. On top of this, some international experts are likely to try to introduce legislation from abroad. This may result in contradictory rules or legislation so weak as to be open to a range of interpretations. This in turn will affect the ability of the courts to make clear judgements on the exact nature of land rights in specific situations.

Land sector project managers must be aware of such risks and address them effectively. They must keep themselves permanently updated on the latest bills, laws and interpretations. They must hold frequent meetings with the powers that be those who will lobby the bills through the legislative process to keep them updated and to make sure that land remains at the top of the agenda. Land sector project managers must again guard against an exclusive focus on technical issues – the easier option in this environment – and keep their sights on the legal/political outputs, which admittedly are difficult to handle.

Staff must remain in close liaison with any agency set up to handle land disputes. Such an agency is likely to have its own land lawyers who can interpret the laws and the latest test cases. It is in the interests of such an agency to make this information available because, as they settle the disputes, the information should be recorded in the land registry/cadastral records. Moreover, if and when this land dispute agency is at some point merged into the government, many of its records will form part of the registry/cadastral records. This agency should also reach agreement with the embryonic registry/cadastral about what forms of legal evidence will be accepted for transactions, and what hierarchies of legal evidence are being used, so that these can also become part of the registry/cadastral technical process. Co-ordination between the land dispute agency and the registry/cadastral will improve legal clarity; land market efficiency and security of tenure in the medium to long term.

### 3.7 Continuous assessment of land record validity

Staff familiarity with the claims process will improve over time. They will gradually find out about the types of claims people can make and actually make, the scale of those different types, and how the courts/tribunal(s) are settling those claims. This can be a valuable input into the development of the hierarchies of legal evidence and of the administrative procedures/technical processes for routine land transactions. This information may lead to:

- Changes to certain functions in the registry/cadastre.
- A return to normal operations in certain undisputed areas, once claims have been settled and the results recorded.
- Detailed sporadic adjudication of some properties that have already been transferred.

In addition to this, staff must continually monitor transactions and transfers as they are processed. Some discriminatory practices may still be going on, possibly to the detriment of absent or vulnerable groups. Staff must monitor all operations to protect under-represented groups and to prevent corruption and nepotism, especially if the economy is weak and the social situation unstable.

Liability and accountability must be developed. Typically three different institutions deal with the technical processes/administrative procedures behind secure tenure: the registry, the cadastral agency, notaries (public or private land lawyers), the courts or the private practitioners. Institutional responsibility for information must be clarified over time. The situation must be avoided where the different institutions involved in transactions rely on each other's data, and refer to each other in the process, but none of them is double-checking the data. If the institution undertaking the certification of contracts relies on the registry/cadastre data, and the registry/cadastre relies on their certification, the system works in a closed circuit that will only perpetuate its own faults.

Where data that has been removed or stolen is returned, staff must be aware of three main types of potential problems:

- Returned data may have become partly outdated due to transactions that have taken place since the conflict, whether they emanate from the seller mentioned in currently available records or from someone else. Alternatively, the dispute resolution agency may have settled a claim in a way that is at odds with the records that were removed. Conflict management is in order, as inconsistent records may rekindle serious tensions.
- Depending on how the returned records were held, there may also be a risk that they have been illegally tampered with.
- The hierarchies of legal evidence in use may need some re-thinking, and may change across different areas.

In general, land records that have been removed lose much of their value within a few years, as transactions continue on the land market. Where these records are returned after a number of years, they must be treated as a secondary rather than a primary source of legal evidence.

## **3.8 Entrenching due process in administrative procedures**

### **Due process for whom?**

The land-related technical processes/administrative procedures that are used as a matter of routine in a stable situation are necessary, though not sufficient, in a post-conflict situation. Technical and administrative procedures must include due process or adjudication mechanisms in order to protect the land rights of the following seven categories:

1. Those who have been forced to abandon their property because of the conflict, especially if forced to move out of the country or territory. These people's rights must be protected against invasion, falsification of documents or use of bogus intermediaries or middlemen.
2. Individuals whose land records may have been illegally altered.
3. Individuals whose land records have been lost or removed.
4. Internally displaced persons, refugees and returnees, some of whom may not be able, or willing, to abide by conventional rules.
5. Individuals who have transferred property in secret because of discriminatory legislation.
6. Individuals whose property transaction was started but not completed, either because of discriminatory procedures, or because of the conflict.
7. Individuals caught up in double sales, where the same land has been sold more than once, because of a lack of information by the buyers or post-conflict conditions.

### **The need for due process**

Beyond a broadening of the range of legal evidence used to assess the rights of individuals to property and land, sustainable reconstruction in the land sector calls for the development of due process or adjudication mechanisms.

Staff must assess the land records and the conditions in the country with regard to land disputes and their scale; the objective here is to ascertain the extent to which due process mechanisms must be introduced into the administrative procedures/technical process. Every land registration may have to go through a process of adjudication. Any adjudication procedure must:

- Allow for alternative legal evidence, on top of any held in the registry/cadastre, such as unregistered or unverified sale documents, documents/permits issued by appropriate authorities, bills from utility companies (telephone, electricity, etc.).
- Check for any outstanding claims, especially by persons not residing in the area or the country.
- Give formal notice that the land is being registered or transferred (e.g., via bulletin boards, newspapers, websites).
- Be of a sporadic rather than systematic nature.

## 3.9 Registration and adjudication

### Registration

The registration of transfers must not be finalised for a certain period. This will allow individuals whose land rights have been illegally altered to claim against the 'soon to be registered right' for a period of, say, three months. An excessively lengthy period would not allow proper operation of the land market, including with regard to mortgages. A balance must be found.

Adjudication is a common step in first registration or land titling, but it is not often associated with subsequent land dealings in a conventional system. Whenever a land registration system is introduced, it usually starts with 'first registration' or 'land titling'; these are fundamental to the initial compilation of the registers, and play a critical role when no real system of land registration exists. Where written documentation is limited, all existing relevant interests need careful stocktaking before they are entered in the register. During this process of adjudication, particulars of all rights and liabilities in a particular plot of land are ascertained and determined conclusively. In some countries, adjudication is used upon conversion from an 'old' to a 'new' system during cadastral reform.

Often the courts, or a special land tribunal, play an important role in finalising the results of the process. However, since adjudication tends to be slow and expensive, an administrative procedure can enable claimants who are not satisfied with the preliminary register to make objections before an 'adjudication committee' and prior to resorting to the courts.

### Adjudication

There are two methods of adjudication: systematic and sporadic. In systematic adjudication, an authority declares a certain area a 'registration district' and takes stock of all boundaries and rights, village by village, or neighbourhood by neighbourhood. This is a slow and initially very costly procedure for government. By contrast, sporadic adjudication— i.e., on an ad hoc basis— can be either mandatory or voluntary, and is more useful in a post-conflict situation where a registry/cadastral is available.

By its very nature, sporadic adjudication entails much less publicity, as it only deals with, say, a single property, rather than a whole village or neighbourhood as is the case with systematic adjudication. Individual property adjudication increases the risk for holders of land rights. In some situations, boundaries must be sporadically adjudicated as well, which requires consultation of adjoining neighbours. The right itself needs corroborating evidence, which insofar as possible the parties must supply themselves. Written evidence is preferred, but if unavailable, sworn statements by the land right holder, supported by local (or customary) officials, are usually accepted as well.

People traditionally enter a sporadic adjudication process voluntarily at the point when they are intending to buy, sell, inherit or donate property. Adjudication is mandatory for registration in certain cases, such as for example when a sales contract is involved. This is the right type of approach for a post-conflict situation, and it must resort to a broader range of documentation, including other than registry/cadastral documents.

## **Safeguards**

Where possible, adjudication must include a public site inspection. The process must balance what is affordable against the protection of the land rights of those who are not present in the area. Lists of (proposed) transactions must be posted in several places, such as municipal offices, refugee camps and websites. Any sporadic adjudication process must make sure that no one has filed any claims on the property with a relevant court or a special land claims tribunal.

Registration of deeds provides another safeguard, since the procedure never quite rules out the potential for counter-claims. Another option is to start with qualified or provisional titles that can be challenged until they become full titles (e.g., after three to five years).

## **3.10 Adjudication and clarity: Practical recommendations**

### **Adjudication: Practical recommendations**

**In short, adjudication is most effective in a post-conflict situation when:**

- It is introduced in the administrative procedures for selected land transfers. Such selection must be based on a broad view of the land market, especially with regard to disputes and illegal transactions. In these cases, adjudication should be mandatory.
- Adjudication must be sporadic instead of systematic.
- It must be publicly advertised in a number of places, and include a site inspection whenever possible.
- It must use registry/cadastral legal evidence as well as other evidence of land rights.
- It is preferable to maintain a deeds system in place, rather than switch to a title system at such an early stage.

Technical experts typically argue in favour of systematic rather than sporadic adjudication. However, this overlooks the fact that systematic adjudication is both too costly and too slow in an emergency, and probably in the reconstruction phase as well. Systematic adjudication is preferable only where a partial registry/cadastral system exists, or where the proprietary situation has changed extensively (through restitution, discrimination, privatisation or almost complete redevelopment after destruction in the conflict). Systematic adjudication must be considered when all claims have been settled and the system is fully able to cope with the day-to-day demands of the land market. Up to that point, sporadic adjudication must be an option for anyone willing to transact land prior to the start of the systematic operation. In other words, instead of waiting until the systematic adjudication is completed, restitution must be part of a sporadic administrative procedure.

### **Clarity for users: Practical recommendations**

In the early days of the reconstruction phase, land management reform is an opportunity not just to entrench due process into administrative procedures, but also to streamline those procedures in a clear and sustainable sort of way. To make the most of this opportunity, three practical recommendations are in order:

- Set up well-adapted technical processes/administrative procedures that are transparent to the users and gender-sensitive.

Technical processes usually include tens, if not hundreds of steps, involving many levels of government and different agencies. The processes are usually not transparent to the user. Changes to the technical processes/administrative procedures must be used as opportunities to involve a range of stakeholders and develop a more straightforward and sustainable process. Best practice in this situation recommends that all the key agencies involved in land delivery or transfers (including inheritance) sit together with users' representatives, and especially women's NGOs, and re-think the technical process. The new process must be transparent to the public and user-friendly, on top of facilitating the completion of transactions at a decentralised level.

- Link the development of legal certainty about land records to administrative procedures. An improved standardised hierarchy of legal evidence must evolve once test cases have been decided. Public court and land tribunal decisions must also support the development of a more robust hierarchy of legal evidence. An administrative protocol must be developed for recurrent cases and include the following two components: (1) a form with a list of relevant types of legal evidence that must be assessed or verified; and (2) for common, routine cases, a decision diagram, based on a number of inter-related questions regarding the available legal evidence.
- Clarify which institution and which person(s) within that institution are entitled to make formal decisions.  
It is likely that in some unique cases, staff will be unable to prepare an administrative protocol. They should then resort to their experience and expertise as well as to the rationale behind the hierarchy of legal evidence. In all cases the decisions, which could be regarded as a form of sporadic adjudication, must be open for appeal to an appropriate court or tribunal. The best approach is to allow claimants access to "administrative appeal" with a special adjudication committee or similar institution, in order to lower the costs of legal representation. The next, final step is an appeal with an appropriate court or tribunal.

### **3.11 Delivering services to users and the market**

The land market will probably resume operations quickly after an emergency and, for the sake of law and order, the relevant framework must be as adequately structured as possible. Land offices must re-open to the public, who must have access to services as soon as some order has been restored to the main records. Moreover, land office information is likely to be required early on for verification of the land rights of those seeking housing reconstruction grants towards repair of any damage to their dwellings.

Staff must provide information from the records wherever possible; they must also take into account the problems attached to incorrect information, because of the potential for fraud and alteration of records during the conflict. The legal status of the records must always be made public to those using the land registry information, who should be warned that:

- The information may be incomplete with regard to certain periods.
- Certain transactions may have been taking place outside the register.
- Other types of evidence, apart from the registry/cadastral evidence, must be used as well when dealing in land.
- Alternative appropriate hierarchies of legal evidence are in use.

Some form of adjudication procedure is in order when processing land transactions (purchase, sale, donation, inheritance) between different parties. When a claim on a property is pending before a land tribunal, the land records must identify it clearly. The public must be aware

as early as possible of the fact that the institutions involved in land transactions (notaries, courts, registries, municipalities, survey offices or cadastral authorities) are accountable for (or guarantee) the information they make available to the public. It must be made clear who is verifying what information, and which institution is only taking responsibility for the storage of the information. In this reconstruction phase, institutions will likely share data that has not been verified or guaranteed, which introduces huge risks in the land market.

Double-checking information need not be overly complicated and bureaucratic, otherwise it will stifle land transactions and stymie the re-emergence of the land market, or force many transactions into the informal sector. A deeds system of land registration is better adapted to this situation. It allows all parties that are buying and selling land to reach a decision on the risk, without making it necessary for the government to guarantee the outcome. Buyers are sometimes in a better position to assess risk than the authorities are, as they can rely on local knowledge.

If a title system is in place, then the introduction of provisional or qualified titles allows those putative owners/holders of land who have lost their rights to make a case in court, prior to the final, indisputable registration of the land right in another person's name. This will reduce the risk to the public authorities or the individual.

### **3.12 Supply and purchase of equipment**

In addition to the initial material acquired in the emergency phase, project implementation will require additional equipment and software, as follows:

- More computers, including computers that are capable of handling software for the processing of spatial data images or geographic information systems.
- A range of software, such as operating systems, general office software, software to process and adjust survey data from total stations, as well as GPS data as it is processed into GIS data, and spatial data image processing software. The software must be licensed in the name of a permanent entity in the country itself, rather than in the name of the project, a consulting company, a donor, or UN-HABITAT.
- Servers, networks, generators and uninterrupted power supply. The latter is important to prevent damage to the equipment from poor electricity systems.
- Digital spatial data scanners and plotters (in larger sizes, such as A2).
- A large amount of survey equipment to implement project activities and to support the land market, including at the very least GPS and total stations. Depending on circumstances, such as equipment availability, staff expertise and power supplies, there may be need for less sophisticated equipment.
- General office equipment for efficient operations, such as functioning and adequate telephones, fax machines, photocopiers.
- Internet access for both e-mails and the Web.
- Vehicles, since much of the activity of a survey office takes place in the field and will be restricted for lack of transportation.

Staff must record all the equipment on an asset register as soon as possible after procurement. The asset register must be in the name of a permanent entity in the country itself, rather than in the name of the project, a consulting company, a donor, or UN-HABITAT.

## **3.13 Land information, taxation and monitoring**

### **Developing routine land information flows**

Land records are only one element in the broader land administration system. Other government organizations dealing with land development, such as planning, construction and maintenance of roads and other trunk infrastructure, utilities, and housing, also use parcel-based overview data (cadastral data, both descriptive and geographic) for their own purposes and as a matter of routine.

Therefore, local offices must systematically share cadastral data with other institutions such as:

- National and provincial departments responsible for planning, roads, State land disposal, service delivery, housing, the environment, etc.
- Local government.
- The central cadastral office, as a base for the relevant statistical analysis used in, for example, land policy development.
- The Statistics Bureau, via the central office.

In addition to this, land information must flow both ways. This allows both the sharing of data and the identification of mistakes. Staff must, as early as possible, identify core data sets for each type of data, and keep the data as current and correct as possible. Different institutions may be responsible for different sets of data, and it does not matter as long as each is quite clear about its own and the others' attributions. In the medium to long term, a detailed analysis of all data sets will be in order, along with clear identification of the core collector for each type of data. At some point, the custodians and the users of the data must together outline a strategy to develop a national spatial data infrastructure.

### **Introducing records-based land taxation**

Land provides a sound and relatively easy to identify tax base. Governments in a post-conflict situation are likely to need revenue, and land tax can be an important source. Generally speaking, local governments are responsible for collecting land tax, and they keep for themselves a significant proportion of the revenues.

To raise land taxes, authorities need details of the owner or occupier of the property, where the property is, and its value. Cadastres originate in land/property taxation systems. Cadastral offices must transfer to tax authorities' data about who holds the rights, the size of the land parcel, where it is located and, in some countries, the value of the land. Short-term leases are usually not registered and tax authorities must look elsewhere for this type of data, and the same holds for information about unregistered properties.

### **Land information flows between cadastral offices and tax authorities are critical for two main reasons:**

- In many countries with vast tracts of unregistered land, tax receipts serve as primary legal evidence of rights in land disputes, or when the land is adjudicated for first titling.
- If land tax is levied on someone who no longer owns the land, (s)he will complain. This will help to keep the registry/cadastre current, as it is will point out where land has not been registered.

## **Continuous monitoring of the land market**

Maintaining analytical records that summarize land market activities can act as a pre-emptive defence against land grabbing and any victors' redistribution of land via the registry/cadastré. Such records must include both the formal and informal land markets. The objective is to collect rough statistics about what is happening in the land market as a measure of the credibility of the register/cadastré and to manage risk over time. Such analytical records may involve:

- Sorting out the different types of transactions coming through the registry.
- Monitoring that are registered outside the formal structure. This could mean working with parallel structures or using local knowledge.

Such continuous monitoring, if effective, will greatly enhance the credibility of the land institutions, as it will help downplay (and better manage) any problems they may experience, as well as any rumours and exaggerations about the reliability of the registry. This will, in turn, contribute to the reconciliation process, the restoration of law and order and an efficient land market. However, short of a clear land policy or strategy about how to deal with land disputes and other issues in this phase, such monitoring will not be effective.

### **3.14 Record reconstruction**

#### **Continuing reconstruction of land records**

The reconstruction of records consists in two phases. The first one, as described in connection with the emergency phase, combines (and where possible makes available in digital form) all available post-conflict data. This data may have only limited value in certain areas, or for some types of properties.

In the national/territorial reconstruction phase, a number of functions – such as adjudication, due process, turning administrative procedures into routine, creation of hierarchies of legal evidence – will be the key factors behind land record reconstruction. This will be a sporadic process, with every land transfer contributing to reconstruction. Documentary evidence of land rights must use registry/cadastral data and include any other types of relevant documents. The relative weights of the various elements of proof will depend on the hierarchies of legal evidence used.

The design of the system must also enable it to keep all the records available on-line, to make it easier to retrace past transfers, claims or decisions. Monitoring of data on ethnicity or group land transfers may also be part of record reconstruction, but then only wherever practicable in a straightforward sort of way that will not act as a drag on the system. It must be noted that inconsistencies in land records can develop for a number of reasons that are not always related to corruption or the illegal alteration of the records.

# IV. LONG-TERM CONSIDERATIONS

## 4.1 Adjusting institutions

### Institutional strengthening in the medium- to long-term

Governments are likely to need creation, re-creation or re-structuring, including decentralisation, and medium- to long-term plans need to factor this in. Institutional strengthening is a key factor for sustainability. It will involve such aspects as:

- Capacity building: general management, technical, legal and accountancy functions.
- The development of budgeting and planning capacities.
- Building trust within government and with users.
- Managing institutional change over time: creation or merger of institutions, spinning off functions, decentralisation, involving the private sector, building institutions with new staff or staff from all groups.
- Merging independent agencies created in the immediate aftermath of the conflict.
- Mainstreaming projects into government department functions (see below).
- Merging parallel structures.
- Setting up working relationships with other government departments or independent government land commissions dealing with land disputes.
- Clear-cut and rational assignment of land functions within government (see below).

### Moving from project to institution building

Sustainability requires every project to be designed in such a way that the relevant activities can be mainstreamed into institutions as early as possible. Projects are launched in emergencies to deal with specific issues within a specific context. If they continue as projects into the reconstruction phase, they will suffer from the problems typically associated with projects undertaken during development. These problems include:

- An inability to scale up.
- The use of ad hoc procedures. In the land sector, this is very problematic, as routine procedure is one of the keys to delivering security of tenure.
- Project activities cannot be replicated, because the amount of resources used are not available at scale, in terms of both number and skills of staff and the amount of money used by the project. This is a common problem in land projects.
- Higher staff wages compared to national pay scale.
- A project that cannot be mainstreamed is only viable because it is isolated from the main regulatory framework. For example, a project can have road widths and plot sizes that are at odds with rules and regulations, and these therefore will hamstring any attempt to scale up the project.

Projects that are run in isolation from government departments are difficult to mainstream because their procedures with regard to staff recruitment, salaries, promotion, access to equipment, procurement, routine and process are not the same. Projects also often build capacity outside of government structures. Therefore, there cannot be any transfer of functions to a government that lacks the relevant capacity.

In some situations, demonstration is the purpose of launching projects. A project is an opportunity either to develop new systems that are mainstreamed into government, or to adapt existing systems. If mainstreamed correctly, this type of project is easy to scale up. This approach can succeed with pilots in the land sector. In the medium- to long-term, donors favour approaches that build into the country, and especially the government's own systems be they legal, governance, planning, financial management, etc.

## **4.2 Adjusting functional arrangements**

### **Re-assigning/creating land functions**

At some point, government land functions must move from the emergency to the reconstruction phase. Short of this, there will be no sustainable land administration. The exceptional circumstances of the emergency phase are likely to cause some confusion, what with functional duplication and gaps, competition over which agency/level will undertake the work, criminal activity, parallel structures, autonomous institutions outside government, lack of clarity on subsidiarity, and projects operating separately from, or inside, government departments. All this must be sorted out by increments, with clear allocation of land functions to specific institutions (including the private sector) or persons within the institutions.

### **Such re-assignment or creation of land functions will involve:**

- The creation of the necessary institutions within government such as a land registry, surveyor general's office, agencies undertaking valuation, dispute resolution, allocation of public land, policy development etc., as well as mechanisms for co-ordination and co-operation between them.
- The finalisation of government structures with regard to national, provincial/state and local authorities, together with a broad policy direction regarding which functions are attributed to which authorities, and the relationships between those (subsidiarity).
- The functions and records of those agencies that were set up in the emergency phase as stand-alone operations outside of government must be merged into the appropriate government departments.
- Streamlining projects into departments must include staff, assets and their knowledge. This will also involve the modernisation of government procedures, in order to integrate the knowledge/expertise gathered by the project.
- Assignment of land functions to government must be closely related to effective capacities, making sure that there are no critical gaps in the technical process/administrative procedure path.
- Allocating land functions serially in terms of policy, law, regulations and administrative procedures, is the wrong approach. It is much better first to design an appropriate, effective land administration system, and then over time to link this information with policy, law and regulations. This will stamp out any notion that one is working from a clean slate. Instead, the design should be incremental and systematic, building on what is proved to be working.
- The allocation of tasks in modern government institutions is also likely to involve functions that are undertaken by the private sector, including NGOs.

To be able to do their work, officials and the private sector need proper training and resources. Capacity building for these purposes is a major element in the preparations for sustainable land management. Short of this, there will be no routine operations, and conflict over land will continue.

## Scaling up from pilots

Owing to their complexity, many activities must first be undertaken as pilot projects. Pilots will provide lessons from which:

- Staff can develop country or territory-wide approaches with due regard for differences between areas.
- Staff can develop handbooks and procedures with a country or territory-wide scope.
- Instructors can derive the materials and methods required to train enough local staff to carry out the activities at scale.
- Staff can identify anything that can prevent scaling up to national level, and which will require the setting up of additional pilots in the first place.
- Evaluate the human and financial resources required to scale up to national/territory level.
- Derive public campaign material for distribution when scaling up to national level.

## 4.3 Local capacity building

### Setting up an inter-ministerial land committee

Land is a crosscutting issue. Short of this basic resource, many specialised agencies cannot deliver on their mandates. An important part of restoring law and order in a country relates to the management of land use allocation. Where there is little structure and order, it is likely that line function/government departments will allocate land use rights outside usual procedures. The ministries of Forestry, Tourism, Local Government, Public Works, Mining, etc., risk stirring up conflict over land in post-conflict societies whenever they award overlapping land use rights to the same parcel of land. It is critical to set up an inter-ministerial land committee to start to deal with these issues.

### A land committee can also play four additional roles:

- It can keep line ministries informed of developments in other government departments.
- It can also play a co-ordinating role: land is often dealt with in separate segments where each agency attempts to maximize its output, regardless of the fact that a variety of agencies undertake land delivery and management/administration. Therefore, it is for an inter-ministerial committee to take an overall view of what is happening in government with regard to land outputs and the users, and to identify any gaps and duplication.
- The committee also has a major role to play in the assessment and re-assignment of land functions within government and across agencies, as the country moves from the emergency to the development phase.
- It is for the committee to develop land policy both to address the conflict in the long term, and to pave the way for sustainable human settlement development through streamlined land delivery.

### Switching from international to local capacity

Many, though not all, situations will require international expertise. Foreign experts must step in only where necessary and after assessment of local staff capacities. Their unique contribution may lie in their technical or legal skills, or in their neutral presence that will prevent any abuse of the land administration system in the early stages. In land affairs, it can happen that international staff become entrenched and that projects seem nowhere close to an end. It is important to instil in the international staff that their time is limited. This is crucial to the transfer of knowledge and management responsibility to local staff.

The registry and surveyor general's offices and land law are extremely complex and difficult areas. Transfer of responsibility to local staff must not be happen prior to adequate training and capacity building and must take place by increments from the beginning. Any training must involve all the groups that were party to the conflict, and must not leave out any particular group.

## **Staff inclusion and capacity updating**

Because of their skills, professional staff often leave a country in conflict and find work elsewhere. In general, professional skills in the land sector are not readily available, and conflict only compounds such shortages. In some situations, the professionals who have been responsible for the registry and surveyor general's office emanate from only one of the ethnic groups in the conflict. In these cases, the other group/s have not received any training or held positions of responsibility. Given that land sector training takes years, this poses a special challenge.

Staff in exile must be identified, encouraged to return, and trained if possible. Improving the capacity of this category of people will improve sustainability.

## **Building capacity**

Capacity building is of major importance from the very beginning of land management operations in post-conflict situations. The effort must focus on various types of capacities, namely: institutional, management, technical, legal and conflict management. Capacity building includes:

- Knowledge transfer from international to local staff throughout the project, which means the two categories must work together as much as possible. This is likely to require language training early on in the project, both for local and international staff.
- Content training in law, surveying, IT and management.
- Training of local staff in financial, personal and strategic processes and decision-making, including through hands-on involvement in these functions.
- Study tours for senior management and local specialist experts to find out how other countries deal with land management. This must include not only technically advanced countries, but also those in a similar situation or a few stages ahead of the post-conflict country at hand.
- Sustainable capacity building through development of in-country education. Curricula must match the degree of technical sophistication of the processes being developed. Academic convention keeps law and land surveying/geodesy education separate, whereas the land sector would benefit from broader-ranging, inter-disciplinary approaches. The technical and vocational levels call for specific curricula, since much of the routine work does not require proper academic training. Strengthening in-country education is as important as the more immediate, ad hoc, short-course training.
- General management training for the middle- and top-ranking officials in the land sector, both at central and municipal level.
- Conflict management and dispute resolution training. Staff in the land sector needs this training for two reasons. (1) Where conflict is associated with land, staff assists in its resolution whether it relates to land allocation, planning approvals or supply of information by other bodies. (2) Staff also need to resolve personal disputes with members of other groups (e.g., ethnic/religious) in the working environment. Such conflict training must initially focus on the skills to work through these situations. Moreover, training can also help change attitudes, so that people can become more objective and work for the good of the country, rather than just for their own group.

Any stage of the plan, from emergency through to reconstruction, provides opportunities to build capacity. It is also a sustainable deliverable in the sense that even if the conflict re-emerges, the human resource capacity will likely remain available to the country for future use.

## **4.4 Enforcement and other legal issues**

Enforcement of legal transactions and dispute resolution decisions

Enforcement of decisions is critical for the credibility of the land institutions and for the sustainability of land management. The enforcement function:

- Must be carried out with an understanding of options at different phases.
- Can be carried out by the military (including peacekeepers) in the early response stages to prevent the invasion of public and private land.
- Must view any attempt to evict ordinary and poor citizens as a solution of last resort, and therefore must be complemented with a temporary humanitarian shelter programme that meets the needs of both the vulnerable and the land/property owners.
- Must rely on operating courts and police where they have credibility, and where they do not, must consider impartial external processes and mechanisms.
- Must go hand in hand with provisions for the enforcement of court/judicial orders and planning approvals.
- Must sanction corrupt officials with (for example) suspension from work and pay if possible, or by bringing charges of trespass.
- Must rely on capacity building at all levels, with regard both to skills and attitudes, and on professional ethics, which must be introduced in the first place.
- Must integrate a persistent information/public awareness campaign to inform the users about what is legal and illegal, and what sanctions are applicable.

### **Regularising extra-legal housing developments**

During conflict and its immediate aftermath (the emergency phase), the rule of law breaks down, abuse of land allocation and use rights is typically widespread, and private and public land/property is stolen or invaded. Such theft or invasion emanates from various segments of the population: ordinary citizens who find themselves in a desperate situation, elites looking for commercial opportunities to exploit, and criminals occasionally linked to organised-type operations. A key part of the reconstruction phase is to restore land, housing and property management and land use management, which are central to law and order. Such reconstruction may include:

- A land/restitution commission to deal with land disputes and the enforcement of related decisions.
- The removal of criminal gangs from public land and buildings.
- Requiring elites who have stolen public/private land to pay the value of the land/property to the government/private person whose rights have been infringed.
- Restitution of property to its original owner.
- Compensation by the public authorities to the new owner and the awarding of the property to the original owner.
- Compensation awarded by the government to the original owner and the awarding of the property to the new owner.

An additional part of the reconstruction phase is likely to include the regularisation of developments that took place in the emergency phase. These developments may include:

- Commercial property developed outside of the spatial plan.
- Residential developments that do not fit in with the existing spatial plan, or are outside any spatial plan.
- Informal settlements that had been demolished during the conflict, and to which claim is now being laid, but that did not fit in with the spatial plan, or were outside it.
- Emergency buildings constructed by the peacekeeping forces outside any spatial plan, or that do not fit in with the spatial plan.

### **Regularising illegal developments will require a variety of steps, which are likely to include:**

- A political decision about the illegal developments in general, and in particular about which developments are allowed to remain.
- Introduction of new participatory planning laws, enabling development of new spatial plans that take this situation into account.
- Introduction of planning regulations, instead of greenfield developments, that are consistent with regularisation, including new planning standards such as site sizes, etc.
- Specific, adequate training for professionals.
- Adjudication of occupancy claims and existing land rights, but making sure that groups that have been forced out of an area do not lose their rights during this process. Adverse possession laws must be of special concern in this regard.
- Where necessary, agreements over compensation must be reached with private and public landowners that have lost land.
- Cadastral and registry information must reflect the new layouts and represent the new legal situation.
- Some form of valuation may be required before any land readjustment takes place, in particular where compensation schemes are implemented, and if claimants are to lose land for the provision of roads and services.
- Intensive institutional strengthening is in order within government, among all the stakeholders involved and the affected communities.

### **De facto vs. de jure and threats of a victors' registry**

The de jure or legal situation only has a limited meaning in a post-conflict society. This is because: (1) Large-scale informality or sales outside of the register are likely to dominate. (2) De jure rights may have limited legitimacy because of discriminatory laws and practices. As they face the conflict between de jure and de facto evidence in the reconstruction phase, staff must be wary of the risks of formalising a victors' registry.

Against this background, using the general legislation regarding limitation/adverse possession to regularize informal land rights/claims would be unwise and risky because: (1) Absentee land right holders may lose their rights very easily. (2) There may be problems with the kind of evidence needed to show that de facto rights holders have exercised their rights during the required period. Secure evidence is difficult to provide in cases involving physical destruction of dwellings, large-scale population movements, removal of land records and biased individual recollections. These two factors clearly raise the threat of a victors' registry.

Satellite imagery or aerial photography of the area can help assess adverse possession claims, provided the images were made immediately after the conflict.

Against this background, and in order to ward off any threats of a victor's registry, rules regarding limitation/lapse of time must abide by the following recommendations:

- Avoid limitation periods that start before the conflict.
- Suspend limitation for the duration of the conflict.
- Limitation must ideally start at some point in the post-conflict period.
- Wherever possible, special legislation must supplement limitation rules with regard to various associated issues, such as repealing discriminatory decisions, restitution, privatisation, etc.
- Limitation must be linked to the sporadic adjudication procedures.

## **4.5 The broader picture and the longer term**

### **Regular broad-picture monitoring and evaluation**

Staff must conduct an overview of the whole land sector as it relates to tenure security, either on a regular basis or at critical times of change. With the peace so fragile in many post-conflict societies, one thing is of paramount importance: assessing the extent to which the project is contributing to a sustainable peace process, or whether it fails to go beyond fixing technical problems and does so in an unsustainable way because larger events will take over in due course. Five distinct factors militate in favour of conducting overviews, or 'broad picture', evaluations of the land sector as a whole:

1. The land sector is characterised by agencies and institutions that operate separately and in isolation from each other, such as the registry, the cadastre, the courts, each operating within their own framework. Projects are usually linked to these separate agencies, and therefore this functional fragmentation tends to shape and constrain monitoring and evaluation. Duplication and gaps may ensue, the potential for which overviews can reduce.
2. Large-scale institutional change is a feature of post-conflict societies. Therefore, the need arises to assess where the land sector, and the registry/cadastre, fit into society at large, and whether they meet user requirements. Short of broad-picture monitoring and overviews, no such assessment can take place. It must include the technical/legal aspects, the larger political/economic framework, as well as the needs of the users in a post-conflict society.
3. Usually, when registries and cadastres are modernised and even in a post-conflict situation, staff focuses on the technical and legal details of their tasks. This situation makes it easy to overlook critical issues relating to human rights and sustainability, such as: social justice, reconciliation, the needs of the poor, women's land rights and land redistribution. Further issues include whether the systems serve a majority or only the middle class, and the accessibility and affordability of the system to the bulk of the population.
4. Only an overview evaluation will make it possible to assess whether UN-HABITAT principles are being mainstreamed (e.g., gender, decentralisation). This makes it also possible to assess the effect of sustainable land management on a society and its future.
5. Such an assessment paves the way for better risk assessment – a major factor for project success in this type of environment. Better risk assessment is critical to ensure that all parties trust the registry/cadastre, rather than perceiving it as a victors' registry because it is entrenching discrimination of one group against another. A broader assessment also

has a role in the detection of corruption, and especially large-scale corruption or corruption linked to criminal activities.

## **Effective and sustainable land management**

Land management is the art, or science, of making informed decisions about the allocation, use and development of the Earth's natural and built resources. Land management includes resource and information management, administration arrangements and policy. It extends from fundamental policy-making by politicians and governments to routine, day-to-day operational decisions by land administrators such as surveyors, valuers and registrars. Land management is both the science and art that is concerned with technology, the people who use it, and the organisational and administrative structures that support them.

Land management is a complex undertaking in itself, and even more so in a post-conflict society. Robust land management is dependent on political will and a determination to build effective systems – including technical and governance – over long periods. As a rule of thumb, it takes about 25 years to build such a system.

# V. GENDER AND POST-CONFLICT LAND ADMINISTRATION

## 5.1 Why is gender important in post-conflict land administration systems?

A recent review of critical lessons learned from UN peace-building in post-conflict situations since 1990 identifies the need for a gender perspective to pervade all housing, land and property sectors<sup>9</sup> as one of sixteen critical lessons for future UN operations. There are a number of reasons why this is so, not least that in general terms men and women's experience of periods following conflict is significantly different and that already deeply embedded inequalities are further exacerbated by conflict. However, post-conflict situations may also present a rare opportunity to tackle these inequalities through a variety of appropriate initiatives and establish the basis of longer-term sustainable reconstruction. Tackling gender inequality, which requires working with both men and women, is therefore an integral component of the peace-building and reconciliation process. It should also be noted however, that the practice of ensuring a gender focus in post-conflict housing, land and property matters is relatively recent, and that actual field experience is correspondingly sparse (as such this section of the handbook also draws upon good practice in gender and land administration in more stable environments). Field practitioners are, therefore, at the forefront of innovation, and documenting and sharing the lessons of addressing gender issues in future post-conflict situations will be of critical importance in detailing the advice offered here.

Gender inequality undermines both immediate emergency responses and longer-term reconstruction and development efforts for a number of reasons including:

- Human rights. Women's land rights are extremely vulnerable in post-conflict situations and therefore deserve special consideration in the reconstitution of land management systems, and in the context of protecting human rights. The right of women to housing, land and property is especially insecure because they are likely to have originally accessed it indirectly through a male head of household.
- Slow economic growth and increased poverty. Gender inequality in the context of the ownership and control of assets including housing, land and property is acknowledged as a major contributing factor to stymied development and economic growth.
- Loss of assets. Conflicts typically leave behind many female- and widow-headed households and sole earners (estimated to typically account for 20-25% of all households in post-conflict situations) who in many post-conflict societies lose the housing, land and property rights held by their dead spouse or brothers. On return, internally displaced persons, refugees and returnees face losing access to those assets critical to re-establishing post-conflict livelihoods.

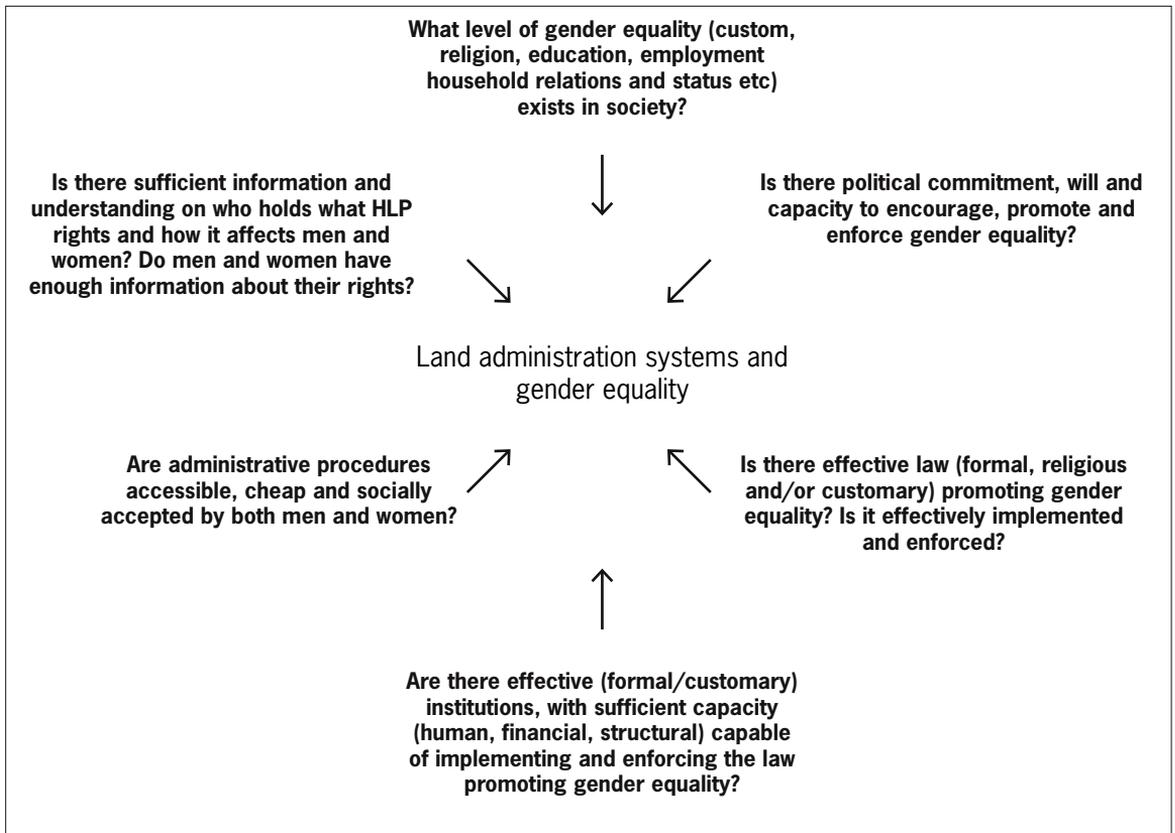
A gender dimension must therefore be integral to emergency measures and to the development and implementation of land administration programmes.

This chapter provides an overview on mainstreaming gender into post-conflict land administration responses by highlighting those areas where gender is of critical significance and, from past experience, where it can be practically addressed. A gender focus necessarily

---

<sup>9</sup> Supra, Leckie (2005).

means that the interests and involvement of both men and women are paramount. Experience has repeatedly shown that the exclusion of men (from discussions, information campaigns, sensitisation and rights-based training, staff training and capacity development in gender equality and so on) is likely to further marginalise, rather than mainstream, gender issues and undercut longer-term gender equality goals. Equally however, assessing the significance of gender in post-conflict land administration also necessitates recognising that women face disproportionate inequalities and that their needs and rights must be addressed.



## 5.2 Addressing basic questions and identifying basic principles

In an environment of overwhelming demands and priorities the reality of finding answers to complex housing, land and property issues may prove partial, messy and faltering. Retaining sight, and understanding, of the overall context within which post-conflict land administration must operate will help provide a broad-picture understanding of gender, and support the formulation of responses that are realistic in the pace and cost of implementation. Addressing gender issues will require providing practical responses to a number of interlocking questions.

## **Diagram 1 - Basic gender considerations in re-establishing land administration systems**

Each post-conflict situation is unique and the guidance and recommendations included here will need to be flexibly applied. The chapter is structured around a number of core components focused on gender issues in land administration. These components are not necessarily sequential steps but provide the basic elements that must be addressed in planning and implementing a response. The way in which these components are packaged in projects and programmes will be dictated by the specific post-conflict context. Each component sets out:

- Critical Questions – these are typical questions that may arise in the design of programmes, mechanisms and processes that seek to ensure gender issues are adequately addressed; and,
- Hurdles, pitfalls, solutions – as necessary, provides background notes on common scenarios from field experience concerning potential problems, possible solutions and the common pitfalls to avoid.

### **The components are:**

- Component 1. Assessing immediate housing, land and property problems, needs and risks: rapid gender appraisal
- Component 2. Increasing security of tenure and access to housing, land and property
- Component 3. Building gender-sensitive data and information systems
- Component 4. Reforming legislation
- Component 5. Strengthening institutions and developing capacity for gender equality
- Component 6. Ensuring participation and inclusive design
- Component 7. Broad-picture monitoring and evaluation

## **5.3 The Emergency Phase**

### **COMPONENT 1. Assessing immediate housing, land and property problems, needs and risks:**

#### **Rapid Gender Appraisal**

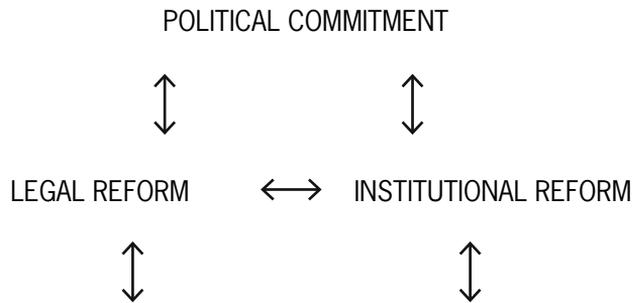
Field practitioners will face a number of critical immediate housing, land and property related needs and issues where women's vulnerability is likely to be pronounced. These include the need to:

- Provide shelter and reconstruction
- Establish rights to housing, land and property
- Avoid forced eviction
- Resolve housing, land and property disputes

Ultimately, practitioners will need to respond to these immediate needs, but short-term interim actions should reinforce the medium- to longer-term requirements of establishing effective land administration systems that promote gender equality and protect the rights of women.

Doing so requires a holistic understanding of the immediate pre-conflict and post-conflict situation as regards land administration and developing a phased response to these needs. A rapid gender appraisal (conducted in the planning phase where possible, and/or as a priority in the emergency phase) provides a basis for comprehending how gender issues are reflected throughout the land administration system. Diagram 2 provides a summary of the main components and activities of land administration as it relates to gender. This 'package' of knowledge is indispensable in developing a meaningful, coherent and effective response. It is recommended that the appraisal is integrated within an overall assessment of land administration systems.

**DIAGRAM 2 - Land Administration Activities Related to Gender Issues**



**OPERATIONAL (PROCEDURAL) INTERVENTIONS**

- Project design and targets
- Identifying holders of housing, land and property rights
- Dispute resolution
- Adjudication processes
- Education, training and communication
- Provision of support services (i.e. legal aid, micro-credit etc.)
- Monitoring of impacts

Source: Adapted from World Bank (2005) Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report, Washington D.C.: World Bank. p.17

## Critical Questions

### **Given the breadth and depth of humanitarian needs in the emergency phase, what is the appraisal seeking to achieve? Can detailed assessment wait until later phases?**

The individual post-conflict situation will dictate the speed of appraisal work, but in a sector that may be characterised by conflict and discrimination, it is important that knee-jerk short-term measures that exacerbate the vulnerability and risk to women or that further entrench discriminatory practices are avoided. A meaningful response to gender issues in both interim short-term measures and longer-term policy and operational procedures are only possible once the local context is understood. As an initial measure in understanding the post-conflict environment, the rapid appraisal has three core purposes<sup>10</sup>:

1. Through a series of basic critical questions and considerations it allows for a clearer understanding of the reality of housing, land and property issues in the post-conflict situation;
2. Provides the basis for designing more detailed assessments on identified priorities and needs (including developing clear and targeted terms of reference for detailed follow-on assessments in priority areas); and,
3. Provides an initial basis of programme planning and design including the identification of likely priority actions.

The initial assessment should be completed as early as possible, with detailed assessments to follow on the basis of identified priority.

### **How should the information be collected and from whom?**

Stakeholders should be identified as early as possible. As the appraisal requires providing a firm grasp of how gender is reflected in housing, land and property issues and how women's rights are affected (especially in terms of their broader livelihood strategies), it must engage with both men and women. The way in which knowledge of the local situation is gained will be conditioned by the particular post-conflict environment, but might involve using the indicative framework to: formulate straightforward (questionnaire) surveys for completion with the key identified stakeholders (such as interviewing local officials, NGO officials, returning refugees and internally displaced persons including those occupying land without authorisation, those trying to establish formal rights, those seeking restitution and so on); conducting local discussion forums; contracting local experts (though national specialist may be difficult to identify and engage), and; consulting and working with emerging women's groups and networks.

### **Who does the appraisal?**

The appraisal should be a team effort that is likely to engage both international and local expertise and knowledge (where possible). In the transition from conflict, a number of assessment missions (by international consultants) may be conducted to provide preliminary identification of issues and priorities. Practitioners must ensure that missions focused

---

<sup>10</sup> This reflects the excellent USAID 'rapid appraisal guide' designed as a filter to comprehend the land administration 'big picture' (through a series of macro-level questions) and detailed questions for those affected (micro-level questions to various categories of persons and around key factors).

on land administration have clearly articulated Terms of Reference covering all relevant aspects of gender. The missions will provide an initial assessment of the situation, but there will be considerable need for follow-up on detailed proposals, indicative actions and recommendations. It is also recommended that local lawyers and housing, land and property rights and institutional expertise is engaged as early as possible, to ensure adequate capacity for mission technical support and technical follow-up.

## **Hurdles, pitfalls, solutions**

Legal frameworks are likely to be characterised by a multiplicity of overlapping and potentially contradictory land laws (and institutions implementing them) which in turn can feed through into institutional and administrative ‘chaos’ negatively impacting on women’s housing, land and property rights. An appraisal of the broader legislative context is critical therefore in developing a land administration system that effectively safeguards the rights of women and men; in countries with systems of civil, religious and customary law a clear understanding of the potential conflicts and contradictions in law and how (if at all) these can be addressed in the post-conflict phases must also be undertaken.

Legislative reform (beyond land law) may be essential for providing a foundation and framework for addressing longer-term gender equality goals, though there are few examples (post-conflict or otherwise) where ‘developing’ countries have translated the principle of gender equality into land law (or secondary legislation). Two legal norms related to men and women’s ownership of housing, property and land are likely to be of most significance: marital property rights and inheritance rights. In practice women’s actual entitlements to land are often determined by inheritance practices, thus focusing attentions on the need to reform laws of inheritance.

Customary law and practice may be of special significance and effectiveness in addressing post-conflict housing, land and property issues by offering practicable, widely accepted, relatively simple and cost-effective responses. However, from a gender perspective, practitioners need to bear in mind:

- customary laws are rarely a single, unified, body of rules and practice, may vary between places and will be adapted over time and to new situations, and
- customary law and cultural prohibitions against women’s ownership or use of housing, land and property is often more pervasive and powerful than formal written law and may act to exacerbate gender inequality.

Customary law that discriminates against women will require gender-sensitive land tenure policies and might also necessitate (in the longer term) amendments to constitutional rights and family law reform. Legislating for polygamy (practised under customary law and practice) is difficult, but to not do so is to inadequately protect women’s property rights in the longer term.

A key element in all land administration systems are the institutional arrangements that will involve central and local government and community and customary ‘authorities’. The institutional framework is arguably the biggest single challenge to successfully reforming land administration systems; and will be especially challenging in post-conflict situations. Where land administration agencies and institutions remain, an institutional mapping (including clarifying mandates and organisational structures) will help identify areas of potential inefficiency (overlaps and gaps) in rebuilding the institutional infrastructure and establishing gender responsive land administration institutions (involving efficient and decentralised land administration agencies, with simplified and pro-poor friendly procedures). With a view to

longer-term gender mainstreaming, key areas for land administration programmes in the longer-term will include improved performance, institutional strengthening and capacity development through the selection and training of new and existing staff (if a civil service remains in tact), and organisational coordination.

## **COMPONENT 2. Increasing security of tenure and access to housing, land and property**

### **Increasing Security of Tenure**

Equal rights for both men and women to hold and use housing, land and property, through appropriate forms of security of tenure are fundamental to social and economic gender equality. Security of tenure helps protect and safeguard the rights and interests of men, women and their children in unstable environments and is critical in limiting land disputes. One of the central issues faced by field practitioners will be addressing access to housing, land and property rights for women refugees and internally displaced persons. The initial assessments should provide an initial assessment of land tenure systems, and this quick reality check should enable an initial understanding of how land rights are recorded, transferred and settled in practice, and how these systems impact upon men and women (and whether this has changes in the post-conflict situation). There are a number of reasons why the security of women is especially significant including:

- De facto and de jure rights to housing, land and property may have been through the male head of household which are lost on the death of a spouse, father or brother
- Many agreements about rights to housing, land and property within a marriage may consist of oral agreements and which cannot be proved in post-conflict situations
- Women may not return to their original home pre-conflict but migrate to urban areas for reasons including livelihood and security, and are therefore effectively homeless
- Women may have inferior rights through legislation, policy and regulations
- Customary practice (for example, inheritance and use rights) may be more pervasive than formal legislation
- Neither formal or customary legal frameworks are being upheld post-conflict increasing the insecurity of the most vulnerable

### **Critical Questions**

#### **Is gender and security of tenure on the agenda?**

It is critical that the particular vulnerability of women (especially widows and internally displaced persons) is placed firmly on the UN peacebuilding agenda and that raising political awareness of these issues commences as soon as possible.

#### **How should homelessness be addressed?**

Though homelessness will affect both men and women and will need to be addressed, women will be especially vulnerable. There is likely to be a need to develop an emergency policy response to homelessness (that may be especially pronounced in the major urban areas) that pays particular attention to the needs and safety of women. Options may include the provision of transitional shelter (such as tents and camps) and temporary allocation and use of state and abandoned buildings (with time limited use rights issued).

## **Is the registration of titles necessary to ensure security of tenure?**

No, though the re-establishment of national cadastral or other forms of registering rights is recommended as an integral component of the restitution process and of ensuring security of tenure. There is a general consensus that the dominance of wide-scale titling in strengthening land administration systems is misplaced and inappropriate in the immediate post-conflict environment, and can be counterproductive in promoting gender equality. It is well established that the individualisation (or privatisation) of property rights often has a negative affect on women (including their ownership rights, rights to use land and their access to communal land) because ownership is usually registered as a de-jure (male) head of household. Title registration can therefore increase the vulnerability of women by undermining or removing customary rights which may have protected them sufficiently.

## **Are customary tenure systems preferable, and better able to ensure gender equality?**

Customary (and informal) systems of land administration may be sufficient to render large-scale tiling programmes unnecessary, unachievable or undesirable, because they are less bureaucratic, more flexible, cheaper and can be delivered more rapidly. However, it will be necessary to ensure that whatever system is adopted will need to ensure that gender equality is assured in practice (this will require on-going monitoring, evaluation and adjustment of adopted systems and in the longer term associated legislation and procedures). Some customary systems have been shown to provide inadequate safeguards for vulnerable groups (such as widows and the young) that are magnified in post-conflict situations and further entrench discrimination. Customary law and practice in housing, land and property access and tenure security, must be fully understood as a dynamic, varied and adapting system of social organisation and its manifestations for gender equality assessed.

## **What alternatives are there for increasing the tenure security of women?**

Post-conflict situations will undoubtedly require the strengthening of both 'formal' and 'informal' tenure systems. Any response must be designed around existing and any proposed adjustments to land tenure systems; understanding how this system works in practice is a key component of the rapid appraisal. Working towards and upholding gender equality in security of tenure is especially significant given the enhanced vulnerability of women in post-conflict situations. There are no blueprints for increasing tenure security for women and, in general, there are pros and cons in any system of registration (including issues of certainty, further disputes and conflicts, longer-term sustainability, enforceability etc). Alternatives to formal titles that increase tenure security include temporary occupation licenses and communal or individual leases. Interim measures such as a rudimentary form of deeds registration will allow for the possibility of challenges in the short term, but could also support the longer-term development of the land administration system. Whatever registration system is adopted, forms should be designed from the outset to record both men and women's names on all legal documents concerning housing, land and property (most commonly by providing joint names as opposed to a 'head of household'). Although there are obstacles to instituting this practical step in male-dominated societies, and it does not guarantee gender equality in practice, it is nonetheless regarded as an important step in promoting the economic security of women and providing a basis men and women to understand their rights. The adopted system will need to be measured against its likelihood of: i) preventing further disputes; ii) ensuring sustainability in the longer term (is it socially and culturally accepted, will future changes be recorded, is there institutional capacity to run the system etc), and; iii) protecting the rights of women?

## Hurdles, pitfalls, solutions

Many of the points made in this handbook are reflected in the 'Pinheiro Principles' on Housing and Property Restitution for Refugees and Displaced Persons (2005). These principles provide a consolidated text relating to the legal, policy, procedural, institutional and technical implementation mechanisms for housing and property restitution of refugees and displaced persons. Whilst all principles apply equally to men and women, Principle 4 deals specifically with the '*The right to equality between men and women*'<sup>11</sup>. Past experience suggests that there is a need for flexibility and innovation in ensuring gender equality through restitution processes, and in particularly protecting the rights of women.

## Adjudication and remedies

Dealing with the housing, land property restitution rights for returning refugees and the internally displaced is likely to be one of the most complex issues to address within post-conflict societies. In the likelihood of a non-existent or seriously overburdened courts system, there will be a need to create mechanisms for resolving disputes and competing claims over housing, land and property; which can be judicial, quasi-judicial or administrative. Adjudication is therefore prerequisite for the restitution of post-conflict land administration systems and is critical to protecting the rights of men and women. Women are especially vulnerable in this regard due for example to the loss, destruction or non-existence of proof of their rights or where patriarchal customary or traditional rules take precedence.

## Critical Questions

### **Do men and women have equal access to all aspects of registering their claim (for example, obtaining the necessary forms, the ability to complete these forms, the ability to physically submit the claim)?**

The restoration of rights to housing, land and property will require a process of making, processing and resolving competing claims. The most basic measure involves ensuring that claim forms and the instructions for completing them are clear, simple, and gender sensitive (in terms of questions and supporting documentation that can be fulfilled equally by men and women). Assessing the ease of completion of the form for both men and women should be rapidly tested in practice and adjusted as necessary. Logistically both men and women need to be able to access the claim forms and submit their claims. Procedures that are free, accessible and enforceable, whilst not guaranteeing gender equality, will help guard against the institutionalisation of discriminatory practices.

---

<sup>11</sup> Principle (4.1) States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.  
(4.2) States should ensure that housing, land and property restitution programmes, policies and practices recognise the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programmes, policies and practices reflect a gender-sensitive approach.  
(4.3) States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

## **What form of remedy is likely to best ensure gender equality?**

Prompt access to dispute resolution mechanisms will be required. Trends in land administration dispute resolution strongly disfavour disputes reaching the courts for reasons including the capacity of courts (where they are functioning) to handle disputes, the costs of hearings and the unequal rights of women to compile evidence and sustain claims, all of which are compounded in post-conflict situations. There is a range of flexible remedies that can be deployed in adjudicating restitution claims and resolving land disputes. The form the remedy will take is dependent on the local context (taking into account the role of both adjudicated and customary dispute resolution mechanisms). Experience suggests that for adjudication of those disputes that cannot be resolved through community-level mediation and negotiation, there are a number of suitable non-judicial resolution mechanisms such as special tribunals, and property or claims commissions. In the promotion of gender equality it is necessary to ensure that whatever remedies are adopted (whether formal or customary) that equal opportunities for both men and women are provided and that potentially discriminatory practices are not maintained. It is critical that the outcomes of the adjudication process are realised and enforced as necessary.

## **Will the types of permitted evidence provide equal opportunity for men and women to present their claims?**

Establishing an adjudication process that ensures men and women's rights are protected and that disputes are resolved in a non-discriminatory manner will likely require permitting a range of evidence that is particularly sensitive to the context faced by women in establishing housing, land and property rights. This flexible and innovative 'hierarchy of legal will need to go well beyond judging claims against formal registered titles. Practitioners will need to critically assess the ability of men and women to obtain written proof of ownership or other rights and provide special sensitivity to the rights and needs of women, which are likely to reflect weak or non-existent de jure, or de facto rights. The post-conflict situation may have resulted in large-scale internal displacement, the destruction of homes (and records) and wide scale widowhood. In a pre-conflict context of male dominated ownership, written records such as utility bills, building permits, property and income tax etc) may in any case further discriminate against women. In such circumstances oral evidence (statements) and witness testimony and reports may also be necessary. A combination of sources is recommended with the avoidance of single source evidence. The development of 'rules of evidence' will help establish a transparent approach to dealing with equality between men and women in the reality of the post-conflict situation.

## **Will men and women have equal access to adjudication processes?**

Establishing the adjudication process to ensure men and women's rights are protected will also require:

- Clear public notices and public information (where and when adjudication will take place).
- Site visits where possible (to ensure adjudication at the place of dispute).
- Consideration of the logistical (timing, location, cost) and socio-cultural (especially in Islamic societies) factors determining equal opportunity for men and women.
- Effective briefing and training of all staff (local and international) in gender related adjudication issues (for example where women are unable to participate with non-family men in property demarcation, as in Muslim countries, mechanisms must be put in place to protect their rights).

## **Hurdles, pitfalls, solutions**

Whilst there will be a pressing need to address short-term issues, including the need for restitution through adjudication, practitioner experience suggests that this must be done within the framework of an integrated longer-term vision for reconstruction and development, including integration with overall land policy, ensuring the implementation of relevant housing, land and property legislation, and supporting the institutional framework. Establishing gender equality as an integral goal of this broader and longer-term effort is equally important, recognising that achieving equality is likely to be a long term process of incremental change.

## **Public campaigns and information on housing, land and property rights**

Widespread public information is of considerable importance for ensuring equal access to land administration systems and processes for both men and women. Once procedures for registering and restitution of housing, land and property rights are settled (in interim form), it is critical that information is widely shared and understood by the whole population. Information is a key asset and it is necessary to identify at an early stage the most appropriate channels and means for getting the message out as widely as possible. Where feasible as the emergency situation begins to abate, information giving should also extend to rapid and practical 'training' and sensitisation to both men and women (allowing for separate sessions for women as necessary) focusing on their housing, land and property rights and exercising these rights through the re-emerging land administration system. Communication will be equally important through both the emergency measures and reconstruction phase.

A flexible (rolling) communications strategy should be developed that focuses on the equitable distribution of information. Where possible this should be developed by a local consultant specialising in communications and media, though conditions may be too difficult to identify and contract such specialists. The provision of public information should start immediately on the establishment of land administration procedures, and continue throughout land administration programmes.

## **Critical Questions**

### **Are both men and women aware of their housing, land and property rights, what these rights mean in practice, and how to exercise them?**

Information must be in a form that is accessible and understood (especially by women). Dependent on the post-conflict situation and the re-establishment of the media, likely channels may include television, radio, and newspapers, together with the distribution of notices (posters) and leaflets through all conceivable and effective channels (such as public and community notice boards, transit areas, leaflet pick-ups at government buildings and decentralised service points, distribution through community based organisations, networks and NGOs). The information provided must be clear on the status of the rights to be conferred (to avoid false expectations). Information may also need to be tailored to reflect regional and urban/rural differences, including local languages and different customary practices.

## **Are both men and women aware of the procedures of making a claim and of the adjudication procedures?**

Public understanding of how practically to exercise these rights is critical. The public information should set out clearly and simply how to register claims (forms and evidence required), where to submit these claims, how these claims are processed and adjudicated, and how long this process is likely to take. Special attention will need to be paid to the different needs of men and women (for example, levels of literacy and comprehension) in making information accessible and understood.

## **Are support services necessary (such as administrative support and legal aid) and accessible to both men and women?**

Information alone may be insufficient to allow men and women to act. Additional support should be considered where necessary and appropriate to assist men and women in completing forms, submitting claims and preparing evidence for adjudication purposes. A form of legal aid may be especially beneficial for women who need to rely on limited written evidence and the preparation of oral evidence and witness testimony for adjudication. Equally support following the decision of the adjudication and the enforcement of rights may be required.

## **Hurdles, pitfalls, solutions**

The effectiveness of communication will need to be monitored and adjusted. Practitioners will need to ensure that communication is not only accessed and understood, but also acted upon (and if not why not).

## **COMPONENT 3. Building gender-sensitive data and information systems**

In a situation where the number of competing priorities and humanitarian need is overwhelming, the need to establish databases and to collect and analyse data may appear a low priority. However, it is important not to overlook the need to establish land records that systematically capture information as it becomes available and do not add to the institutionalisation of gender inequality, together with need for good quality gender disaggregated data more broadly for establishing gender equal land administration systems. Women's economic and social opportunities may be decreased if programmes and policies are designed on insufficient understanding and information regarding gendered land rights.

## **Critical Questions**

### **Why is gender-disaggregated data needed?**

There are two principal reasons. First, promoting gender equality and preventing discrimination against women requires building land records (and designing documents) that record gender disaggregated data. For example, where recording co-ownership or co-possession of spouses, it will be necessary to ensure that both men and women's names appear on registration records and all legal documents concerning housing, land and property (records, certificates, claim forms, applications and so on). Collection of such data should be made part of the administrative routine as early as possible. Second, broader gender-disaggregated data (that

## Critical Questions

### Which legislation needs reforming and should be prioritised?

For obvious reasons priority will be given to primary land and land administration law, and practitioners will need to ensure that this is non-discriminatory as successive drafts emerge. The rapid gender appraisal (and possible detailed follow-up assessments) will have revealed those areas of law that are especially significant to promoting gender equality. Martial property rights and inheritance rights are the two legal areas most directly related to men and women's ownership or possession of housing, property and land. In practice women's actual entitlements to land are often determined by inheritance practices, thus focusing attention on the need to reform laws of inheritance (See Box 2 - Rwanda).

#### **Box 2 - RWANDA - Will changes in laws of inheritance guarantee greater gender equality?**

Two factors make land in Rwanda a highly contested issue: (i) it has the highest person-to-land ratio in Africa, and; (ii) the monumental population shift resulting from decades of ethnic strife culminating in the 1994 civil war and genocide following which 30% of all households are headed by females. Rwandan women face numerous constraints (cultural, customary, economic, legal and social) to their access to land and ownership of property. The post-conflict situation has thrown several cultural and legal assumptions previously controlling women's access to land into conflict, and women (especially widows) found themselves in especially vulnerable situations when they do not have a legal (civil) marriage to protect their rights.

According to Rwandan custom, women's land rights are guaranteed by men because they are dependent upon the men in their families. They are protected by their fathers, their husbands and finally their male children. Only male children inherit, as female children are expected to benefit from their husband's land and property, and in general land was inherited patrilineally from father to sons. Even before the genocide, these cultural protections for women's access to land were under attack. Constraints on women's access to land were heightened when land became increasingly scarce, and men's land holdings came under pressure.

After a lengthy battle by children's and women's rights groups and the Ministry of Gender and Women in Development, the Rwandan Transitional National Assembly passed a new Inheritance and Marital Property Law in 1999. The major change introduced by the law is the equal inheritance right for male and female children to inherit property.

There are weaknesses in the law. The major limitation is that it only governs legal marriage. Whilst the majority of Rwandan women are, or have been, 'married' in a social sense, Rwandan law does not allow for common law marriage nor does it protect women's rights in cohabitation or informal marriage arrangements. The majority of marriages in Rwanda are not therefore legal and the law does not address the problems of these women who are not in legalised marriages. They do not receive the legal protections afforded by a civil (and thus legal) and left vulnerable to the goodwill of their

husbands and their husbands' families to ensure their access to land. Numerous conflicts over land adjudicated by the courts and local government officials concern women or children who have lost their usufruct rights to land in informal marriage situations.

A second weakness is that it only guarantees the inheritance rights of children from legal marriages. In instances where a man had more than one wife, with only one legal wife, the rights of the 'illegitimate children' (the children of the non-legal marriages), do not have legally protected inheritance rights. Third, field research found cultural and customary impediments to implementation because particularly rural Rwandans were confused by the new inheritance law and its motivations. Most respondents had heard about the new inheritance law on the radio, but they had no detailed information about it. At the time of research, RISD found virtually no cases where the new inheritance law had played a role in adjudicating disputes over land. In general, the new inheritance law has faced resistance due to its collision with prevailing customs in terms of conceptions of marriage and inheritance.

Despite its limitations and the slow pace of implementation, the law is nonetheless 'monumental' in recognising equal inheritance rights to male and female children and creating a choice of property regimes upon marriage and allowing a wife to inherit her deceased husband's property. A New Organic Land Law which came into force in 2005 and which will be detailed in secondary legislation and regulations (including law on land tenure types, land transactions and land registration), demonstrates a maturing land administration system but one that needs to take women's land rights into careful account, and will require further amendments to the 1999 Law. Change will take time, but a start has been made.

#### Sources

Brown, J. and Uvuza, J. (2006) Women's Land Rights in Rwanda: How can they be protected and strengthened as the Land Law is Implemented? Reports on Foreign Aid and Development No.123, September, Rural Development Institute, Seattle, U.S.A.

Burnet, J. (2001) 'Culture, Practice and Law: women's access to land in Rwanda' Paper prepared for the Rwanda Initiative for Sustainable Development (RISD).

UN Habitat, the United Nations High Commissioner for Refugees, OCHA, FAO, et al. (2006) A Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'.

is anticipated by the rapid gender appraisal but not necessarily part of official land records) is also significant in understanding how housing, land and property rights are distributed among different groups of men and women, and the effect of these rights on gender equity. Gender-disaggregated data is necessary to both the emergency and reconstruction phases for:

- Assessing the extent and depth of women's housing, land and property rights in the first place.
- Designing and implementing policy and legislation.
- Monitoring and evaluating the progress in land administration systems and adjusting programme interventions as necessary.

The first step therefore is to design a straightforward strategy for collecting gender disaggregated data (including partnering with local institutions with sufficient capacity to carry out such activities).

## 5.4 The Reconstruction Phase

As the post-conflict situation begins to stabilise and practitioners have a first opportunity to think beyond immediate needs and responses, a broader strategic planning framework can start to take shape. This is especially important for ensuring gender equality, which is likely to be a longer-term process requiring systematic change. Priorities may have already been identified in the emergency phase and some initiatives will have already commenced including addressing access to housing, land, and land tenure and restitution issues. This phase will help adjust activities, look to developing interim measures into formal processes and set out an integral plan of reconstruction. This section highlights those areas where gender equality is of particular significance.

### COMPONENT 4. Reforming legislation

The reform and drafting of new legislation will prove time-consuming and will be difficult to see through to its approval. However, legislation is the cornerstone of the land administration system and for establishing the longer-term principles of equality between men and women and must, therefore, be allocated sufficient attention. An assessment of the legal framework and its impact on gender will have already been completed and primary tasks, such as the translation of legislation and detailed follow-on assessments of particular pieces of legislation, may have already commenced.

The pace of change will be heavily influenced by the social and cultural context and the political appetite and pressure for change. Practitioners will need to adopt strategies that keep gender equality issues firmly on the political agenda and the agendas of the international support agencies. Working with existing women's networks and organisations and developing new forum and 'think-tanks' to support the development process will also assist in measuring emerging legislation to the reality faced by women. Effective communication with the political process, civil service and international and national experts will need to be established and draft legislation carefully reviewed.

#### **Will there be sufficient institutional capacity to implement and enforce new legislation?**

Law is only as good as its effective application. In parallel with the repeal of legislation, practitioners will need to ensure sufficient assessments are taking place regarding the institutional structures, human and financial capacity, and enforcement mechanisms that will be necessary to bring the law into practice. This is especially important for issues of gender equality as there may be significant resource gaps in implementing the law (such as insufficient understanding and training in gender equality issues within the civil service and amongst the public) that will need to be addressed prior to, or in parallel with, the implementation of the law.

#### **Hurdles, pitfalls, solutions**

Legislative reform is insufficient of itself in tackling discriminatory practices and may make little difference to the majority of women if religious and customary law does not recognise equal housing, land and property rights for men and women, and where women's rights are not therefore accepted and enforced in practice. Practitioners must therefore keep a constant eye on the distance between statutory law and practice and seek policy development and secondary legislation where there are gaps; Box 2 for example illustrates the restrictiveness of Rwanda's post-conflict inheritance legislation by restricting rights to those women in 'legal' civil marriages. Fundamental though it is, legal reform must be seen as part of a broader package (including legal education and aid, campaigns and accessible information) necessary to establishing gender equal land administration system in the longer-term.

## **COMPONENT 5. Strengthening institutions and developing capacity for gender equality**

The reform (and/or re-establishment) of the institutional framework and institutions is likely to represent the single biggest challenge to successfully reforming land administration systems. The implications for gender equality must be assessed throughout this process of change in order to ensure there is sufficient capacity to enact new legislation and effectively promote equality between men and women.

### **Critical Questions**

#### **What should capacity development consist of and how should the needs of institutions be assessed?**

Capacity development is most commonly equated with formal training and/or the recruitment of staff. Important though these activities are, they should be elements in a broader and more systematic ('root-and-branch') approach to building the competence of institutions. Diagram 3 below identifies some of the main considerations in supporting the formulation of institutional strengthening and capacity development strategies and action plans; the points identified are indicative only and should be adjusted to the particular post-conflict situation and institutional framework and needs. Internally, the approach is likely to consist of two principal elements: institutional and organisational development, and human resource development.

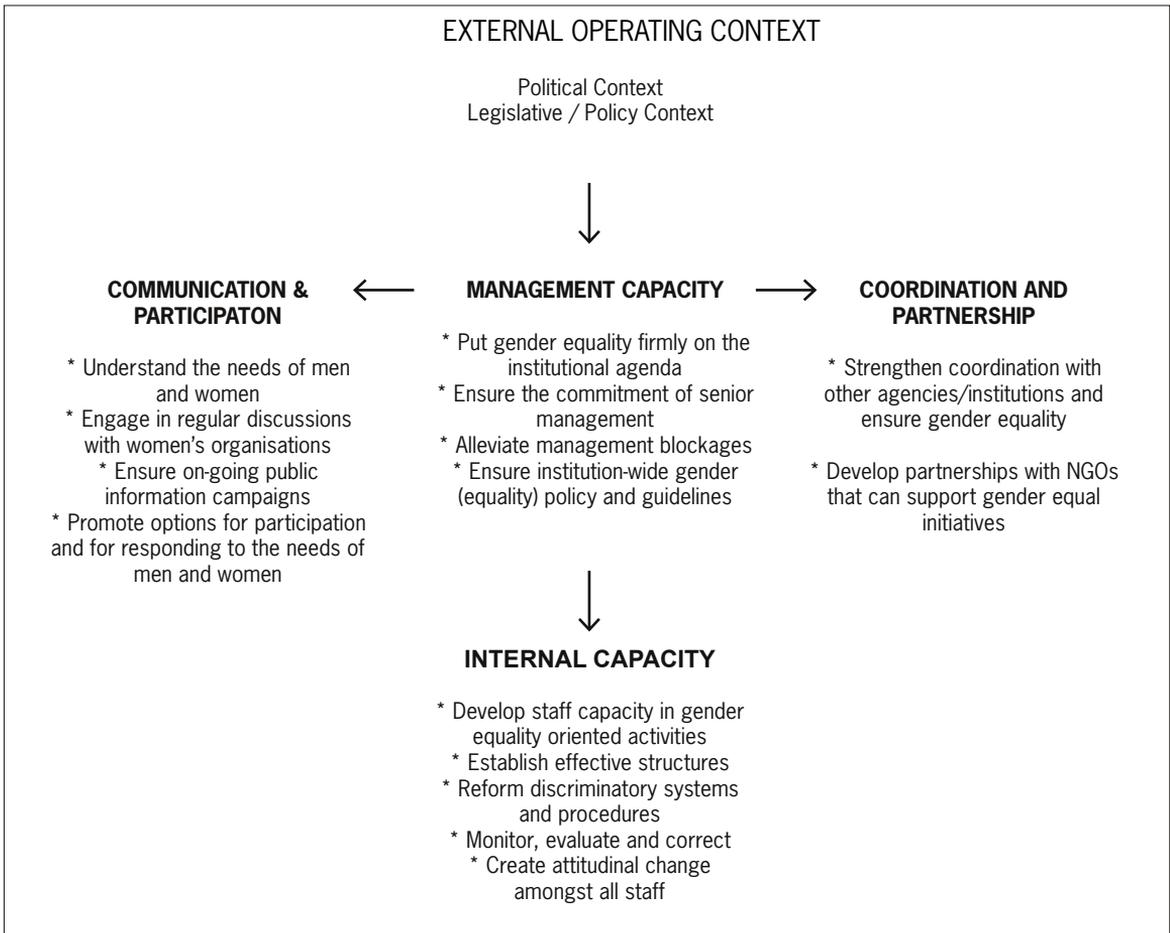
#### **Which aspects of institutional and organisational development are relevant to gender equality?**

Institutional and organisational development includes the way in which institutions are structured and how business is carried out within and with other institutions; for example the institution's aims and corporate strategy, the management practices and procedures, the rules and regulations, the hierarchies and job descriptions, and so on. The strategy should aim to mainstream gender equality in all relevant aspects on the institutions work. Because broader institutional change in the land administration system is likely to involve significant change through (for example) mergers of independent agencies, decentralisation and inter-departmental collaboration, practitioners should keep a constant eye to ensure gender equality goals are being effectively addressed. Building gender equal land administration systems will require capacity development and needs to involve all parts of the land administration process.

#### **What degree of staff change and development will be needed?**

Equipping people with the understanding and skills to deal with the needs of both men and women will be critical. At a basic level this will principally involve training and sensitisation initiatives with both female and male members of staff (and should extend to all grades including management). Education and training initiatives have been shown to be significant in raising the overall levels of awareness of men's and women's rights and of making those involved more aware of the social and cultural contexts within which land administration systems operate. Every effort should be made to ensure women are equally represented in land administration training and education programmes, though it is critical that gender equality is not reduced to a 'woman's issues' and compartmentalised as such within the structure of the institution.

### Diagram 3. Strategic Framework for capacity development and institutional strengthening<sup>12</sup>



Building staff capacity is also likely to require the recruitment of new staff through selection processes underscored by the need to mainstream gender and (as necessary) redressing gender imbalances in the workplace. Although the employment of women does not in itself ensure equality in practice, engaging women professionals (such as surveyors, land administrators and tribunal representatives) may help guarantee that the perspective of women is understood especially in circumstances where religious or cultural customs restrict inter-sex social contact or where women are unable to express their views publicly (which may be especially heightened in post-conflict situations). Whilst creating opportunities for the employment of women in all land administration positions it is important, gender mainstreaming requires opportunities, activities and understanding for all employees, regardless of their gender and level.

Source: framework adapted from Plummer, J. (2000) Municipalities & Community Participation, London: Earthscan.

## **Are there external capacity development initiatives that should be undertaken to help promote gender equality?**

It is not the capacity of institutions alone that will ensure equal rights for men and women. In order to operate effectively, institutions will need to communicate with, and build the capacity and understanding of, users of the system. Communicating gender issues externally with affected populations is likely to be critical to the longer-term reconstruction efforts and will involve general awareness raising through public information campaigns and sensitisation activities involving men and women (and with separate women-only sessions a appropriate in non-threatening environments). Ultimately the goal must be to increase the participation of men and women in land administration processes (such as registering claims), and the achievement of gender equal housing, land and property rights.

### **Hurdles, pitfalls, solutions**

Developing the capacity for gender equality equally requires the sensitisation and training of all programme and project staff. This may include understanding the gender policy of the lead international agency, understanding how men and women's rights to housing, land property are affected differently, and good practices and lessons learned from land administration programmes in post-conflict situations.

## **COMPONENT 6. Ensuring participation and inclusive design**

Supporting the active and effective participation of men and women is fundamental for:

- Effectively understanding the local context;
- Developing straightforward, practical and culturally durable procedures (in terms of cost, logistics, practicalities, and cultural acceptability) to the problems of land administration and security of tenure; and,
- Sensitising both men and women to their rights and to the broader goal of gender equality.

Given the vulnerability of women in post-conflict situations, experience demonstrates that directly targeting the participation of women and women's organisations is critical for both understanding the reality of post-conflict housing, land and property rights and for putting these rights on the political agenda. The supporting role of UN in this process can be especially important. The cases of post-conflict in Guatemala and Rwanda (Box 2 and 3), for example, are testament to the power of women's organisations effectively advocating their needs and priorities.

### **Box 3 - GUATEMALA - Does joint titling ensure gender equality?**

Guatemala's protracted civil war finally ended in 1996 with a series of Peace Accords, but many of its provisions dealing with access to land have not been fully implemented. An examination of land programs in Guatemala is instructive in highlighting the importance of grassroots participation in program design and implementation. It is also instructive of how cultural norms and practices (in the absence of programs to promote social equity and democratic governance) can affect the level of gender equity in land programs.

State and private land programs in Guatemala from the 1960s until the mid-1990s did not recognize women's rights to be property owners in equal conditions as men. When land certificates and titles were issued by state agencies such as INTA (Instituto Nacional de Transformación Agraria) and FYDEP (Fomento y Desarrollo de El Petén) only the head of household was named - women household heads (with the exception of widows) were not offered property rights. Private sector land market programs followed the same pattern.

Highlighting the importance of women's participation in the design of land programmes, ironically, the experience gained by women who were forced to migrate during the height of the civil war in the 1980s and early 1990s increased consciousness of their rights and responsibilities. Supported by the United Nations High Commissioner for Refugees, these organisations put pressure on the state to recognise women's rights, and more specifically, that the names of both spouses be put on titles for land distributed to rural families through post-conflict programs. The 1999 law that created a land bank fund (FONTIERRAS), stipulates that land titles have to include the name of both spouses, whether legally married or not.

But legal provision does not assure a change in practice. No comprehensive studies were found to corroborate whether both spouses are being given title to land purchased through state programs, and some case studies have indicated that serious problems exist in the implementation of these programs. The land being acquired through programs consists of large estates purchased by a group of smallholder families; generally these groups form themselves into cooperatives or smallholder enterprises. The original purchase contract is in the names of all the families, with both spouses from each family appearing on the document. When the group subsequently decides to legally subdivide the large estate into individual family parcels and title these parcels, however, women are often denied legal rights through several different tactics. Some of these include intra-household pressure on women not to insist on having their name included on the title and by denying women membership in cooperatives and in Empresas Campesinas Asociativas.

Consequently, when cooperative land is subdivided, wives of cooperative members are not included as owners when the individual sale-purchase contracts between cooperatives and families are drawn up and when these contracts are recorded in the Land Registry. The state institutions in charge of these land transactions appear to turn a blind eye to this discrimination against women as landowners. This case of a clear legal mandate, to extend to women their legal rights to land in a post-conflict situation, being ignored or subverted attests to the strength of cultural norms and practices.

#### **Source**

Abridged excerpt from Lastarria-Cornhiel, S. (2004) 'Gender and property rights within post-conflict situations' Report prepared for the Centre of Development Information & Evaluation, University of Wisconsin-Madison.

## Critical Questions

### **Are there existing structures, channels and networks (community organisations, women's organisations, savings groups etc.) that could be engaged?**

The rapid appraisal should seek to establish which structures exist and are developing, and subsequent support should be targeted accordingly. Consideration could also be given to the creation of new (sub)-national networks or forums (such as policy and law task force, think-tanks for designing new processes and procedures, or 'coalition' structures) where there is an expressed need, and in order to bring together various interests in sharing information and advocating change. Such structures may be useful for maintaining momentum, for championing the cause of gender equal land administration systems and for designing new land administration procedures.

### **Can community organisations be established where none exists?**

Where there is a need and demand, support should be given to women in establishing community organisations (it is likely that organisations will form to address multiple livelihood needs including micro-finance, small-scale employment support opportunities, welfare issues etc). Women's organisations and associations can have multiple benefits (such a providing a source of collective counselling and education, encouraging self-reliance and improved welfare, improving decision-making capacities through participation in the day-to-day planning and organisation of associations), reinforce the role of participation in tackling poverty and discrimination, and therefore support the longer-term development process.

Community organisations and councils may also provide important channels for discussing land tenure and administration issues and there should be a special effort to target organisations involving both men and women.

### **Will women's interests be equally represented at a national Stakeholders' Forum**

As discussed above, the Stakeholders' Forum must be inclusive. Given the inequality that is likely to be exacerbated in post-conflict situations, it is critical that the stakeholders identified adequately involve any central, regional or local government body with a 'women's affairs' remit, any professional women's networks (such as lawyers) together with women's organisations (NGOs and Community-based organisations). Care should be taken not to confine women's representation to NGOs and Community-based organisations wherever possible, and to ensure the effective articulation of women's interests and needs in housing, land and property rights through smaller 'clusters' for feeding into the broader Stakeholders' Forum.

What methods and techniques can help women's organisations express their needs? There is a tried and tested innovative method known as 'local to local dialogues' that aims at building collective action (and the capacity to do so) to promoting women's rights and rebalancing power, but in a fashion that avoids an adversarial approach and instead concentrates on successive negotiations and discussions with central and local officials. Whilst existing good practice examples do not involve local to local dialogues in post-conflict situations, as the post-conflict situation begins to stabilise it presents a useful tool in addressing access to housing, land and property, and of supporting broader reconstruction and reconciliation processes.

## **COMPONENT 7. Broad-picture monitoring and evaluation**

Far from a standard programmatic requirement, broad-picture monitoring and evaluation is critical to understanding how gender equality is reflected in the land sector and land administration system in practice. The pressure on meeting immediate humanitarian needs, the protracted difficulties in accessing useful information and the shortage of staff with monitoring and evaluation skills will all work against monitoring and evaluation activities in the emergency phase. It is however critical that programme activities are monitored for effectively promoting gender equality, and where not, that faults and gaps are addressed as early as possible. Whilst some developments may appear positive in theory, such as the repeal or development of new legislation, the implementation of gender-sensitive hierarchies of evidence before adjudication, or the recruitment and gender-sensitivity training of staff in land related agencies, it is necessary to ensure that such initiatives are resulting in changes to the housing, land and property rights of men and women in practice, and that these are sustainable over time.

### **Which indicators should be used in monitoring and evaluation?**

Collecting quantitative and qualitative indicators will not be easy (and may prove futile in some cases due to range of factors such as the lack of land records, fear amongst post-conflict population in interacting with officialdom, or just the lack of staff to do so). The data and indicators necessary to assess the effectiveness of adopted measures will depend on the strategy being implemented but are likely to focus on the key areas of development such as the implementation of legislation, disputes and adjudication, eviction and the enforcement of rights. Since there is likely to be a lack of reliable data, monitoring and evaluation efforts will need to rely on interim data sources and records as well as qualitative assessments; the latter may prove the most revealing in the operation of the land sector and in its impacts on men and women. Practitioners should consider all possible channels for gathering monitoring and data and information, including networks of community and women's organisations, and will need to take a pragmatic attitude to the quantity and quality of data that is available and can be collected.

### **Hurdles, pitfalls, solutions**

For the reasons noted above, there are numerous factors working against the gathering of data for monitoring and evaluation, and multi-faceted approach will needed (such as building monitoring and evaluation activities into the new institutional framework, into job descriptions and ensuring adequate records are collected). Partnerships with those organisations with adequate capacity to monitor and evaluate should also be considered (including education, training and research institutes as they are re-established, and NGOs).

## **5.5 Conclusions on gender in post-conflict land administration**

Promoting gender issues in post-conflict land administration may encounter indifference, and in some places outright resistance. Addressing these challenges will require resilience, and a realistic and pragmatic approach to the pace and depth of change that is achievable within the social and cultural context.

### **Putting gender at the centre of land administration programmes**

Typically, around a quarter of all households in post-conflict situations will be headed by females and widows, and are especially vulnerable in their unequal access to housing, land and property, and the threat of eviction. It is critical therefore that gender is placed firmly on the land agenda. This includes making sure these aspects are adequately reflected in peace building operations (and are not confined to isolated measures), that initiatives are assessed in terms of their impact on gender, and more specifically that particular initiatives are designed to address gender inequality. Equally, it is necessary to ensure that field office and project staff are adequately briefed, sensitive to, and trained in gender issues.

### **Addressing needs on the basis of 'fact'**

Only by assessing the significance of gender and building it into programme development and implementation from the outset, will issues be adequately addressed and further (institutionalisation) of gender discrimination avoided. Gender disaggregated information will be necessary in 'making-the-case' for land administration and gender on peace-building and political agendas, and is a pre-requisite for the design of initiatives.

### **Assessing the risk to women**

Responding to post-conflict gender issues will require balancing need and risk. Forcing the pace of change may prove counter-productive to finding sustainable long-term solutions and may increase the level of risk faced by women. This includes levels of physical violence, and effective loss of rights. Equally, inaction is unacceptable where gender equality is deeply ingrained and the vulnerability of women has been exacerbated in the post-conflict situation. The pace and depth of change in gender equality will be heavily influenced by the particular social and cultural context. Practitioners will need to give careful consideration to the level of vulnerability and security of women through the development and implementation of legal, policy and institutional mechanisms, and adopt a commonsense and incremental approach that is firmly fixed on the practical needs and consequences for men and women. Addressing gender issues will require working strategically with all stakeholders and partners.

### **Working on gender equality in the longer-term**

Restoration and modernisation of land administration systems and records, and promoting gender equality through this process, is a means to an end. Whilst the immediate emergency phase will demand rapid humanitarian responses, practitioners should not lose sight of the significance of discrimination and equality in retrospectively undermining or supporting the peacebuilding, reconciliation and longer-term development process. Land administration programmes will provide the opportunity for practitioners to open up debates on gender equality in the land policy and development frameworks more broadly.

## **Broad-picture monitoring and evaluation**

Supporting the development and implementation of a range of measures for promoting gender equality is not an end in itself. Developments – ranging from the reform of legislation, land records and adjudication procedures to redressing gender inequality in the staffing of land agencies and providing sensitisation on gender issues - must lead to positive changes in the lives of women and men. The effectiveness of these initiatives in supporting change, and building upon and adjusting initiatives where necessary, can only be tracked through regular monitoring and evaluation activities. Whilst challenging in reality, practitioners must work around the difficulties of the post-conflict situation and build in the need for such processes from the outset.

## **VI. FINAL RECOMMENDATIONS**

### **6.1 Land administration in a post-conflict situation:**

- Early availability of some basic services relating to land transactions is vital in the post-conflict period.
- Monitoring and regulating use of absentee right-holders' properties must start as soon as possible, in order to avoid fresh conflicts and pre-empt high expectations that can lead to evictions further down the road.
- Monitor and prevent invasion of public land and properties and illegal constructions as much as possible, in order to prevent the development of unsustainable urban (fringe) areas and evictions or demolition further down the road.
- Land issues do not seem to be a top priority in the short term, but their long-term effects are significant and costly. The land sector must feature high and from the very start on the post-conflict agenda. Admittedly, this is not an easy thing to do, as the authorities typically face many urgent issues in a post-conflict situation.
- The restoration and modernisation of land records must not be viewed as ends in themselves in a post-conflict situation. Instead, they are means to the same ends, namely, reconciliation, the development of appropriate land policy, an effective and efficient land market and the bringing about of land records the majority of the population feel they can trust.
- Instead of being undertaken in isolation, operations related to land records must be co-ordinated with other areas of the land management/administration system.

### **6.2 UN-HABITAT's role in post-conflict land administration:**

- Contribute to the immediate post-conflict (UN) administration, in keeping with its mandate regarding land and shelter.
- In the emergency phase, identify any needs and requirements coming under its mandate, develop appropriate projects, attract donors' interest, assist in project design and project management, as well as monitor, assess and manage risk.
- In the reconstruction phase, focus mainly on planning and financial management – until a stand-alone public land institution is in place that can undertake its own project management and implement a strategic action plan.
- Ensure that the land issue is placed high up enough on the authorities' agenda, especially with regard to any legislation that needs to be passed.
- Undertake broad-picture monitoring and evaluation of the land sector projects/donors and land functions, in order to improve co-ordination between projects and with the (UN) administration.
- Ensure that stakeholders are involved in the process and that the project is not just product-focused
- Help open up the debate on a broader land policy framework to encompass issues such as gender, equity, decentralisation, etc.
- Assist in the development of enforcement mechanisms.

## VII. ANNEXURE

### 7.1 International Standards on Housing, Land and Property Rights

R International Covenant on Economic, Social and Cultural Rights (1966), adopted by UNGA resolution 2200A(XXI), entered into force on 3 January 1976. Article 11(1) states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

#### See also:

- Article 2(1): progressive realization of human rights
- Article 2(2): non-discrimination
- Article 3: equal rights of men and women to the enjoyment of all economic, social and cultural rights

R International Convention on the Elimination of All Forms of Racial Discrimination (1965), adopted by UNGA resolution 2106A(XX), entered into force on 4 January 1969. Article 5(e) (iii) states:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...(e) in particular...(iii) the right to housing.

#### See also:

- Article 5(d) (v): the right to own property
- Article 5(d) (vi): the right to inherit

R International Convention on the Elimination of All Forms of Discrimination Against Women (1979), adopted by UNGA resolution 34/180, entered into force on 3 September 1981. Article 14(2)(h) states:

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...(h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

## See also:

- Article 1: definition of discrimination
- Article 13: women's equal rights to bank loans, mortgages and other forms of financial credit
- Article 15: women's equal rights to conclude contracts and administer property
- Article 16 (1)(c): equal rights and responsibilities during, and at, dissolution of marriage
- Article 16(1)(h): equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property
- International Convention on the Rights of the Child (1989), adopted by UNGA resolution 44/25, entered into force on 2 September 1990. Article 27(3) states:

States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

- Convention Relating to the Status of Refugees (1951), adopted on by UNGA resolution 429(V), entered into force on 22 April 1954. Article 21 states:

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

- Universal Declaration of Human Rights (1948), adopted and proclaimed by United Nations General Assembly resolution 217A (III). Article 25(1) states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

## Resolutions

### UN General Assembly

- Resolutions 41/146 (1986), 42/146 (1987), 43/181 (1988) and 46/163 (1991) on the Global Strategy for Shelter to the Year 2000
- Resolutions 50/195 (1996), 52/130 (1998), 54/167 (2000) and 56/164 (2002) on the Protection of, and Assistance to, Internally Displaced Persons

### UN Economic and Social Council (ECOSOC)

- Resolution 1987/62 on the Realization of the Right to Adequate Housing

## **UN Commission on Human Rights**

- Resolutions 2000/13, 2001/34, 2002/49, and 2003/22 on Women's Equal Ownership of, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing
- Resolutions 2000/53, 2001/54, 2002/56 and 2003/51 on Internally Displaced Persons
- Resolutions 2004/16 and 1993/77 on Forced Evictions
- Resolutions 1986/36, 1987/22 and 1988/24, 2001/28 , 2002/21 on the Right to Adequate Housing as a Component of the Right to an Adequate Standard of Living
- Resolutions 1994/8, 1994/14 on Promoting the Realization of the Right to Adequate Housing

## **UN Sub-Commission on the Promotion and Protection of Human Rights**

- Resolution 2002/30 on the Right to Return of Refugees and Internally Displaced Persons
- Resolutions 1998/26 and 2002/7 on Housing and Property Restitution in the Context of Refugees and Other Displaced Persons
- Resolutions 1991/12, 1993/41, 1994/39 , 1996/27 and 1998/9 on Forced Evictions
- Resolutions 1993/15 , 1994/20, 1995/12 on the Right to Adequate Housing
- Resolutions 1991/26, 1992/26, 1993/36, 1994/38, 1995/27 and 1995/19 on Promoting the Realization of the Right to Adequate Housing
- Resolutions 1997/19 and 1998/15 on Women and the Right to Land, Property and Adequate Housing

## **UN Commission on Human Settlements**

- Resolution 19/3 on Global Campaigns on Secure Tenure and Urban Governance, adopted 9 May 2003
- Resolution 19/16 on Women's role and rights in human settlements' development and slum upgrading, adopted 9 May 2003
- Resolution 16/7 on the realization of the human right to adequate housing adopted 7 May 1997
- Resolution 14/6 on the human right to adequate housing, adopted 5 May 1993

## **Declarations and Recommendations**

Habitat Agenda, 1996: Paragraphs 8, 11, 14, 15, 16, 17, 26, 27, 37, 38, 39, 40(b), 40(c), 40(d), 40(e), 40(h), 40(j), 40(l), 40(m), 40(n), 46, 60, 61, 93, 94, 95, 96, 97, 98.

## **Types of International Standards**

**Covenants and conventions** are treaties under another name and they legally bind the countries that have signed and ratified them. Ratification means that after representatives of a country have signed a treaty, the head of state or government of that country has approved this signature. Covenants and conventions can be bilateral (between two countries) or multilateral (between more than two countries). Where they originate with the United Nations, covenants and conventions are first adopted (by resolution) by the General Assembly and then opened for both signature and ratification by member States. Whenever a State ratifies or accedes to a treaty, it may make reservations with regard to one or more specific clauses, unless prohibited under the treaty. States can normally withdraw any such reservations at any time. In some countries, international treaties take precedence over national law; in others, a

specific law may be required to give an international treaty, although ratified or acceded to, the force of national law. In practice, States that have ratified, or acceded to, an international treaty must often add to or amend existing legislation if it is to be fully effective on the national territory.

**Declarations and recommendations** are generally documents of intent. In most cases they do not create legally binding obligations on signatory countries. They do not need ratification. However, in some instances, a declaration or recommendation may gain the force of binding law: if its contents are widely accepted by the international community, it achieves the status of customary international law.

**Resolutions** are documents without legally binding force (except for those of the UN Security Council). However, since they typically emanate from UN bodies, they can carry considerable weight, and often provide a wealth of detail about a particular subject not to be found in other international instruments.

## Human Rights Linked to Housing, Land and Property

**The Right to Adequate Housing** was first recognised within Article 25(1) of the Universal Declaration of Human Rights, and subsequently included in various standards, most notably the International Covenant on Economic, Social and Cultural Rights (CESCR). Beneficiaries of this right are entitled to housing that is 'adequate'. Adequacy includes: security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy. Governmental obligations derived from this right include duties to take measures to confer security of tenure (and consequent protection against arbitrary or forced eviction and/or arbitrary confiscation or expropriation of housing), to prevent discrimination in the housing sphere, to equality of treatment and access vis-à-vis housing and protection against racial discrimination, guaranteeing housing affordability, landlord-tenant relations and many others. Further duties are incumbent upon those exercising powers of governance to promote access to and provision of housing resources suited to the needs of the disabled, the chronically ill, migrant workers, the elderly and refugees and internally displaced persons.

**The Right to Property** is also enshrined in international legal standards, including the Universal Declaration of Human Rights (art. 17), the Convention on the Elimination of All Forms of Racial Discrimination (art. 5(d)(v)), the Convention on the Elimination of All Forms of Discrimination Against Women (art. 16(1)(h)) and other international standards. In addition, Principle 21 of the internally displaced persons Guiding Principles pursues comparable approaches. While the right to adequate housing is designed to ensure that all persons have a safe and secure place to live in peace and dignity, the right to property is particularly important in terms of protecting the rights of persons who already own property or who have rights to use property (such as tenants), in particular, against the arbitrary deprivation of one's property or home.

**The Right to Be Protected Against Forced Evictions** is increasingly recognised under international law. Many international standards assert that forced evictions constitute 'a gross violation of human rights, in particular the right to adequate housing'. In addition to asserting that 'forced evictions are prima facie incompatible with the provisions of the Covenant [CESCR], and can only be carried out under exceptional circumstances', a leading UN human rights body has consistently proclaimed that States parties to the CESCR had violated the right to adequate housing and "18. [T]he Committee considers that instances of forced evictions are

prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law". The obligation of governments to prioritize attention to securing the housing rights of the most disadvantaged groups in society is also addressed in General Comment No. 4: "States parties must give due priority to those social groups living in unfavorable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others" (Para. 11). Principle 18 of the IDP Guiding Principles provides:"1. All internally displaced persons have a right to an adequate standard of living; 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure access to: (a) Essential food and potable water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation. 3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies". General Comment No. 7 on Forced Evictions (1997) provides the most comprehensive statement on forced evictions and the CESCR.

**The Right to Security of Tenure** is a central housing rights issue. Without security of tenure – whether formal, informal or in other forms – people's housing, land and property rights are permanently under threat, and the risk of forced eviction, displacement or other forms of dispossession are ever-present. Providing security of tenure has been widely recognised as both a positive development goal, and increasingly as a distinct human right. International human rights bodies are increasingly linking the full enjoyment of human rights to the enjoyment of security of tenure.

**The Right Not to Be Arbitrarily Deprived of One's Property:** Closely related to the eviction question, the right not to be arbitrarily deprived of one's property is widely addressed throughout human rights law. The basic principles associated with this right stipulate that property can only be expropriated or compulsorily acquired if this is carried out in accordance with law, in the public interest and subject to the payment of just and satisfactory compensation.

**The Emerging Right to Housing and Property Restitution** has been increasingly recognized not just as a preferred general legal remedy to the deprivation of housing land and property of the displaced, but also as a distinct right. In increasingly commonly heard language, the UN has re-affirmed "the right of all refugees, as defined in relevant international legal instruments, and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish".

**The Right to Be Protected From Homelessness or Other Housing Rights Violations** is relevant in all cases, but particularly in cases involving the secondary occupation of housing and property belonging to returning refugees, where evictions of unlawful and illegitimate occupants may need to occur (if voluntary moves are not forthcoming) for restitution rights to be enforced. All programmes of return involving housing and property disputes should contain assurances that even those who have no lawful or other rights to dwell within housing or property registered to returnees, do not become homeless or the victims of other rights violations.

## VIII. REFERENCES

- Augustinus, Clarissa and Barry, Michael (2004). 'Strategic Action Planning in Post-Conflict Societies' (Paper presented at a symposium on Land Administration in Post Conflict Areas jointly organized by the Federation of International Surveyors, the Kosovo Cadastral Agency and UN-HABITAT), Geneva, Switzerland, 29-30 April 2004.
- Aursnes, I.S. and Foley, C. (2007). 'Property Restitution in Practice: The Experience of the Norwegian Refugee Council' in *Returning Home: Housing and Property Restitution Rights for Refugees and Displaced Persons – Volume 2* (Scott Leckie, ed.), Ardsley: Transnational Publishers.
- Bagshaw, Simon (2000). 'Property Restitution and the Development of a Normative Framework for the Internally Displaced', in *Refugee Survey Quarterly*, vol. 19, no. 3, Oxford: Oxford University Press.
- Barkan, E. (2000). *The Guilt of Nations: History and Injustices*, New York: W.W. Norton & Co.
- Barry, Michael (1999). *Evaluating Cadastral systems in Periods of Uncertainty: A Study of Cape Town's Xhosa-speaking Communities*, PhD Thesis University of Natal, Durban, www.geomatics.uct.ac.za.
- Barry, Michael and Fourie, Clarissa (2002). 'Analysing Cadastral Systems in Uncertain Situations: A Conceptual Framework based on Soft Systems Theory' in *International Journal for Geographical Information Science (IJGIS)*, Vol. 16, No. 1, p. 23-40.
- Barton, F., and Crocker, B., (2005). *Making Peacebuilding Work: Reforming UN Peacekeeping Operations*, Washington DC: Post-Conflict Reconstruction Project - CSIS.
- Bildt, C. (7 May 2003) 'Seven ways to rebuild Iraq: Hard-earned lessons on nation-building', *International Herald Tribune*.
- Binns, Bernard O. Binns and Dale, Peter F. (1995). *Cadastral surveys and records of rights in land*, - *FAO Land Tenure Studies 1*, Rome: FAO.
- van Boven, Theo (1993). *Final Report: Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms* (E/CN.4/Sub.2/1993/8).
- Brooks, R. L. (ed.)(1999). *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice*, New York: New York University Press.
- Center on Economic and Social Rights (May 2002) *Human Rights and Reconstruction in Afghanistan*, New York: CESR.
- Chandler, D. (2002) *From Kosovo to Kabul: Human Rights and International Intervention*, Pluto Press, London.
- Clapham, Andrew (2006). *Human Rights Obligations of Non-State Actors*, Oxford: Oxford University Press.

COHRE (2006). *The Pinheiro Principles – United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons*, Geneva: COHRE.

(2001). Sources No. 7: Legal Resources on Housing and Property Restitution for Refugees and IDPs, Geneva: COHRE.

(2000). *The Human Right to Adequate Housing 1945-1999: Chronology of United Nations Activity*, Geneva: COHRE.

(1999). *Better Late Than Never: Housing Rights in East Timor*, Geneva: COHRE.

(1999). *Sources No. 3 Forced Evictions and Human Rights: A Manual for Action*, Geneva: COHRE.

Conflict, Security & Development Group (King's College, London) (2003). *A Review of Peace Operations: A Case for Change - East Timor*, London: King's College.

Dale, Peter F. and McLaughlin, John D. (1999). *Land Administration*, Oxford: Oxford University Press.

(1988). *Land Information Management: An Introduction with Special Reference to Cadastral Problems in Third World Countries*, Oxford: Clarendon Press.

Das, Hans (2004). 'Restoring Property Rights in the Aftermath of War' in *International and Comparative Law Quarterly*, Vol. 53, April, pp. 329-444.

Diller, J. (1997) *Handbook on Human Rights in Situations of Conflict*, Minnesota Advocates for Human Rights, Minneapolis.

Dobbins, et al (2005). *The UN's Role in Nation-Building From the Congo to Iraq*, Santa Monica, Rand Corporation.

Dodson, A. & Heiskanen, V. (2003) 'Housing and Property Restitution in Kosovo' in Scott Leckie (ed.) *Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons (vol. 1)*, Transnational Publishers, New York, 225.

Dowson, Sir E. and Sheppard, V.L.O. (1956). *Land Registration, Colonial Research Publications No. 13 (2nd edition)*, London: Her Majesty's Stationery Office.

Dress, Tobi P. (2005). *Designing a Peacebuilding Infrastructure: Taking a Systems Approach to the Prevention of Deadly Conflict*, New York, United Nations NGLS.

Economist (5 March 2005). 'Rebuilding failed states: From chaos to order' in *The Economist*, pp. 43-45.

Eide, E.B., Kaspersen, A. T., Kent, R., and Von Hippel, K. (2005) *Report on Integrated Missions: Practical Perspectives and Recommendations (Independent Study for the Expanded UN ECHA Core Group)*.

European Union (2004). 'EU Land Policy Guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries', EU Task Force on Land Tenure. Food and Agriculture Organisation (2005) *Access to Rural Land and Land Administration After*

*Violent Conflict*, FAO Land Tenure Studies No.8, Rome: FAO.

(2005). *Access to rural land and land administration after violent conflicts - FAO Land Tenure Series 8*, Rome: FAO.

(2002). *Gender and Access to Land - FAO Land Tenure Studies No. 4*, Rome: FAO.

(1993). *Computer application to the cadastre and land registration in the Near East*, Rome: FAO.

FIG (1999). *The Bathurst Declaration on Land Administration for Sustainable Development*, FIG in co-operation with the United Nations, FIG Publication No. 21.

Fitzpatrick, D. (2002) *Land Policy in Post-Conflict Circumstances: Some Lessons From East Timor – New Issues in Refugee Research Working Paper No. 58*, the United Nations High Commissioner for Refugees.

Foley, Conor (2004). 'Legal Aid for Returnees: The NRC Programme in Afghanistan', in *Humanitarian Exchange*, No. 26, March 2004.

Fourie, Clarissa and van Gysen, Herman (1995). 'Constructing Cadastral Reform Theory in South Africa' in *Geomatica*, Vol. 49, No. 3, 1995, p. 315-328.

Garlick, Madeline & Cox, Marcus (2003). 'Musical Chairs: Property Repossession and Return Strategies in Bosnia and Herzegovina' in Leckie, S. (ed.) *Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons (vol. 1)*, Ardsley: Transnational Publishers, 65.

Gerson, Allan (2001). 'Peace Building: The Private Sector's Role' in *American Journal of International Law*, Vol. 95, No. 1, January, pp. 102-119.

Granderson, C. (1996) 'Institutionalizing Peace: The Haiti Experience' in *Honoring Human Rights: From Peace to Justice* (Alice Henkin, ed.), Aspen Institute, 227.

Habulluah, S.H, Balasundarampillai, P., and Tudor-Silva, K (2005) *Addressing Root Causes of the Conflict: Land Problems in North-East Sri Lanka*, Colombo: UNHCR.

Hastings, Lynn (2001). 'Implementation of the Property Legislation in Bosnia Herzegovina', in *37 Stanford J. Int'l L.* 221.

Howland, T. (1999) 'Mirage, Magic, or Mixed Bag? The United Nations High Commissioner for Human Rights' Field Operation in Rwanda', in *Human Rights Quarterly*, pp. 1-55.

Independent Task Force/Council on Foreign Relations (2005) *In the Wake of War: Improving US-Post-Conflict Capabilities*, New York: Council on Foreign Relations.

Inter-Agency Standing Committee (2002) *Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action – Programmes & Practices Gathered from the Field*, IASC, Geneva.

International Council on Human Rights Policy (2006). *Negotiating Justice? Human Rights and Peace Agreements*, Geneva: ICHRP, Geneva.

International Peace Academy (2005). *Housing, Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming - Policy Report (Security-Development Nexus Program)*, New York: IPA.

(2002). *Justice Under International Administration: Kosovo, East Timor and Afghanistan*, New York: IPA.

Kasanga, R. Kasim (1996). 'Land Tenure, Resource Access and Decentralization: The Political Economy of Land Tenure in Ghana', Paper presented at the Franco-British Conference on Land Tenure and Resource Access in West Africa, Dakar, Senegal, 18-22 November 1996.

Kitay, M. (1998) 'Land Tenure Issues in Post Conflict Countries', paper presented at the International Conference on Land Tenure in the Developing World (University of Capetown, Capetown, 27-29 January 1998).

Komjathy, K, and Nichols, S. (2000). *Principles For Equitable Gender Inclusion In Land Administration: FIG Guidelines On Women's Access To Land*, Background Report and Guidelines. FIG Publication No.24.

Larsson, Gerard (1991). *Land Registration and Cadastral Systems: Tools for Land Information and Management*, Harlow (Essex): Longman Scientific and Technical.

Lastarria-Cornhiel, S. (2004). 'Gender and property rights within post-conflict situations', Report prepared for the Centre of Development Information & Evaluation, Madison: University of Wisconsin-Madison.

Leckie, Scott (2007). *Returning Home: Housing and Property Restitution Rights for Refugees and Displaced Persons – Volume 2* (editor), Ardsley: Transnational Publishers.

(2007). *Housing and Property Restitution Rights for Refugees and Displaced Persons: International, Regional and National Standards* (editor), Cambridge: Cambridge University Press.

(2006). 'Post-conflict housing, land and property rights' in *Habitat Debate* (Dec 2006), Vol. 12, No. 4, *A New Start: The Paradox of Crisis*, p. 10.

(2003). *Returning Home: Housing and Property Restitution Rights for Refugees and Displaced Persons – Volume 1* (editor), Ardsley: Transnational Publishers.

(2000). 'Housing and Property Issues for Refugees and Internally Displaced Persons in the Context of Return, Key Considerations for UNHCR Policy and Practice' in *Refugee Survey Quarterly*, vol. 19, no. 3, Oxford: Oxford Univ. Press.

Lewis, Daniel (2004). 'Challenges to Sustainable Peace: Land Disputes Following Conflict'. Paper presented at a symposium on Land Administration in Post Conflict Areas jointly organized by the Federation of International Surveyors, the Kosovo Cadastral Agency and UN-HABITAT, Geneva, Switzerland, 29-30 April 2004.

Marks, Susan and Clapham, Andrew (2006). *International Human Rights Lexicon*, Oxford.

- McLaughlin, John and Palmer, David (1996). 'Land registration and development', in *ITC Journal* No. 1, p. 10-17.
- Mulolwa, Augustine (2002). *Integrated Land Delivery, Towards Improving Land Administration in Zambia*, Delft: Delft University Press.
- Norwegian Refugee Council (2005). *A Guide to Property Law in Afghanistan*, Kabul: NRC and UNHCR.
- Office of the High Commissioner for Human Rights (1996). *Fact Sheet No. 25: Forced Evictions and Human Rights*, Geneva: OHCHR.
- OSCE, UNMIB, OHR, UNHCR & CRPC (October 2000). *Property Law Implementation Plan (PLIP) – Inter Agency Framework Document*.
- Philpott, Charles (2005). 'Though the Dog is Dead, the Pig Must be Killed: Finishing with Property Restitution to Bosnia-Herzegovina's IDPs and Refugees' in *Journal of Refugee Studies*, vol. 18, no.1, pp 1-24.
- Pinheiro, Paulo-Sergio (2005). *Final Report of the Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons* (E/CN.4/Sub.2/2005/17 and E/CN.4/Sub.2/2005/17/Add.1). This document contains the official UN text of the *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, as approved by Sub-Commission Resolution 2005/21 of 11 August 2005.
- (2004). *Progress Report of the Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons* (E/CN.4/Sub.2/2004/22).
- Pons-Vignon, Nicolas and Solignac Lecomte, Henri-Bernard (2004). *Land, Violent Conflict and Development* (OECD Development Centre Working Paper No. 233), Paris: OECD.
- Simpson, S. Rowton (1976). *Land Law and Registration (Book 1)*, London: Surveyors Publications.
- Strohmeier, Hansjörg (2001). 'Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor' in *American Journal of International Law*, Vol. 95, No. 1, January, pp. 46-63.
- UN (1996). The Bogor Declaration (by the United Nations Interregional Meeting of Experts on the Cadastre), Bogor.
- UNDG Programme Group (October 2004). *UNDG Guidance Note on Durable Solutions for Displaced Persons* (refugees, internally displaced persons and returnees), New York: UNDG.
- UNECE (1996). United Nations Economic Commission for Europe (Meeting of Officials on Land Administration), *Land Administration Guidelines*
- UNHCR (2005). *Handbook for Planning and Implementing - Development Assistance for Refugees (DAR) Programmes*. Geneva: the United Nations High Commissioner for Refugees.
- (2004). *Excom Conclusion No. 101 on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees*.

(2003). *Agenda for Protection*, Third Edition, Geneva.

(1998). (Inspection and Evaluation Service), *The Problem of Access to Land and Ownership in Repatriation Operations*, 1998.

(1996). *Handbook: Voluntary Repatriation/International Protection*, UNHCR Division of International Protection, Geneva: UNHCR.

(1985). *Excom Conclusion No. 40 on Voluntary Repatriation*.

(1980). UNHCR, *Excom Conclusion No. 18 on Voluntary repatriation*.

UN Housing Rights Programme (2002). *Housing Rights Legislation*, Nairobi: UN Habitat Programme and the Office of the UN High Commissioner for Human Rights.

UN HABITAT (2006). *A New Start: The Paradox of Crisis (Issue of Habitat Debate)*, Dec 2006), Vol. 12, No. 4.

(2004). *Post-conflict, natural and human-made disasters assessment and reconstruction*, (UN doc. HSP/GC/20/5).

(2004). *Dialogue on urban disasters and reconstruction - Sustainable relief in post-crisis situations: transforming disasters into opportunities for sustainable development in human settlements*, (UN doc. HSP/WUF/2/10)

(1999). United Nations Centre for Human Settlements (Habitat), *The Global Campaign For Secure Tenure; A Strategic Vision for UN-HABITAT; Discussion and Recommendations*, 1999, <http://www.unhabitat.org/tenure/vision.htm> (visited 29 March 2002)

(1999). *Housing and Property in Kosovo: Rights, Law & Justice: Proposals for a Comprehensive Plan of Action for the Promotion and Protection of Housing and Property Rights in Kosovo*, 30 August 1999.

UN Mission in Kosovo (2000). *UNMIK Regulation 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission*.

(1999). *UNMIK Regulation No. 1999/23 on the establishing of the Housing and Property Directorate and the Housing and Property Claims Commission*.

UN Secretary-General (2005). *In larger freedom: towards development, security and human rights for all*, New York, UN General Assembly (UN doc. A/59/2005).

(2004). *The rule of law and transitional justice in conflict and post-conflict societies*, New York, UN Security Council, (UN doc. S/2004/616).

(2002). *Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict*, New York, UN Security Council (UN doc. S/2002/1300).

(2000) *Report of the Panel on United Nations Peace Operations - The Brahimi Report*, UN doc. A/55/305-S/2000/809.

- USAID – Office of Conflict Management and Mitigation (2004). *Land and Conflict – A Toolkit for Intervention*, Washington DC, USAID.
- Van der Molen, Paul (2001). 'Cadastrals Revisited: The Promised Land of Land Administration', Inaugural Address ITC, Enschede.
- Von Carlowitz, Leopold (2005). 'Resolution of Property Disputes in Bosnia and Kosovo: The Contribution to Peacebuilding' in *International Peacekeeping*, Vol. 12, No 4, pp. 1-15.
- Wedgewood, Ruth and Jacobson, Harold K. (2001). 'Symposium: State Reconstruction After Civil Conflict - Foreword' in *American Journal of International Law*, Vol. 95, No. 1, January, pp. 1-7.
- Wichart, Tim (1997). 'Property Issues in Displacement and Conflict Resolution' in *Refugee*, Vol. 16, No. 6, pp. 22-27.
- Wiley, L. (2002) *Land Rights in Crisis*, Kabul: Afghan Research and Evaluation Unit.
- Williams, Rhodri (2006). 'Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice', in *NYU Journal of International Law and Politics*, vol. 37, no. 3., 441.
- Williamson, Ian (1997). 'The Justification of Cadastral Systems in Developing Countries' in *Geomatica*, Vol. 51, No. 1, 1997, p. 21-36.
- Williamson, Ian and Clarissa Fourie (1998). 'Using the Case Study Methodology for Cadastral Reform', *Geomatica*, 52(3), pp. 283-9.
- World Bank (2005) *Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report*, Washington D.C.: World Bank.
- (2003) *Comparative Study of Land Administration Systems: Global Synthesis of Critical Issues and Future Challenges*, Washington: World Bank.
- Zevenbergen, J. (2002). *Systems of Land Registration, Aspect and Effects*, PhD Delft: NCG Netherlands Geodetic Committee.
- (1998). 'Is Title Registration Really the Panacea for Defective Land Administration in Developing Countries?' in *Proceedings International Conference on Land Tenure in the Developing World*, Cape Town 1998, pp. 570-580, <http://www.gtz.de/orboden/capetown/cape60.htm>.
- Zevenbergen, J. and Van Der Molen, P. (2004). *Legal Aspects Of Land Administration In Post Conflict Areas*, Symposium On Land Administration In Post Conflict Areas, Geneva: April 29 - 30, 2004.
- Zieck, M. (1997). *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, The Hague: Martinus Nijhoff Publishers.
- Zweig, R.W. 1993). 'Restitution of Property and Refugee Rehabilitation: Two Case Studies' in *Journal of Refugee Studies*, Vol. 6, No. 1/4, pp. 56-64, Oxford: Oxford University Press.

**Authors:**

Clarissa Augustinus, Chief, Land ,Tenure and Property Administration Section, and Dan Lewis, Chief Disaster Post Conflict and Safety Section, UN-HABITAT, Scott Leckie, Executive Director, Displacement Solutions.

Human  
Settlements  
in Crisis

A  
POST-CONFLICT  
LAND  
ADMINISTRATION AND  
PEACEBUILDING  
HANDBOOK

**UN** **HABITAT**

United Nations Human Settlements Programme  
P.O. Box 30030, GPO Nairobi 00100, Kenya  
Tel: +254 (20) 762 3120, Fax: +254 (20) 762 3477  
E-mail: [infohabitat@unhabitat.org](mailto:infohabitat@unhabitat.org)  
Website: [www.unhabitat.org](http://www.unhabitat.org)