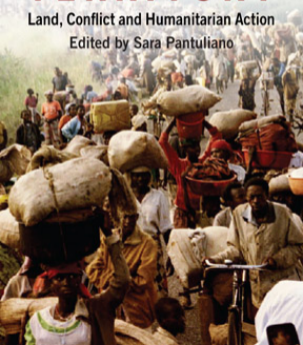


# UNCHARTED TERRITORY

Land, Conflict and Humanitarian Action

Edited by Sara Pantuliano



## Uncharted Territory

### **Praise for the book ...**

'Humanitarian relief efforts and peace building must take into account the land disputes that often caused the conflict in the first place. This book makes this important point, and shows how to bring an understanding of land issues into humanitarian work.'

*Salim Ahmed Salim*, former Prime Minister of Tanzania and former Secretary General of the Organization of African Unity

'This is a very timely and excellent contribution on disputes over land and property as major sources of armed conflict – and the challenges they pose for the work of humanitarian organizations.'

*Gunnar M. Sørbø*, Director, Chr. Michelsen Institute, Norway

'This is an important contribution to the literature. There is a good blend of chapters and themes; the cases studies are well chosen.'

*Jeff Crisp*, Head, Policy Development and Evaluation Service, UNHCR

'The right to housing and land restitution more than ever is essential to the resolution of conflict and to post-conflict peace building, safe return and the establishment of the rule of Law. *Uncharted Territory* is an outstanding account of the main challenges that humanitarian intervention must consider, providing through concrete cases the main lessons from past experience that must pave the way for ongoing or future actions.'

*Paulo Sergio Pinheiro* is adjunct professor, Watson Institute for International Studies, Brown University, USA

'At last! Recognition in this timely collection that land issues are often at the heart of violent conflict, and that emergency relief and planning for recovery ignore them at their peril. This dialogue between practitioners and researchers calls for and presents badly needed, joined-up thinking to link land and humanitarian relief.'

*Lionel Cliffe*, Emeritus Professor of Politics, University of Leeds

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Cover photo: Refugees cross the border into Tanzania from Rwanda,  
30 May 1994. Credit: Reuters/Jeremiah Kamau, courtesy [www.alertnet.org](http://www.alertnet.org)

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## Foreword

The last two decades have witnessed a rapid growth in the literature on humanitarian action, reflecting the increasingly important role which this issue plays in international affairs. And yet that literature has been patchy in its coverage. While some topics have attracted extensive and perhaps even excessive attention, others have been relatively neglected. A particular case in point is the issue addressed by *Uncharted Territory*, namely the nexus between land, property and armed conflict, and the implications of this connection for organizations that seek to provide protection, assistance and solutions to displaced and otherwise affected populations. I therefore congratulate the Overseas Development Institute's Humanitarian Policy Group on the publication of this important book.

As *Uncharted Territory* demonstrates, land and property issues arise at every point in the cycle of violence that is to be seen in so many countries throughout the world. Disputes over land and property, often linked to questions of ethnic and communal identity, have acted as a major source of social tension and political conflict in states at almost every level of economic development. Once violence breaks out, the parties to armed conflicts and other actors frequently seize the opportunity to dispossess and displace their compatriots, to gain control of valuable resources and to bring about significant changes in the demographic geography of their societies. And once an armed conflict comes to an end or diminishes in intensity, one of the first and most important issues to arise is that of restitution and compensation for those who have lost the assets they once possessed.

My own organization, UNHCR, has been repeatedly confronted with such issues in recent years, especially in the context of major repatriation and reintegration programmes. When large numbers of refugees began to return to their homes in Afghanistan in 2002, for example, it quickly became apparent that they faced a host of land-related problems, such as illegal occupation by local commanders, disputes arising from the loss and destruction of ownership documents, fraudulent transactions, land distribution by successive governments to their political supporters, and disputes over grazing and water rights.

In Burundi, where large numbers of displaced people and refugees are returning home to the same communities, some 70 per cent of the claims submitted to courts concern land. The resolution of these claims will evidently be central to the peacebuilding process in that country. And while some fitful progress has been made in relation to both the political and humanitarian situation in the Democratic Republic of Congo, UNHCR's monitoring

activities have revealed that land disputes are on the rise, impeding our efforts to support the re-establishment of rural livelihoods.

Looking to the future, it is difficult to avoid the disturbing conclusion that the issue of land, conflict and humanitarian action will occupy a more prominent place on the international agenda. An accumulation of adverse trends – the economic downturn, the process of climate change, volatile food and energy prices – appear likely to create the condition for conflicts within and between states, some of them directly related to the struggle for land, water and other scarce resources. If it proves possible to bring peace to war-torn countries such as Colombia, Iraq and Sri Lanka, then local, national and international actors will be confronted with a vast array of land and property challenges, a particularly daunting task in view of the number of people affected by those conflicts and the deliberate nature of their displacement.

Such issues will not only arise in a rural context. UNHCR's recent experience demonstrates that a growing number and proportion of the world's refugees, displaced people and returnees are to be found in urban areas, where humanitarian organizations have traditionally played a very limited role. Meeting the particularities of this challenge is a major policy preoccupation for UNHCR and other humanitarian actors.

Many of the issues raised in this brief Foreword, and a large number of additional topics relating to the nexus between land, conflict and humanitarian action, are explored in the following chapters of *Uncharted Territory*. We owe a debt of gratitude to the editor and authors of this very timely volume, which I consider to be essential reading for humanitarian practitioners and researchers.

António Guterres,  
United Nations High Commissioner for Refugees

## Acknowledgements

This book is the final outcome of a research programme initiated by the Humanitarian Policy Group (HPG) in late 2006 that sought to further understand the role of land issues in conflict and post-conflict situations and develop thinking around appropriate responses for humanitarian agencies, particularly in return, reintegration and recovery processes. In-depth field studies were carried out in Angola, Colombia, Rwanda and Sudan, which were complemented by further desk research for Afghanistan, East Timor and Liberia. I would like to acknowledge all the people that provided their time and input during the case studies and particularly thank CARE Rwanda and the Norwegian Refugee Council (NRC) Angola for their generous research support in country.

The key findings and themes that emerged from these case studies were further developed and debated in an HPG conference and a follow up roundtable held in February 2008 with the support of Royal Institution of Chartered Surveyors (RICS), which I gratefully acknowledge. The conference sought to create a network of humanitarian policy makers and practitioners and land professionals to discuss ways in which humanitarians can better engage and tackle housing, land and property issues in emergency and recovery settings. The discussion and conclusions that emerged from the conference and the roundtable provide the intellectual basis for this final publication.

I would like to thank all the speakers, discussants and chairs of the conference for their passionate involvement in the two-day discussion. Their ideas have significantly contributed to the content of this book. In addition to the authors of this volume, I wish to thank the following colleagues: Judy Adoko, Elizabeth Babister, Gregory Balke, Allan Cain, Lionel Cliffe, James Darcy, Caroline Gullick, Jacque Kiggundu, Dan Lewis, Gert Ludeking, Barbara McCallin, Fernando de Medina Rosales, Sergio Odorizzi, Robin Palmer, the late Pierre Michel Perret, Paul Richards, Gunnar Sorbo, Richard Trenchard, Koen Vlassenroot, Robin Walters, Paul de Wit and Roger Zetter. Thanks are also due to James Carlin, Carolina Kern and Guy Lamb for the tireless administrative support to the conference.

I would like to express my gratitude to those who offered comments and advice along the way, particularly John Bruce, Jeff Crisp and my husband John Plastow.

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## Acronyms

ACORD	Agency for Cooperation and Research in Development
ADRA	Action for Rural Development and Environment
AJPD	Justice, Peace and Democracy Association
ARD, Inc.	Associates in Rural Development Inc.
AUC	United Self-Defence Forces of Colombia
BCPR	Bureau for Crisis Prevention and Recovery (UNDP)
BDA	British direct aid
BINUB	United Nations Integrated Office in Burundi
CAURWA	Community of Indigenous People of Rwanda
CES	Central Equatoria State
CLEP	Commission for Legal Empowerment of the Poor (UNDP)
CNDD-FDD	National Council for the Defence of Democracy-Front for the Defence of Democracy (Burundi)
CNRR	National Reparation and Reconciliation Commission (Colombia)
CNRS	National Commission for the Rehabilitation of Victims
CNTB	National Commission for Land and other Property (Burundi)
CODHES	Consultancy on Human Rights and Displacement
CPA	Comprehensive Peace Agreement (Sudan)
CSO	civil society organization
DAC	Development Assistance Committee
DAI	Development Alternatives, Inc.
DFID	Department for International Development (UK)
DPKO	United Nations Department of Peacekeeping Operations
DPSS	Displacement and Protection Support Section (OCHA)
DRC	Democratic Republic of the Congo
EC	European Commission
ELN	National Liberation Army
FAO	Food and Agriculture Organization (UN)
FARC	Armed Revolutionary Forces of Colombia
FRELIMO	Liberation Front of Mozambique
FUPAD	Pan-American Foundation for Development

GNU	Government of National Unity (Sudan)
GOS	Government of Sudan
GOSS	Government of Southern Sudan
GRC	Governance Reform Commission (Liberia)
HLP	housing, land and property
HLPRD	Housing, Land and Property Rights Directorate
HPG	Humanitarian Policy Group
HRFOR	United Nations Human Rights Field Operation in Rwanda
IASC	Inter-Agency Standing Committee
ICLA	Information, Counselling and Legal Assistance
ICRC	International Committee of the Red Cross
IDP	internally displaced person
IFAD	International Fund for Agricultural Development
IFRC	International Federation of Red Cross and Red Crescent Societies
IGAD	Inter-Governmental Authority on Development
IMBARAGA	Union of Agriculturists and Stockholders of Rwanda
INCODER	Colombia Institute for Rural Development
INCORA	Colombian Institute for Agrarian Reform
IOM	International Organisation for Migration
JCC	Justice and Confidence Centre
JICA	Japan International Cooperation Agency
JPL	Justice and Peace Law
LRA	Lord's Resistance Army
MDTF	Multi-Donor Trust Fund
MINAGRI	Ministry of Agriculture (Rwanda)
MININFRA	Ministry of Infrastructure (Rwanda)
MINITERE	Ministry of Land, Environment, Forestry, Water and Mines (Rwanda)
MiPAREC	Ministry of Peace and Reconciliation under the Cross
MONUA	United Nations Observer Mission to Angola
MPLA	Popular Movement for the Liberation of Angola
MRRDR	Ministry of Resettlement and Reinstallation of Internally Displaces Persons and Repatriates (Burundi)
NCA	Norwegian Church Aid
NCP	National Congress Party (Sudan)
NGO	non-governmental organization

NMPACT	Nuba Mountains Programme Advancing Conflict Transformation
NPA	Norwegian People's Aid
NRC	Norwegian Refugee Council
NURC	National Unity and Reconciliation Commission (Rwanda)
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
ONUB	United Nations Operation in Burundi
OTI	United States Office of Transitional Initiatives
PADCO	Planning and Development Collaborative International
PRSP	poverty reduction strategy paper
REDES	Reconciliation and Development Programme (UNDP)
RENAMO	Mozambican National Resistance
RICS	Royal Institution of Chartered Surveyors
RISD	Rwanda Initiative for Sustainable Development
RLPA	Rule of Law Promoters Association
RPA/RPF	Rwandan Patriotic Army/Rwandan Patriotic Front
SAHRC	South African Human Rights Commission
SDG	Sudanese Pound
SIDA	Swedish International Development Cooperation Agency
SINTRAMINERCOL	National Mineworkers' Union
SOS-Habitat	Sociale et Solidaire-Habitat
SPARC	Society for the Promotion of Areas Resource Centres (India)
SPLA/M	Sudan People's Liberation Army/Movement
SRSG	Special Representative of the Secretary-General
SSLC	Southern Sudan Land Commission
SSRDF	Southern Sudan Reconstruction and Development Fund
UCTAH	Humanitarian Aid Coordination Technical Unit
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNDP	United Nations Development Programme
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	United Nations High Commission for Refugees



UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNITA	National Union for the Total Independence of Angola
UNMIK	United Nations Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMIS	United Nations Mission in Sudan
UNMIS/RRR	United Nations Mission in Sudan's Returns, Reintegration and Recovery Section
UNOPS	United Nations Office for Project Services
UNRISD	United Nations Research Institute for Social Development
UNTAET	United Nations Transitional Administration in East Timor
UPRONA	Union for National Progress (Burundi)
USAID	United States Agency for International Development
USDA	United States Department of Agriculture
USIP	United States Institute for Peace
WFP	World Food Programme

# Introduction

This book is the final outcome of a research programme initiated by the Humanitarian Policy Group (HPG) in late 2006. The programme originated from the concern that despite increasing evidence that land is often a critical issue in conflict-affected emergencies and forced displacement and plays a key role in post-conflict reintegration and reconstruction processes, there is a perceived lack of humanitarian engagement on housing, land and property (HLP) issues. Even where land is not a central driver, secondary conflicts over land can emerge particularly if there is protracted displacement and land is occupied opportunistically.

Access to land should be of particular concern especially with respect to the return and reintegration of refugees and internally displaced persons (IDPs). The issue affects both the choice to return and the prospects for recovery. Yet an understanding of ownership, use and access to land is minimal amongst the humanitarian community. Assistance and programming rarely incorporate sufficient analysis of local land relations and mainly focus on the return and restitution to displaced populations despite the fact that these interventions are often inappropriate for the type of the land issues involved.

Humanitarian agencies largely neglect these wider issues on the basis that they are too complex and politically sensitive, and that they lie in the mandate of development or human rights organizations. At best, agency responses miss important opportunities by failing to take these issues fully into account; at worst, they can feed tensions or create conflict between different groups seeking access to land.

Through the expertise of long-standing academics and practitioners, this book attempts to bridge the humanitarian and land tenure divide to highlight their mutually important relationship and instigate a process that seeks to understand how HLP issues can and should be practically incorporated into humanitarian responses. It is divided into three parts, exploring the theoretical nexus between land, conflict and humanitarianism, the architectural challenges for a more integrated response and the findings of some of the key case studies undertaken for this research.

In part one, Alex de Waal opens the section by exploring why humanitarian agencies need to tackle land issues. The answer largely lies in the fact that land issues are often key drivers of conflict-affected emergencies and humanitarian

## 2 UNCHARTED TERRITORY

responses inevitably have an impact on land. Understanding the role that land plays in complex emergencies can ensure that these responses adequately support the livelihoods of affected populations; the failure to do so can aggravate land issues and consequently the well-being of populations of concern. In this regard, de Waal identifies seven ways in which land issues are central to conflict contexts and explores the implications of each for humanitarian actors. He emphasizes the need to understand complex emergencies as accelerated transitions that lead to diverse forms of social transformation; returning to a preconceived state of normality or status quo ante is often unfeasible given the dynamics of change and therefore the challenge for humanitarians is to understand these dynamics and develop innovative responses that ensure their interventions support progressive outcomes, for which land issues will be central.

Liz Alden Wily further examines the role of property relations and tenure in conflict-affected countries and highlights the implications for successful war to peace transitions. She argues that in most post-conflict states, humanitarian actors, following international norms and guidelines, tend to concentrate their efforts on the return of displaced populations without taking into account the conditions in the areas of return. Returnees often have no land to return to or are often not able to access it due to occupation or contestation by different parties including the state. Therefore, without understanding and tackling wider land issues such as new arrangements affecting ownership and access to resources, humanitarians can potentially lay the foundations for future strife and undermine fragile peace agreements. Although it is beyond the mandate of humanitarians to engage in the reform of property relations, Alden Wily lays out several ways to guide humanitarian practice so as to avoid exacerbating complex property disputes and enhance their ability to support efforts that seek to transform and stabilize property relations in a way that promote peace.

Jon Unruh explores the different sets of rights and obligations concerning land and property within multiple social fields that develop in conflict contexts, particularly where there is significant forced displacement. He argues that misunderstandings and contrasting perceptions associated with these legal pluralisms can often threaten fragile peace processes and reignite conflict. Furthermore, peace-building processes rarely take into account these legal pluralisms in land tenure. Unruh views humanitarian agencies, due to their understanding of local livelihoods, as potential key actors in managing and mediating legal pluralisms and supporting their inclusion and management by the state in peace processes. He outlines several practical mechanisms that humanitarians can adopt in these contexts such as forum shopping and forms of appeal. In addition, Unruh discusses HLP as a human right versus a property right, a common legal pluralism that arises in restitution processes. He argues that they are not mutually exclusive and that they need to be managed together as a means to support both adherence to human rights and the development of post-war property rights systems.

Chris Huggins analyses return and reintegration processes in Rwanda and Burundi in order to gauge lessons learned for humanitarian actors. In both cases widespread conflict-induced displacement is tied to land issues and although these have been recognized in peace agreements and by the international community, he shows that many of the diverse strategies sought to tackle these issues have often failed to meet local expectations and lead to effective outcomes. Huggins, building on these lessons, identifies several practices that can guide humanitarians in their engagement with land issues in return and restitution processes; however, he warns against 'one size fits all' models and advocates for context-specific approaches that take into account historical and political factors. Of particular importance is the ability to bridge policy and implementation, such as developing practical and clear measures to tackling land issues when included in peace agreements. Furthermore, Huggins emphasizes that supporting a lasting peace will usually require a delicate balance between international norms and standards and locally acceptable outcomes.

Scott Leckie's chapter acknowledges the advances made in recognizing the importance of HLP issues in conflict and post-conflict situations. However, he highlights the shortfalls in the practical implementation of the current consensus, particularly its sole focus on restitution and adherence to the Pinheiro Principles. Leckie sees restitution as one of multiple approaches to HLP issues and consequently argues for an integral approach by the international community that embraces HLP in its entirety. In order to achieve such an approach, Leckie identifies lead agencies and outlines practical recommendations to construct a Humanitarian Platform that serves to create the administrative and institutional structures to consistently and effectively tackle HLP in all conflict and post-conflict contexts. He also ventures into identifying specific lead agencies that can support this integrated approach.

Part III includes some of the specific case studies that informed the research programme and led to the development of the chapters in Parts I and II. The first case study by John Bruce provides an overview of land, conflict and displacement issues in Rwanda. Bruce highlights land scarcity, unequal distribution and poor governance as causes of conflict in Rwanda. Furthermore, he illustrates how despite attempts to tackle land issues in the Arusha peace accords, multiple large-scale displacements and returns have furthered competition over land and have consequently threatened efforts to build lasting peace in Rwanda. Bruce provides a critique of government policy on land issues in return processes with a particular focus on 'villagization'. Bruce argues that humanitarian agencies have often supported these projects despite their shortcomings due to a lack of political awareness, reluctance to criticize the government and their sole focus on the technicalities of returning and providing shelter for large caseloads of refugees. In addition, Bruce highlights the tensions between adhering to international norms and standards, such as the Pinheiro Principles, and building lasting peace.

#### 4 UNCHARTED TERRITORY

In the second case study, Conor Foley discusses land issues in the context of Angola's emergency to development transition. Although there is no scarcity of land in Angola and the returnee process led to few reported disputes over land, Foley recognizes land tenure insecurity as a key obstacle to an effective transition. He identifies government legislation and corruption as the main factors affecting tenure security, although he also highlights a lack of planning by humanitarian actors and a failure to seek longer-term solutions for the displaced and other populations of concern. The failure by the government to recognize customary law is also seen as an impediment to successfully reintegrating returnees and ex-combatants. Foley pays particular attention to land tenure insecurity in urban settings and examines some humanitarian practice in supporting tenure security and raising awareness of land rights.

In the third case study, Sara Pantuliano provides an assessment of return and reintegration processes in Southern Sudan and the transitional areas. She outlines how land and property disputes in both rural and urban areas have been exacerbated by the return of over two million refugees and IDPs without adequate planning and the absence of an effective institutional framework to deal with these issues. Although land issues were recognized in the Comprehensive Peace Agreement (CPA), Pantuliano argues that the lack of clarity on how this would progress in practice has hindered the development of appropriate legislation and the creation of effective institutions. For example, the failure to recognize customary tenure has meant that many returnees have been unable to recover and access their lands. Furthermore, the international community has mostly lacked adequate land-related analysis in their assistance to returnees and when they have recognized the importance of land issues there has been a lack of leadership and coordination to effectively respond. Pantuliano concludes by emphasizing the importance of resolving land disputes as identified in the CPA to support reintegration and, more broadly, peace in Sudan, and argues that the humanitarian and development agencies, with the support of land tenure expertise, can help with technical assistance and resources and facilitating adequate community consultation.

The fourth case study by Samir Elhawary provides insights of land and conflict issues in Colombia. He firstly identifies the failure of state institutions in resolving land disputes as a structural cause of conflict; secondly, Elhawary identifies land as a resource of conflict in which illegal armed groups have used mass displacement as a strategy to illegally expropriate land for capital accumulation. He then provides a critique of state practice in tackling these issues, outlining the implications for humanitarian agencies engaged in transitional programming. In addition, Elhawary analyses current humanitarian practice that has actively sought to tackle land issues both through programmes and advocacy initiatives. He identifies potential best practice from these experiences and although he concludes that success largely depends on the dynamics of war and peace, he emphasizes the importance of understanding land dynamics and ensuring that humanitarian programmes at a minimum do not exacerbate tensions.

In the concluding chapter Sara Pantuliano draws together the key land issues that humanitarian organizations should consider when operating in conflict and post-conflict contexts, and the main lessons that should inform their response. Humanitarian organizations are among the first on the ground in war and post-war situations, and as such can play a substantial role in addressing land and property issues both for displaced and resident populations. The limited efforts undertaken so far in the humanitarian sector have suffered from an inherent bias towards the needs and rights of the displaced, especially through a focus on the restitution of land and property. The conclusions elaborate on some of these shortfalls and suggest ways in which humanitarian actors can better integrate land issues into their responses, both in conflict and post-conflict contexts, building on the analysis of the relationship between land and conflict presented in the different chapters of the book.



PART I

**Land, conflict and humanitarian action:  
Exploring the nexus**





## CHAPTER 1

# Why humanitarian organizations need to tackle land issues

*Alex de Waal*

*Humanitarian organizations need to consider land issues for three sets of reasons. First, land crises are central to why humanitarian crises happen, and why they take the form that they do. Second, humanitarian responses, both during the height of crisis and during the rehabilitation or recovery phase, have an impact on land tenure and settlement patterns, and thus on the future prospects of the people affected. Third, humanitarians should seriously consider how to support secure access to rural and urban land. Drawing upon the livelihoods framework and an approach to humanitarian crises as traumatic, accelerated transitions, this chapter analyses how humanitarian crises derive from and impact upon land crises. It also discusses how humanitarian responses including establishing camps, organizing resettlement or return, or allowing market forces to operate in the land market, all have impacts on land tenure.*

### Introduction

The neglect of land issues in humanitarian response has been both striking and unsurprising. It has been striking insofar as conflicts over land play leading roles in many humanitarian emergencies, and land access and tenure issues are also central to recovery or rehabilitation. It has been predictable insofar as humanitarianism as an organized activity has only slowly come to grips with the idea that it should be concerned, not just with the preservation of bare life, but also with the protection of ways of life. Increasingly, humanitarians have come to use livelihoods frameworks for understanding and designing their interventions and, to the extent that they are concerned with livelihoods, they must be concerned with land. To be specific, they need to know about land rights and settlement and use patterns.

Why should humanitarian organizations consider land issues? There are three sets of reasons. First, without understanding why humanitarian crises happen, and why they take the form that they do, we will be handicapped in our responses. Given that land tenure lies at the centre of many humanitarian crises, we need to know about it. Second, humanitarian responses, both during the height of crisis and during what is variously called the rehabilitation or

recovery phase, have an impact on land tenure and settlement patterns, and thus on the future prospects of the people affected. These are technical reasons, to improve the proficiency of action. Last, given that humanitarianism is motivated in part by an impulse to emancipate poor and peripheral people, and given that land is fundamental to autonomous and sustainable livelihoods, we should seriously consider how we can support secure access to rural and urban land.

This chapter draws upon two frameworks for analysing humanitarian crisis. One is the livelihoods framework (Swift and Hamilton, 2001). Land is usually the most valuable of rural people's assets and forms the centre of their livelihood strategies. In the simpler, non-political versions of livelihood analyses, rural people's strategies for responding to crisis revolve around retaining access to their land. In versions of the livelihood approach that take into account the political context of crises, land lies at the heart of political struggles for the control of rural people.

A second framework holds that a humanitarian crisis is a traumatic, accelerated transition, that it accentuates existing processes of social and economic change that in most cases are already underway and are in any case irreversible. This draws upon studies which frame complex emergencies as systems with winners and losers, which serve certain political interests (Duffield, 2001; Keen, 2007). Five components of accelerated and traumatic change warrant our attention: urbanization; rupture of local authority; commoditization; the extension of administrative control; and what might be called 'selective nostalgia'. Each of these five elements has implications for land tenure and settlement patterns, and how they are conceived, analysed and incorporated into a humanitarian response.

Humanitarian responses have impacts on the trajectories of livelihoods during and after crises, or, alternatively, on the operation of political systems that generate traumatic and accelerated transition. Responses including establishing camps, organizing resettlement or return, or allowing market forces to operate in the land market, all have important impacts on land tenure and livelihoods.

### **Livelihoods, land and famines**

Let us begin with the concept of a famine as an aberration from a stable normality, or a developmental normality. An external shock – paradigmatically a drought – causes a crisis of production and entitlement to food, leading to a brief but acute crisis (Sen, 1981; Davies, 1996). In the classic peacetime African agrarian smallholder famine, lack of access to land is rarely a cause of the crisis. It is more likely to be low land productivity (Iliffe, 1987). Improving the productivity of the land is a basic developmental project that lies outside the scope of this chapter. But in the affected population's response to the famine, retaining land becomes a central component of coping strategies (Dessaegn, 1995; de Waal, 2005). The rationale for this is well-known – keeping land

tenure rights is fundamental to a return to a livelihood when the crisis is over.

Relief agencies have experimented with livelihoods-focused programmes during famines. Some of these focus on livestock, for example buying animals at guaranteed prices or providing animals on loan to help restore herds. Others focus on farming, for example the ubiquitous seeds and tools programmes (sometimes implemented even when people have no access to land). But it is rare for relief responses to focus on land rights.

For assisting smallholder farmers, three possibilities present themselves for increasing options for survival strategies or decreasing the risks of loss of land. One is securing tenure rights so that they can be used as collateral for a loan to an affected household. Registering land in this way is a complicated legal and administrative exercise that has many perils, especially in the context of actual or incipient crisis. Moreover, while there is considerable experience of registering communal or customary-title land, the theoretical promise of translating this asset into collateral has yet to be met (UNDP, 2004). A second option, where land has already been registered, is providing such loans themselves. This is a financial exercise and is a field in which development agencies have been gaining considerable expertise as they expand micro-credit programmes. Relief agencies may also want to consider such exercises, which would aim to minimize the phenomenon of distress sales of land by providing an alternative on more favourable terms to the borrower. The third possibility focuses on short-term administrative or legal measures to prevent distress sales of land on unfavourable terms during crisis. This would function by intervening at the level of the administration of land – the community leadership or local government – for example to freeze land transactions during a crisis. This is the kind of mechanism that communities themselves must initiate, and success depends upon the level of community involvement and leadership.<sup>1</sup>

Matters are rarely as simple as the prototypical agrarian smallholder famine due to drought. In almost every famine in modern history, inequitable land rights have been at least part of the cause of the crisis. In many Asian famines during the 19th and early 20th centuries, it was the landless who were hardest hit. Amrita Rangasami, in her critique of Amartya Sen's entitlement theory, sees the acute phase of famine as the culmination of long processes of deprivation and impoverishment, and argues that, by focusing only on the final, acute stage of the famine, we are missing the real drama, which has already unfolded (Rangasami, 1985). Central to this drama is the loss of land rights of the poorest at the earliest stage of the countdown to famine or their indebtedness and impoverishment to the point at which they sell their land at a low price during the crisis.

Variants on this analysis can be applied to many famines in Africa. Pastoralists in the Sahel and East Africa have suffered famines after losing access to grazing lands because of the establishment of large-scale commercial farms on their grazing reserves or the gradual encroachment of smallholdings.

Land laws that grant ownership to the state and the authority to allocate land to state functionaries leave smallholders with unregistered land, held according to traditional land tenure systems, vulnerable to expropriation. In many cases, this expropriation has duly occurred and villagers have been rendered destitute, at best labourers on land that they used to call their own, at worst starving.

### **Complex emergencies and land**

This section describes how land access and control are fundamental to understanding the way in which complex emergencies function. Land ownership is perhaps the oldest reason for organized conflict. Territorial acquisition or defence is the most basic function of armies. Territorial expansion in the conventional sense of invasion and occupation followed by sovereign possession has fallen out of favour in the conduct of international relations since the Second World War, but land is still fought over in many different ways.

#### ***One: Taking hold of the land***

In the first form, the belligerents – governments, rebels, warlords – are concerned with the land itself, or the natural resources that lie beneath it, and the people who live on the land are a mere inconvenience – or, insofar as they seek to resist, an enemy. There is a substantial literature on the causes of famine that identifies state attempts to gain control of smallholders' farmland or pastoralists' rangeland as the villain (Salih, 1999). It is instructive that land dispossession has often also been the cause of rural resistance and insurrection. For example, the Beja of eastern Sudan saw their grazing reserves alienated to construct irrigated cotton schemes in the colonial era, causing both deprivation and political mobilization. The flag of the Beja Congress bears a symbol of the lost pastures of the Gash Delta. Also in Sudan, the Nuba lost much of their land to commercial farms, especially in the 1980s, a major cause of impoverishment and the single largest source of grievance that led to civil war. Attempts by the Siad Barre government in Somalia to seize large parts of the central rangelands for exclusive use by Darod clans in the mid-1980s were an important reason for rebellion by the Hawiye and the manipulation of the land registration system to dispossess indigenous farmers led to support for rebellion among minority clans (Besteman and Cassanelli, 2003). Development projects were complicit in plans for drilling boreholes in the rangelands that facilitated the takeover of pastures by clans aligned with the government and some of the forced displacement of farmers (Maren, 2002). The expropriation of land in southern Ethiopia to make way for state farms and resettlement schemes in the 1980s contributed to rebellions there (Africa Watch, 1991). Land alienation to build dams is a cause of impoverishment and protest across the globe.

Humanitarian responses rarely tackle the land ownership issues that underpin these conflicts. Usually, it is too late – people have already been dispossessed, caught up in the conflict and displaced. But we can be confident that any documentation and advocacy project that involves mapping their previous residences and land tenure and providing them with some documentation in support of that will meet with their enthusiastic support. Retrospective documentation of former land claims warrants consideration as a programmatic response. This can be the basis for return and resettlement or (more likely) compensation claims.

In recent decades, relief assistance to IDPs has often become a means of easing the transition of autonomous rural populations to the status of peri-urban squatters or landless labourers. As Mark Duffield has shown, humanitarians' dislike of 'dependency' and preference for displaced people achieving some form of self-sufficiency means that there is a preference for cutting rations to people who are without the assets necessary to pursue a viable livelihood (Duffield, 2001). Especially, when they lack secure access to sufficient land. This means that displaced people are left with little option but to also work as wage labourers, with the partial relief ration serving as a de facto subsidy to their employers, who can pay wage rates below subsistence level. There is no simple answer to this, except that humanitarians should be aware of the dilemmas.

### ***Two: Land as reward***

A variant occurs in those instances in which the state's interest in land is not for its own direct possession, control or exploitation, but rather as a form of loot that can be freely allocated to its favoured agents and proxies. Robert Bates has investigated how rulers, keen for immediate sources of revenue and with disastrously low revenues from domestic taxation, have resorted to plundering available assets, including land (Bates, 2008). When a government faces a rebellion, licensing pillage has the double attraction that it is a cheap means of mobilizing counter-insurgency. This is the predominant state interest in land in Darfur: it is an asset that can be offered free to the government's allies in order to encourage them to fight at low cost to the ministry of finance (de Waal, 2007).

The humanitarian challenge is not so different to the first variant, but the policy or advocacy response must be different. The root of state predation lies in the precarious fiscal foundation of weak states and the foreshortened discount rates of rulers under pressure to maintain thirsty patrimonial systems. Reforming these systems is a challenge for the political forces in the country concerned, major bilateral donors and international financial institutions. The way in which land predation is played out at a local level depends upon grievances over land access and ownership and the local market forces that determine the value of land.

***Three: Controlling the city***

We must not overlook urban land tenure. Governments typically have security interests in urban settlement patterns and economic interests in urban land. The first step in most counter-insurgencies is to consolidate territorial control of urban centres (Kalyvas, 2006). Governments may take draconian measures against squatters and unregistered migrants, or even poor urban dwellers with residence papers. They do this in order to gerrymander elections (keeping recent migrants off the electoral roll), to minimize the threat of urban protest or insurgency, or in order to sell or redistribute the land these people occupy. When urban people have been forcibly displaced, they rarely if ever move 'back' to rural areas. Rather, they typically remain economically integrated in the urban economy and look for alternative places to live where they can pursue meagre livelihoods – albeit much deprived in comparison to beforehand. Urban economies are usually, though not always, sufficiently robust to sustain these people without them descending into outright famine. Humanitarians rarely diagnose urban emergencies despite the extent and depth of urban hunger and deprivation.

Humanitarian responses to urban displacement are typically short-term and, while they may involve emergency shelter provision, do not address the issue of urban housing or land rights in a systematic way. Urban populations have usually been marginal to the concern of relief agencies, but with the increasing urbanization of all societies and the growth of vast cities of people with relatively little social and economic integration, we need to pay attention. Countries like Sudan are already almost 50 per cent urbanized. Africa's emerging megacities are not socially and politically integrated.<sup>2</sup> We know much too little about how these cities function. We need to be alert to the possibilities of complex emergencies in cities and the need for humanitarian responses (Davis, 2006).

***Four: Communal land conflict***

Another manifestation is a land conflict between communities, in which the state has little or no interest except, perhaps, to see a resolution, or in cases where the state has collapsed or is powerless. This is the form of land dispute that is most often brought to mind by mention of conflict over land. It can take the form of boundary disputes between different landholding groups, perhaps tribes; conflict between sedentary groups and mobile pastoralists; and conflict between people who consider themselves natives and those who have settled more recently. The dispute may manifest itself less in fighting over territory than in disputes over the authorities that have the power to allocate land and adjudicate land disputes. For example, if a paramount chief has jurisdiction over land, a land conflict may be manifest in a struggle for who takes the office of the chief, or in the ranking of different chiefs.

Administrative reorganization is often a spark for such disputes. The adoption of a federal system in Ethiopia in the 1990s set off a number of such conflicts. Competition for different systems of administration in Kenya has contributed to land conflict. Decentralization in the Indonesian Papua Region has similarly contributed to new patterns of settlement and resource claims.

Usually it is possible to discern the hand of government in creating the conditions for such conflict, sparking it or at least failing to stop it. However, other factors should not be underestimated. These may include long local histories of disputes over ownership, changes in land use, growth in population or increased pressure on land, and socio-economic, ecological or political disruptions elsewhere that have knock-on effects through migration.

Humanitarian agencies have often been called upon to respond to the victims of communal land conflicts. Interventions to prevent such conflicts are a more challenging proposition. They go beyond the standard remit of humanitarian response into the field of conflict prevention. Success requires local knowledge and engagement with effective local peacemaking mechanisms.

#### ***Five: Ethnic cleansing and forced relocation***

Forced displacement and land seizure can take place as part of a project to create ethnically homogenous territories, for ideological or security reasons (for example as part of an attempt to create controlled zones during counter-insurgency) or a combination of these. This is forced displacement and it typically occurs during war or in the political-military positioning immediately prior to the outbreak of hostilities. Ethnic cleansing may not necessarily involve the physical removal of the targeted population; it could also take the form of removing their land rights and political authorities so that they become entirely subjugated to the leaders of the group carrying out the ethnic cleansing. At the command level, the motivation is political or military, but at the operational level, the individuals or small groups that carry out atrocities may do so for economic reasons – they want to seize their neighbours' land or houses. Granular motivations at individual or community level can amplify, redirect or impede higher-level political objectives.

Ethnic cleansing poses sharp dilemmas for humanitarian agencies. Saving lives dictates rescuing people and taking them to safety. But this can also be seen as serving as quartermaster and logistician for ethnic cleansing. This critique was often mounted in the case of the war in Bosnia. At the same time, the human rights principle of resisting this gross abuse of rights entails taking a politically partisan stand in a violent conflict, which may expose both the target population and humanitarian workers to serious risks. Darfur is the obvious example today, where advocacy for international intervention tars humanitarian agencies by association, compromising their neutrality and placing them in a position that is ultimately untenable.



***Six: Controlling people***

A variant of this occurs when the state, rebel group or para-state warlord is primarily interested in controlling the population, but in order to do so needs to eliminate its autonomy. A rural community is politically autonomous when it exercises control over its own resources. This makes it attractive to rebels as a zone of control or operations. Alternatively, insurgent presence can lead to the establishment of an effective anti-government administration of the population. A government can reduce or destroy this autonomy by controlling markets, migration or political authorities, or by controlling the land. A classic technique in counter-insurgency is for the authorities to gather the civilian population, suspected to support the insurgents, in protected villages, where they can be subject to close surveillance and control. Some cases of forced displacement are perpetrated precisely in order to gather the population in camps. This method, deployed by the British against the Boers in South Africa, was the origin of the term ‘concentration camp’ (see for example Callwell, 1996). The apartheid government used more sophisticated methods to control the African population. It was used during the Ethiopian civil war in the 1980s, and humanitarian agencies were criticized for their readiness to provide assistance to government-administered zones (Africa Watch, 1991). Another version of this occurs when urban or peri-urban populations are forcibly relocated and/or dispersed because the government sees them as a security threat. This occurred in Khartoum in the early 1990s (African Rights, 1995).

What is permissible and not permissible in counter-insurgency operations has been the subject of analysis by lawyers specializing in international humanitarian law. However, it is striking that the relevant provisions in the Geneva Conventions<sup>3</sup> are limited to prohibiting the destruction of material items necessary for sustaining life. There is no mention of activities (such as migration for work, livestock herding and gathering forest products) necessary to sustain life. International humanitarian lawyers have made progress in codifying the circumstances under which involuntary displacement can take place, according to military necessity, conducted with humaneness and proportionality. These codifications have not, however, been informed by livelihoods analysis and rely instead on a simplistic and mechanical presupposition of what is necessary to sustain life. There is a need for an improved dialogue between humanitarian practitioners, livelihood specialists and international humanitarian lawyers on these issues.

***Seven: Battlefields***

In a final set of cases, land is little more than battleground – it simply happens to be in the way of military operations, lies in a no-man’s land or a free-fire zone, becomes a minefield or is seized to build fortifications or supply bases, or indeed IDP camps. In such cases, displacement and loss of land rights are

simply a by-product of the way in which a war is conducted. This may be a secondary impact of war but it may be very long-lasting, as with for example the uninhabitable areas along the Iran–Iraq border following the war of the 1980s and the displacement of farmers who lived close to the battle-lines of the Eritrean–Ethiopian war. While these areas may be relatively limited, land is never without its significance, most notably for the people who used to live on it.

The loss of land to anti-personnel landmines is a comparable problem. Land mine agencies became familiar with the social and economic implications of clearance activities as soon as they began work in countries such as Afghanistan, Angola and Cambodia. Land tenure and access rights for cleared land could often become a contentious issue. In this case, as with land otherwise used by armies or temporarily rendered unusable by fighting, rehabilitation is a socio-economic exercise as well as a technical one.

### **Humanitarian crisis as traumatic accelerated transition**

Trotsky famously remarked that war is the locomotive of history. In the last half-century, with territorial expansion no longer a legitimate objective for states and the violent overthrow of government increasingly less respected, it has become harder to win wars. Another locomotive of history was primary capital accumulation through asset seizure, whether through colonial conquest and dispossession or through the state-backed enclosure of the commons or the clearance of smallholders and pastoralists.

What we today call ‘complex humanitarian emergencies’ are civil conflicts that neither side has yet won. Typically, they originate either because a government is too weak to decisively suppress an insurgency or because it is too weak to enforce a programme of primary accumulation through asset seizure without encountering armed resistance, which it is then unable to crush. In Africa and some other parts of the world (the Andean republics, parts of Central Asia), states are not strong enough to prevail over insurgents armed with modern weapons and who can secure sufficient finance to pursue a war through criminal activities, diaspora support or local forms of taxation, including stealing from humanitarian agencies and running protection rackets (Kaldor, 1999).

David Keen has argued that such wars should not be considered as contests between opposing teams, but as systems in which the leaders on both sides (or all sides – the concept of two matched ‘sides’ begins to lose traction in these circumstances) benefit from the conflict (Keen, 2007). They develop private interests in sustaining the conflict and may collude with their supposed ‘enemies’. This is largely correct, but it is also important to note that these systems are inherently unstable. Primary accumulation within a limited territory, especially one affected by war, has limits. The appetite of the predator requires new prey, and while international relief agencies are often ready to shovel unending resources into such crises, local resources may run

out. Mechanisms for establishing trust among adversaries in an ongoing war are scarce and weak because of the obvious difficulties of enforcing contracts. This means that collusion of adversaries within a conflict system is necessarily tactical, and at some point one 'team' tends to win. The proof of prior collusion may then be that the victors promptly cut some apparently surprising deals with their former enemies.

Keen's analysis is best suited to countries with extremely weak states or evenly matched adversaries, notably in West and Central Africa, Somalia and Afghanistan.<sup>4</sup> In other cases, for example Sudan, Algeria and the Andean countries, protracted conflicts are asymmetrical systems, insofar as governments, while too weak to suppress insurgencies thoroughly, are also financially strong enough to be the dominant player by means of determining the price of loyalty in the political marketplace. These systems may lead to more prolonged conflicts than those in which adversaries are evenly matched, because ruling elites have learned to live with, and profit from, the disorder on their peripheries. In Mark Duffield's phrase, such political systems reproduce 'permanent emergencies' on their frontiers (Duffield, 2001). However, they are also not stable because, no matter how well the centre is able to manage its peripheries, there is always a possibility of a military strike at the centre that can topple a government, or a change of regime in a neighbour-sponsor that can decisively undermine an insurgent's capability. Nonetheless, these conflicts achieve a predictability of sorts. Even if the regime does change, the patterns of conflict continue.

We might say that protracted complex humanitarian emergencies are also a locomotive of history. The human distress, the destruction and transformation of livelihoods, the accelerated transfer of assets (including land), urbanization and the opening up of economies to global forces, all represent accelerated social transformation. In the aftermath of a crisis there may be a (partially) successful attempt to return to the status quo ante, with a return of displaced people and the rehabilitation of infrastructure, but the 'normality' that resumes is inevitably very different from that which preceded the crisis. And it is in the nature of such systematic crises that they may persist for very long periods of time.

A weak state that is nonetheless much stronger than its domestic adversaries is particularly likely to pursue a political strategy that involves the widespread dispossession of peripheral peoples. This kind of state has sufficient authority that, when it reallocates land, it can enforce the reallocation. Such a state has a Janus-like identity. Patrick Chabal and Jean-Pascal Daloz call it the 'politics of the mirror' (Chabal and Daloz, 1999). To the international community, and especially to its paymasters, it presents one face – a beneficent apparatus aspiring to order. And, insofar as governments employ some officials who believe in civil service as a duty to the population, this characterization is not wholly untrue. But to its peripheral and subject peoples, it typically presents a very different face. Such a state has come to rely on its power to grant favoured groups the authority to engage in asset-stripping, distributing rewards through opportunities for primary accumulation, and has come to

fear the prospect that the peoples of its peripheries might band together with an external sponsor and pose a real military threat. These features mean that protracted complex emergencies lead to a specific syndrome of rupture and displacement, which I have characterized as traumatic and accelerated socio-economic transformation. Five elements of this syndrome are noted here.

First is *urbanization*. During the 1990s humanitarians began to speak about displaced people, with the neologism 'IDP'. This category originated jointly in the operational need to target assistance and the recognition that IDPs lacked the apparatus of legal protection extended to refugees (Cohen and Deng, 1998). The term is therefore an instrumental one: the IDP is someone designated as deserving of international assistance and protection. Prior to this, those displaced by conflict or subsistence crisis fell into the categories 'migrant' or 'squatter'. In terms of trajectory of residence, the older labels remain accurate: most IDPs ultimately become urban migrants or squatters. The label IDP itself serves to maintain people in a liminal category, nourishing an illusion of impermanence. For the humanitarian practitioner it is an alibi that allows the challenges of managing urbanization to be ignored.

Urbanization is in reality largely a one-way process. It is very rare for significant populations, displaced to cities during a conflict, to return to rural life. The longer they are displaced, the less likely re-ruralization becomes. Traumatic urbanization of this kind presents huge challenges for land tenure and land use management. How is the authority over the land on which IDP camps and new peri-urban settlements to be formalized? What are the land rights of individual IDPs, migrants and squatters, and how are they to be protected? What vestigial rights do they retain in their former home villages, especially after a prolonged absence?

Humanitarians need to pay attention to urban land tenure, to recognize that the majority of what we call 'IDPs' are in fact long-term urban settlers. Humanitarian policy needs to examine how urban and rural livelihoods are mutually dependent, and the role that secure land tenure can play in stabilizing both. Another variant is the secondary urbanization that occurs when returning refugees or IDPs move to towns that were not their original homes. In these cases, humanitarian organizations can play a role in mediating land issues among the host and incoming communities.

A second feature of complex emergency is *rupture of previous forms of social organization and local authority*. With war, famine and forced migration, authority patterns change. Authority structures based on land, kinship and tradition may be weakened; new authorities may emerge based on relief distribution, or control over access to credit, residence papers or travel permits, or other vital commodities or services. Insofar as they continue to preside, old leaders may change the nature of their authority.

Typically, displacement or urbanization weakens previous, rural-based authorities and throws up new ones, whose authority stems from their role in managing the migration and urbanization, securing land for settlement, controlling relief distribution, acting as an intermediary with urban authorities

or humanitarian agencies, or controlling moneylending, security or commerce. This transformation is typically disguised by the supposedly temporary nature of the new authority – a pretended impermanence that serves as an alibi in managing conflict with the previous authorities. It is also disguised by the stated desire to return home to resume former livelihoods, with traditional land tenure patterns and traditional forms of authority. This dream of return and restoration is seldom realized and usually mutates into a myth of the past (see Malkki (1995) for an analysis of this in the case of Burundian refugees in Tanzania). In real time, it serves as a common reference point for a traumatized and uprooted community, a form of ancestral legitimization for an identity that is under threat, and a charter for political authorities. In turn, these transformations in local administration and authority entail new forms of jurisdiction over land and new ideologies of land tenure. The more that authorities insist on a reversion to traditional land tenure systems, the more probable it is that customary systems are being rewritten in these circumstances.

The importance of new forms of political authority among displaced populations carries with it a clear implication for humanitarian engagement, especially at the outset of a humanitarian programme. The individuals selected to control relief distributions and the allocation of plots to IDPs are likely to become figures of authority, power and wealth. The mechanisms for registering newcomers to IDP camps and exercising jurisdiction over where they live are likely to become systems of power over land. Decisions taken by humanitarians are not only emergency expedients but have long-term implications for how the transition to new settlement patterns and livelihoods is managed.

*Commoditization* is a third aspect of emergency as transition. War and hunger are typically marked by a shrinking of the ambit of trust, and as a corollary, an increase in the arena in which monetary relations hold. Items that were free, or subject to non-monetary regulation, such as wild foods or communal labour, may become monetized or politicized. The commoditization of land is perhaps the sharpest case. Typically, non-statutory traditional land tenure systems suffer during crisis, as people are displaced or are willing to liquidate assets to meet immediate consumption needs. Once a market in land emerges, there is no going back to previous systems. The implication of this is that humanitarian programmes should consider engaging in land registration processes. There are many hazards associated with such systems, but any mechanism that regularizes status and provides some security of residence is a form of assistance. A modest step would be legal assistance to the displaced to claim land.

Fourth is *extension of administrative control*. During crises, governments, rebel groups and warlords, and/or international agencies, extend forms of administration over populations. People are counted and categorized. For food they rely on ration cards. For tents or plots of land they depend on official lists and permits. It may appear paradoxical that a state that is too weak to impose its authority on its peripheries, which has ceded control over parts of its territory

to insurgents or warlords, is able to extend its administrative authority during a crisis. Yet the governance of displaced populations is typically more ordered and intrusive than of the pre-conflict rural communities. Indeed, that is one of its purposes, because a credible military and administrative presence is a major asset for a contending party during a civil conflict (Kalyvas, 2006).

Administrative intrusion places humanitarian agencies in a particularly awkward position. The spirit of humanitarianism is to support and enfranchise the marginalized, dispossessed and weak. One of the most effective weapons of the weak is to remain elusive to authority – to refuse to be counted, to escape formal administration and to keep open clandestine options for livelihood or migration. Yet technically effective relief programmes demand that the subject population is measured, monitored and governed. In the short term, the actual governance mechanisms are often set up by relief agencies and community leaders independent of the state. This is unlikely to last, as governments co-opt population registers and take over control of rations and land.

The central role played by humanitarian agencies in the governance of crisis-affected populations, especially IDPs, gives them influence. By their very existence they demonstrate the possibility of a rule-governed, professional and benign service provider. This function can be extended into areas that are both more contentious and, in the long term, more significant – such as land allocation and the codification of tenure rights.

The final component of complex emergency is *selective nostalgia*. The dream of a return to communities and livelihoods as they existed before the crisis is tempered by a reinvention of that past, which idealizes certain aspects, and the creation of new, usually polarized, identities that prevent certain groups from participating in the anticipated new community. This involves elements of denial, idealization and stasis.

It is the prerogative of human rights advocates to set up ideals and advocate for them. In the case of a displaced community in a complex humanitarian emergency, that means advocating for the complete restoration of the status quo ante, but in a selective and simplified form. Such international advocacy will have political implications. It will shape the aspirations and political strategies of the leaders of displaced communities.

The humanitarians' concern with actual outcomes places a different set of obligations on humanitarian advocacy and action. One particular challenge that arises is that, when some people do in fact return, their reinvented form of 'traditional' community, authority and land tenure may not match the concepts and preferences of those who stayed behind or who came in to occupy the land. Any attempt to return to the status quo can become a new cause for conflict. Mediating between different representations of land tenure system is an important task for a peacemaker.

Another challenge is managing the conflict between the idealized demands of a return home and the realities of an irreversible transition. How are the land rights of the newly urbanized to be protected when the political leaders of

these groups insist that they are not urbanizing at all, but merely temporarily displaced?

### **Conclusion: Humanitarians and land**

Humanitarian programmes are typically unacknowledged interventions in the livelihoods, authority, politics and land access of the targeted population. Relief agencies' presence and activities invariably have important unintended consequences. Prominent among these are the implications for land rights, access and use, and the settlement patterns of the affected populations. Humanitarian agencies' policies over land – in IDP camps, among remnant rural populations, on absorption into the urban fabric and on return home – are an important determinant of whether the affected population loses, keeps or gains access to land, and whether it can establish sustainable livelihoods, either urban or rural.

Humanitarian influence on the outcomes of famines and complex emergencies is limited and is strictly secondary to the political dynamics of the conflict itself. Humanitarian responses steer outcomes only at the margin. The situation is different when humanitarian agencies, usually acting in partnership with governments, actually mount initiatives that radically change the nature of the crisis itself. A dramatic example of this concerns the international NGOs that supported resettlement in Ethiopia in the late 1980s. These resettlement schemes, which were poorly planned and set up with minimal or no consultation with locals, quickly became a source of controversy and conflict, with some NGOs drawn in, rhetorically, on both sides of the argument (Jansson et al., 1987; Clay et al., 1988). 'Peace villages' in Sudan's Nuba Mountains are another disturbing example (Karim et al, 1996; Pantuliano, 2005). Planned resettlement has been given a bad name by these and other examples of coercive movement of people that, in the worst cases, cost tens of thousands of lives.

However, it is likely that humanitarians will need to revisit planned resettlement. Most scenarios for climate change involve well-populated parts of the planet becoming uninhabitable for a variety of reasons, particularly rising sea levels. This includes the possibility that coastal cities will become inundated. The implications of the evacuation of a city such as Lagos beggar the imagination. We will need to reconsider what this means for humanitarian action and the scale of the global IDP crisis.

Emergency measures such as the creation of IDP camps and other settlements are also de facto interventions in land management and land tenure. A substantial number of IDPs in camps are set to become permanent residents, and an even larger proportion of those who live there will actually become urbanites. Humanitarians need to consider that a variable but large proportion of the recipients of assistance are people in transition from rural to urban residence and livelihoods, and reconceptualize strategies accordingly.

In turn we need to think through the nature of humanitarian responses to urban emergencies. These will certainly become more common, because of rapid urbanization (especially in Africa), the likelihood of urban conflicts, and the likelihood that large cities in low-lying areas will become the locus of emergencies associated with rising sea levels and climate change. We might also want to reconceptualise humanitarian relief to IDP populations, after the first year or so of displacement, as urban assistance programmes. Doing so might alter how we respond to protracted crises of displacement. It might, for example, involve extending assistance to peri-urban populations, providing them with shelter and services.

There are far-reaching policy and programmatic implications to approaching humanitarian activities through the lens of land and residence rights and settlement patterns. These implications will become clear in detail as humanitarian practitioners and researchers turn their attention to the issue. This introductory chapter has sketched out some directions that it would be useful to explore. However, the main recommendation arising is that humanitarians need to become more educated in the complexities of land issues, both insofar as land plays a role in the aetiology of crises, and insofar as humanitarian activities and policies can influence land and livelihood outcomes for affected populations, in rural and urban areas.

## Notes

1. See the debate on land in peace and war in Sudan, [www.ssrc.org/blogs/darfur/](http://www.ssrc.org/blogs/darfur/) [accessed 2–7 March 2008].
2. [www.ssrc.org/category/darfur/](http://www.ssrc.org/category/darfur/) [accessed 29 January and 14 February 2008].
3. Additional Protocols of 1977, AP1 article 54 and AP2 article 14.
4. He has also extended the analysis to the Global War on Terror, albeit only for the US side. See Keen (2006).

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## CHAPTER 2

# Tackling land tenure in the emergency to development transition in post-conflict states: From restitution to reform

*Liz Alden Wily*

*This chapter provides an overview of the land and property issues confronting post-conflict administrations. Its main argument is that the focus of the humanitarian sector upon restitution of property lost during war is too narrow and potentially obstructive to resolve given that in more and more cases thorough reform of pre-war land and property relations is required in order to keep and sustain peace. This is especially so as most wars today are civil wars and largely confined to agrarian states, where access to land is critical for the survival of most of the population, and post-colonial or post-feudal deprivation of land rights a common reality. The author concludes with practical suggestions for focusing action by the assisting humanitarian and reconstruction sector.*

### **Introduction**

A key attribute of land, housing and other fixed assets is that they are *property*. That is, they are owned, held or otherwise accessed and used by one entity or another, whether individuals, families, groups, communities, corporate bodies or governments, and whether or not the system through which this occurs is laid out in national law (statutory tenure) or through customary or other locally systemized practices. This chapter illustrates how tension between the two almost always emerges following civil wars along with broader issues of rights to land and property. It argues that the emerging focus on *property relations* by the post-conflict assistance sector is overdue and still requires development. While there have been successes, there are more cases where the humanitarian and reconstruction community have failed to bring property relations into focus, to pre-empt further tenure disorder, to remove land-related injustices that drive conflict or to create the conditions needed to limit the land-grabbing so pervasive after conflict.

Clearly, we are dealing today with something much bigger than helping displaced people return home and reconstruct their lives. Durable peace cannot, it seems, be achieved simply by return or by getting back to business

as usual. Return is itself a more complex business than it appears or as the declamatory Pinheiro Principles of 2005 and their mechanical delivery in handbooks suggest (FAO et al, 2007; Pantuliano, chapter 10 this volume). Humanitarian agencies increasingly have to ask themselves 'return to *what?*' when faced with refugees and IDPs who either never had property in the first instance (for example Afghanistan), still cannot access what property they have (for example Colombia, Sudan, Guatemala, South Africa), have settled on land they know to belong to others but have nowhere else to go (for example Rwanda, Colombia, Timor-Leste) or who are in direct competition for those properties with other parties, including the state itself and its foreign or local business partners (for example Angola, Sudan, Aceh, Liberia). To resolve these issues in lasting ways, property norms must be changed.

### **Reform not restitution**

In fact, the outstanding requirement in many post-conflict societies is for the very revolution in property relations that the conflict did *not* deliver: new arrangements affecting ownership and access to resources. This poses a special challenge to the humanitarian community. Especially since the Balkan wars, humanitarians have focused on the principle of *restorative* justice, aiding displaced people to retrieve the homes, farms and businesses that they owned before the war. That the war itself routinely throws the rightness of such restoration into question is a fact not always well absorbed by humanitarian actors. Capture of especially rural lands during a war is often considered itself rightful return of lands wrongfully taken in the recent or even less-recent past. The characteristic focus on the individual returnee or displaced person also obscures the fact that many more pressing property issues are communal, or between people and the state.

Of course, responsibility for successfully tackling property issues in the early post-conflict state cannot be laid entirely at the door of the assistance community. Even without war, efforts to address troubled land relations face overriding constraints stemming from weak political will, corruption and administrative systems that are unable to cope (Adams and Palmer, 2007). The 'property project' is a development enterprise, and as such is only effective when owned and driven by the government and people concerned. Weak or self-serving political interests are a crucial factor in the widespread failure to satisfactorily address property concerns in post-conflict states, and in the tendency of around half of post-war states to slip back into conflict within five years of a peace accord (Development Workshop, 2005). The two may conjoin. Angola, for example, has failed three times to consolidate successive peace processes. A tangible factor is contested, mismanaged and politicized land administration (Robson, 2006). This echoes experiences elsewhere, in Palestine, Somalia, Sri Lanka, Sudan, Aceh, Iraq and Timor-Leste (Alden Wily, 2008c, 2008d; Pantuliano et al, 2007; Fan, 2006; De Souza, 2006). These

examples highlight the importance of the tenure context in which assistance operates.

### **The changing nature of war**

War has changed over the last century, and so have the property challenges that come with it. Broadly, conflict has moved from an inter-state to an intra-state context. Battles over sovereign territory, and which necessitate territorial restitution and/or reparation, have accordingly shifted into inter-communal and inter-class conflicts, often complicated by ethnic concerns. 'Whose land is it?' has come to the fore in ways not experienced before. The land sector is struggling with these new realities (CLEP, 2008). Pivotal, the conviction of the 1960s that all will be resolved through the global adoption of Western property norms is giving way to a more nuanced understanding of property, particularly the indigenous tenure regimes common in the agrarian world.

Of the 70 or so conflicts currently under way, only 11 are inter-state and only 15 are not within agrarian developing economies. Since 2000, 48 per cent of civil conflicts have been in Africa where access to rural land matters deeply to the survival of the majority. A key element in the shape of emerging conflicts is the historical (and largely colonial) way in which new states were created over the last century or so, and the incomplete social transformations embarked upon in the 20th century. Paul Collier (2004, 2007) argues that a combination of low levels of income, economic failure afflicting the majority, the capture of valuable extractable natural resources by elites and mis-governance make agrarian economies ripe for conflict. The socio-political underbelly here is the emergent reaction against the property order in recent decades, in which perceptions of unjust elite capture of land and other resources are an elemental trigger.

Arguably, what we are seeing in agrarian states within and beyond Africa is an attempt to finally reject asset-related colonialism. In the post-colonial period of the last half of the 20th century, many oppressive, unworkable or simply irrelevant property norms were further entrenched, and then manipulated and abused by post-colonial leaders and their governments (McAuslan, 2006a, 2006b, 2006c; Alden Wily, 2006b). This is the case from Angola and Afghanistan (where colonization has been intra-state and inter-ethnic since 1890) to Timor-Leste and Guatemala (Alden Wily, 2004; van Hemert, 2004; De Sousa, 2006; Robson, 2006). We must also include the colonial-like norms that many agrarian governments impose in appropriating or diminishing the rights of majority populations; this is seen in government treatment of valuable collective resources such as forests and pastureland (Alden Wily, 2008d) and in revived popular challenges to feudal property relations, as in India, Bangladesh and Nepal where extreme inequity leaves more than a third of these populations landless or near-landless (Ramesh, 2007).

### **A state–people issue**

In all agrarian societies, the question of who owns land, shelter and other pivotal assets is becoming more important with each passing year as resource and economic pressures mount. Although this affects non-conflicted polities just as much as societies that have gone to war with themselves, war provides more conscious provocation to once-tolerated norms. This confronts post-conflict administrations with a conundrum: on the one hand, desperate to re-launch stagnant economies, usually with resource-capturing investment; on the other, challenged to lead the way in finding still-elusive ‘development with growth’. Should local communities or the government own the major productive land assets of Afghanistan? Should millions of Sudanese have their customary lands recognized as their private property, or should they remain, for all intents and purposes, permissive tenants on government land? And what *is* that property – is it just their houses and fields, or do their estates include the vast and lucrative pastoral and wooded plains that they customarily own collectively? Who should own the forests and minerals of Indonesia, Colombia, Angola, Aceh, Nepal, Liberia, Sierra Leone, the Democratic Republic of the Congo (DRC) and Sudan? To whom should the major benefit of these assets accrue, and how far is ownership of such resources the foundation of an equitable return of benefits, an ownership which agrarian governments have so far steadfastly secured to themselves? Often the issue sets populations against their governments and their policies, a legacy that post-conflict administrations have to confront.

These broader issues cannot be ignored. While coups and armed conflicts have become less common in recent years (HSRP, 2008), this may not remain the case for long. Events in Kenya in 2008 are a salutary reminder of this risk (Alden Wily, 2008b). While tipping-points to conflict are likely to remain mainly political in nature, underlying land anger suggests that more concerted attention to agrarian property issues is in order, and that it is at base a governance issue. Signs that inter-state land-grabbing in the form of agri-business leases are on the rise as food supply threatens, is likely only to add to stresses between developing-country governments and their people as to who precisely owns the land leases, and with whom leases should be made (Alden Wily, 2008d).

### **Property issues as cause or casualty of war**

To be fair, assisting agencies are now noticing property issues at every turn. If anything, there is a proclivity to exaggerate land problems as the *cause* of conflict. While this helps to put property concerns on the agenda it is not helpful to strategic planning. For this purpose, property concerns are best divided into four groups:

1. grievances that consciously triggered the conflict and that therefore carry with them a known victor's or peace agenda relating to property;

2. those that appear during the war due to a breakdown in norms, rule of law, the policies of those in control during the conflict and, especially, by displacement caused by the violence;
3. property issues that arise or are heightened because of a poorly managed peace;
4. inequitable property relations afflicting especially agrarian societies and that, if unresolved, promise further strife.

It is the last two that remain most poorly attended to in the emergency to reconstruction transition. This is due in no small part to the institutionally embedded focus upon the displaced, leading naturally to a focus upon restitution of the property losses that occurred *during* the war. In the process, the severity of this problem may be exaggerated (as is the case in Sudan and Liberia). More seriously, attention is deflected from chronic issues that must be addressed if related occupancy conflicts, including finding places for returnees to live, are to be resolved in a lasting manner.

Even where restitution of property is the outstanding challenge, this may not be possible. The ratio of holders to the land base may have changed (this is the case in Burundi and Rwanda, where land shortage exacerbates tensions), ethno-historical factors may throw into question the right of pre-war owners to retrieve those lands (the case of timber, oil palm and mining concession holders in Liberia, Sierra Leone and Aceh), the numbers of overlapping claims may be too great to swiftly unravel (Timor-Leste), or restitution may be socially or politically unsafe or unacceptable (as widely experienced in the Balkans, where ethnic cleansing has left a powerful legacy), impractical, mainly due to the long passage of time (such is the case for millions who moved into capital cities during the long wars in Afghanistan, Angola, Liberia and Sudan), or simply impossible (such as for those Colombians whose lands are still under militia control). Even in the much-proclaimed restitution successes in Bosnia, the key to success ultimately lay less in enabling the 40 per cent of population who were displaced to return to their homes than in assisting them to sell their homes to other ethnic groups whose dominance had been established in those areas (Williams, 2007).

Nor is it as common as imagined that deprivation of property or property rights is the trigger to civil war. For example, while people in Guatemala and Côte d'Ivoire, *did* go to war partly over land rights, people in Liberia, Afghanistan, Kosovo, Cambodia, Somalia, Sierra Leone, Angola and even initially in Sudan did not. This is not to say that claims of property injustice are not a main issue in war, but it does suggest that this is often inchoate, crystallizing only with the events of the war itself.

Most of all, far too little attention is paid to the role of a mismanaged peace in disturbing property relations in post-conflict states. This is not just where peace is a mirage (Timor-Leste, Afghanistan), but also where peace accords seem potentially more final (Liberia, Mozambique, Namibia). In Timor-Leste, for example, failure to prepare for, regulate and temporarily house the 75 per



cent of the population that had been displaced led quickly to mass 'wrongful' occupation and rental of houses, for which investment in necessarily slow cadastral development was never going to be the required response (van Hemert, 2004). Comparable failure to constructively address startling levels of urbanization in Angola, Afghanistan and Sudan similarly threatens peace, as does the slow resolution of land disputes between nomads and settled people. Property conflict *increases* in the post-conflict period, for reasons that often stem from a failure to understand or constructively manage post-conflict property relations.

### **Analysing property disputes**

Although humanitarian agencies are uncertain in their handling of land disputes, their monitoring and mediation is nonetheless enthusiastically adopted as part of the humanitarian mandate. A common mistake is not to realize that dispute *always* accompanies property relations; even in peaceful agrarian societies land disputes account for 40–60 per cent of cases entering the courts (Alden Wily, 2007).

To use Liberia as example, the alarm raised by humanitarian agencies over the fact that 12 per cent of disputes concerned land and other properties (NRC, 2006, 2007) was found to be unwarranted (Alden Wily, 2007). So too, United Nations Mission in Liberia (UNMIL) and NGO concerns that 'communal war' threatened on the basis of what were a limited number of inter-tribal disputes in several districts exaggerated the issue. Nonetheless, this was routinely reported as fact, even prompting presidential announcements on the apparent problem (GRC, 2007). Failure to understand the matter at dispute, its history or the implications added to misconceptions and undermined the utility of expensive monitoring. The in-built focus on displaced persons adds further strain. A lack of analytical nuance on such matters often spills over into the provision of legal aid, which is also largely focused on returnees. While such assistance should not be undervalued, care needs to be taken not to overestimate its contribution to peace, as the cases that are taken up are often routine intra-familial and boundary concerns (Alden Wily, 2007).

The tendency to assume that disputes are uniformly negative should also be avoided. Again, to use Liberia, scrutiny of court and non-court disputes in 5 of 15 counties in mid-2007 showed that not only were wrongful occupancy cases largely confined to the urban and peri-urban sphere, as expected, but that over 90 per cent of rural disputes were over inter-village boundaries (Alden Wily, 2007). This was of enormous significance because it reinforced another finding of the research to the effect that hundreds of Liberian communities were actively seeking agreement with neighbours as to the limits of their respective village land areas; while contentious, such actions are an essential step towards rural land security and peace. The fact that it was self-driven and self-funded is doubly advantageous. Without clarification of such communal boundaries, communities cannot stabilize their rights or secure the formalization of those

collective rights they so desperately seek. The sharpened awareness of 'our land' and the concretization of community-based authority that occurs in this process are proving helpful to rural and peri-urban Liberians alike in limiting opportunistic capture of local lands by influential outsiders, including officials and the state itself. This is not to say that some disputes of this ilk are not bitter and difficult to resolve; this is frequently the case where community land areas are extremely large and have a long history of breakdown in customary jurisdiction. This is so in Sudan and Afghanistan where a comparable drive to concretize 'our area' may be seen in most rural areas (Alden Wily, 2006a). In Liberia, such breakdown in community-driven negotiation and agreement was shown to be limited. It was however precisely these kind of disputes that so alarmed UNMIL, which wrongly feared that communal disputes were rife (Solomon, 2006).

### **Peace can be dangerous**

We also need to adjust our conventional distinction between war and peace, conflict and post-conflict periods, as Unruh (2004) and Bruce (2007) have also remarked. This goes beyond the fact that violence often continues after the signing of peace agreements, to the point that civil war is renewed. Even without this there is little that is peaceful in the property sector in post-conflict conditions. Return and restitution disturb settlement patterns, land use and the property market. In rural areas returnees may bring with them new technologies, new finance and new ideas, which alter land access, land use and landlord-tenant relations (this has happened in Afghanistan, for instance). Alternatively, the failure of communities to return or an inability to farm as before may make large tracts of owned land vulnerable to elite capture and new disputes (for example Angola, Afghanistan, Aceh). Even in orderly societies like South Africa, the terms of peace may make it difficult for the authorities to challenge popular responses to grievances, such as the mass occupation of farms perceived as rightfully the property of the previously dispossessed (SAHRC, 2007).

### **Increasing stress on the urban sphere**

Characteristically, public buildings and open spaces in towns and cities are quickly occupied by those fleeing during the war or returning afterwards, and their occupancy often becomes the target of punitive actions by panicked administrations in the form of evictions, as seen in recent years in Khartoum, Juba, Luanda, Kabul and Dili. To those affected, this is not unlike comparable evictions undertaken during the war, in Rwanda, Angola, Burundi, Afghanistan, Cambodia and Timor-Leste, as the powers of the day manipulated occupancy to their own interests. This is especially so as military authorities often conduct the evictions.

Peri-urban insecurity also rises sharply as farming communities find their land co-opted, or their lands simply taken over during their absence or expropriated for low prices and resold for high prices by property developers and the state. Even where this is not the case, the characteristic weakness of post-conflict administrations and the disorder in such title documentation as exists encourage officials, military personnel, notables and developers to ride roughshod over existing occupancy and rights, particularly where these interests are not titled – the fact for 90 per cent of sub-Saharan Africans, for example (Deininger, 2003). Meanwhile, urban property values soar post-conflict due to high demand. This is exaggerated in the middle-class housing sector by the arrival of the wealthy international community and returning investors. This triggers further illegal land-grabbing and dispute – even within families (World Bank, 2005).

Even where battles over property rights were not a trigger to conflict, it may not be long before the rural and urban poor recognize that their property interests are still under threat, to perhaps a greater degree than before the war. New seeds of resentment are sown. In Sudan, the appropriation of peri-urban lands by both Northern and Southern militaries, continued promotion of nomad settlement on the lands of cultivator communities and the extension rather than restitution of commercial estates are all provoking resistance (Pantuliano et al, 2007, 2008). Slum evictions and reallocations of vast swathes of valuable arable land to non-local investors are having the same effect in Angola (Foley, 2007).

When it comes to peace, whether contestation over land and property was the cause of the original conflict does not ultimately matter. Experience shows that this will *always* emerge as a prominent governance concern, and one that has to be resolved for peace to be lasting. Timor Leste, Aceh, Sudan, Liberia, Sierra Leone, Côte d'Ivoire, Rwanda, Burundi, Angola, South Africa, Zimbabwe, Namibia, Guatemala, the DRC, Afghanistan, Israel-Palestine, Cyprus and Kenya all demonstrate the case.

### **Nothing is the same after a civil war**

There is another element of this issue that needs noting. War changes people. Millions of people cannot be expected to endure or participate in the horrors of war, leaving their homes, sometimes for a decade or more, and not develop marked new awareness, skills and aspirations. Even those who do not want to return pass on to those who stayed behind the experiences that the distance of diaspora typically provides. Settlement patterns and the composition of communities also alter after a war, along with the sources and patterns of livelihood and labour, and even the way the land is used (Richards et al, 2005). As often as not, urban–rural linkages receive an extra fillip with a sharp rise in the proportion of households with one foot in town and one foot in the countryside. Added to this is greatly raised awareness among populations of past inter-social and political relations as affecting their rights to resources,

and much bolder demand for changes. Even the once-voiceless poor are much better able to demand their rights. In Afghanistan, for example, landlord-tenant relations have been forced to change following the 24 year civil war, not through revitalized farmland distribution policies or laws, but through local resistance to return to absentee landlord's farms that have been cultivated by landless tenants for a number of generations, or to yield exclusive use of pastures to non-local elites (Alden Wily, 2008c).

Overall, war, the experience of war and intolerance for past inequities and misgovernance may be expected to grow. Peace therefore becomes much less a matter of *restoring* the order than *changing* the order. There is, for example, nothing new about Firestone or other international companies occupying one-tenth of the land in Liberia, but there is something new in the intolerance of this land capture and in the sharp questioning of the government's role in issuing concessions (Alden Wily, 2007). There is nothing new in Afghanistan about the dominance of one tribe over others in access to the pastures, but a great deal that is new in the post-conflict resistance to this century-long tradition (Alden Wily, 2008c). There is nothing new in Sudan in the legal status of unfarmed lands as the property of the state, but much that is new in the resistance of affected communities to this state of affairs (Pantuliano et al, 2008). There is nothing new about Mozambicans and Angolans finding vast swathes of land allocated to big business, but there is something new about the local determination to limit it (Norfolk and Tanner, 2007; Robson, 2006).

These changes combine with a burgeoning civil society, remade or consolidated community identities and an ever-more critical press, providing fertile ground for the advancement of much-needed democratization and community-based approaches, not just to conflict resolution (the darling of the humanitarian community) but to real control over occupancy in urban and rural areas. This opportunity is unevenly exploited by the aid community in the common knee-jerk response of advising mass titling and/or the development of new national land policy and law as the route to change; efforts into which local NGOs are increasingly being co-opted. While policy reform is important, so too is local facilitation and problem-solving by affected people themselves, aspects that innovative policy and law can ill-afford to ignore. As illustrated in broadly failed or truncated attempts at post-conflict reform in Namibia, South Africa, Mozambique, Rwanda, Uganda and Angola, it is precisely such experiential learning, combined with genuine popular empowerment in terms of local neighbourhoods and communities being enabled to control their property relations themselves, that may be needed to crack intractable problems, arrive at workable norms or simply swing the balance from public inaction to action (McAuslan, 2006c; Norfolk and Tanner, 2007; SAHRC, 2007; Alden Wily, 2008d). This is something that land specialists themselves have trouble taking on board, the tendency being rather to observe the potential of post-conflict conditions to enhance popular participation in the plans of the state, rather than increasing self-reliant popular empowerment (Torhonen and Palmer, 2004; Adams and Palmer, 2007).

### **Rising demand and tension around customary land rights**

A single dominant structural issue underlies much of the discussion so far, namely the dubious legal position of customary land interests in most of the agrarian world. For example, among the 30-plus conflicts in Africa in 1990 and/or since, there have been only three cases where this was not (often in hindsight) to prove a fundamental element in the grievances driving people to war and emerging out of war as a concrete target of remedy.

By ‘customary’ we mean indigenous land systems and the (typically unregistered) property rights they deliver. Summarily, as touched on earlier, customary regimes of land tenure were almost uniformly subordinated to imported European-derived systems. This made the better part of the agrarian world tenants of the state for much of the 20th century (Alden Wily, 2006b; McAuslan, 2006b). Rebellion against this position was a key element in anti-colonial wars around the globe, and remains a common factor in the post-independence secessionist movements that account for a significant proportion of today’s civil conflicts (for example in West Papua, Aceh and Ambon in Indonesia, the Hmong, Tamil and Kurdish insurgencies in respectively Laos, Sri Lanka, Turkey and Iraq, and the Naga, Tripura, Assam Bodo and Mizo conflicts in India). Conflicts in Africa typically involve battles over land and territory that have an inter-ethnic and territorial disposition, a state–people disposition and usually colonial and post-colonial dimensions, seeking to liberate majority populations from retained colonial norms. These all come into play for example in civil conflicts in Cabinda (Angola), Somalia, Ethiopia, Western Sahara, the Niger Delta (Nigeria), Darfur, Abyei and Beja in Sudan and the recurrent Tuareg wars in Mali and Niger.

Often, both the problem and its solution lie in the status of customary interests and in the balance of property between state and people. A natural focus is upon the dubious construct of ‘public lands’, a classification into which much of the customary world finds its traditional ownership suborned (Alden Wily, 2006b). Often these encompass the better part of the nation’s territory (for example well over half of Sudan, Liberia and Afghanistan). This has origins in the categorization by most 19<sup>th</sup> and 20<sup>th</sup> century administrations of lands beyond the house and farm as national, state, public or trust lands. Customary rights, particularly as they related to unfarmed resources, were routinely reduced to rights of occupancy and use only (Alden Wily, 2006b). This was advantageous to resource-hungry colonial and then post-colonial administrations, and remains so today as the value of these lands rises in the face of land scarcity, and with the exploitation of their fish, water, oil, mineral and timber assets. Not surprisingly, if not during war then after it, state ownership and control of these customary common properties becomes explicitly contested. In these circumstances, we can easily understand, as Collier observed (2004), why so many secessionist movements begin in high-value natural resource areas such as Aceh and Timor in Indonesia, Cabinda in Angola and Bougainville and Southern Sudan. Ominously, the rising number

of attempts by wealthy Middle Eastern states in particular in seeking to lease vast hectares of public lands in Africa will raise the stakes and tensions higher (Alden Wily, 2008d).

The search for improved security of customary tenure is understandably therefore not limited to conflict states. An estimated 2.2 billion customary landholders around the world are seeking recognition of their occupancy and use rights as modern private property rights in national law recognition (CLEP, 2008). A core element of rural land reform globally is around this issue, along with the development of mechanisms for its realization (Alden Wily, 2006b, 2008d). Innovations in family and especially collective entitlement are proving helpful (this is well-entrenched in Mexico and Tanzania and is slowly becoming operational in Mozambique, Ethiopia and Colombia). In particular, the notion of 'community land area', including valuable communal properties, is gaining traction. Still, this is frequently constrained by unresolved tensions between investor-supporting state control and people's rights, and progress tends to be easier in areas with low commercial timber or mineral value.

While humanitarian research and development agencies including the UN routinely comment upon the importance of attending to customary land tenure in the reconstruction agenda, there is little discernible depth in understanding or recognition of the extent of state capture of these majority interests. Again, a common shortfall is the sector's overemphasis on the ownership of individual assets to the exclusion of the more expansive, valuable and threatened properties that are logically held collectively (pastures, forests, swamps, community reserve lands). There is limited recognition that it is these customary assets that tend to fall first at the frontline of civil conflict and mismanaged peace (for example in Angola, Liberia, Sudan, Afghanistan and Aceh). This failing is in part a result of the understandable focus upon the displaced and the immediate needs of shelter and livelihood. It also stems from a lack of familiarity with the dynamics of a regime that is first and foremost a *community-based* system of property relations, with complex patterns of ownership and access. For example, it is common for humanitarian actors to recommend that nomads be given ownership of pastures in circumstances where in fact their rights are historically rights of seasonal access, not ownership, and where state-supported abuse of those rights contributed to war in the first instance (as in Sudan, Afghanistan, Chad, Somalia and Ethiopia).

Alternatively, agencies may press for the immediate retrieval and re-entrenchment of registered entitlements as if these issues were not a source of contention and grievance, or advocate titling without recognizing precisely what should be registrable and by whom – including families, groups and whole communities. Conversely, it is as common for the humanitarian sector to argue strongly against titling, for fear that this will generate elite capture, as was indeed often the result under early programmes of registration. This ignores (or rather does not know about) the shift in titling orthodoxy away from its individualizing and conversionary thrust into imported European forms towards approaches that seek to title customary rights 'as is', with the

attendant development of modern community-based administration systems (for example community land councils, with their own registers).

Ignorance of such advances frequently goes hand in hand with insufficient scrutiny of property legislation and policy, with a tendency to assume that what the law says is fair and acceptable, or at least must be accepted. This hardly serves post-conflict populations who are often themselves grappling with the contradiction between what they have become accustomed to accept as 'fact' through the long imposition of legal norms, and what they see as both traditionally and rightfully facts about their land ownership. Even when so aware, humanitarian agencies are faced with the conundrum of working within illegitimate but lawful norms. It may seem easier to simply focus upon the individual case, or on more accessible abuses of women's or orphans' land rights; while easier to analyse and safer to complain about, useful change in such areas is difficult to achieve without structural change in the customary regime overall.

### **Learning from non-conflict situations**

With the exception of multiple claims of ownership arising through war and post-war conditions, the requirements for tenure reform are broadly the same as those which non-conflicted countries have to grapple with. These include how peri-urban rural interests are protected (or not protected) against invasive developer and elite capture (as big an issue in Tanzania as in Liberia); how fast-growing urban slum and squatter occupation may be swiftly regularized (as big a problem in Brazil as in Angola); how large investor versus subsistence interests may be constructed to mutual benefit (as big a challenge in Cameroon as in Sierra Leone); the conditions in which freedom of settlement should operate so as to not unfairly jeopardize local rights and norms (as big an issue in Uganda as in Rwanda); the relative rights of immigrant settlers of long standing as against those of original inhabitants (as big an issue for Ghana as for war-torn Côte d'Ivoire and now Kenya); the procedures through which property may be fairly acquired for public purposes (equally an issue in Zambia and Afghanistan); the status of unregistered or insufficiently documented properties (as big an issue in Lesotho as in Guatemala) – and, everywhere, overriding concerns around incorruptible property governance and sustainable reach. Post-conflict administrations and assisting agencies need not confine their search for solutions to other conflict states; much may be learned from non-conflict economies.

At the same time, the notion that best practice examples abundantly exist in non-conflict states is false. Post-redistributive reform is new around the world and still struggling to arrive at workable norms, as low levels of uptake and implementation bespeak (McAuslan, 2006a; Adams and Palmer, 2007). Justice is also still frequently remote in those norms finally settled upon (McAuslan, 2006c). Moreover, the openness to change, popular demand and urgency that characterize post-conflict conditions suggests that these states must lead the

way. This is especially so in regard to some founding issues that still elude less pressured reformism. These include the need for more innovative approaches to prompt regularization of the occupancy of millions of urban poor, along with much greater provision of mass social housing; simpler mechanisms to deliver collective titling en masse, particularly where high-value pastoral, forest or mineral resources are at stake; and the development of approaches that reconcile strongly held notions of ethnically defined dominion over (tribal) land areas with freedom of settlement. Kenya is just one topical case where such concerns are high on the agenda (Alden Wily, 2008b).

Nor may it be assumed that the aid community speaks with one voice in the handling of property matters. Even within the tenure fraternity, there is as much diversity of conviction and approach as in other spheres of social transformation. A common source of difference is the extent to which public lands should be made available to investors or to community tenure, as the route to lasting economic recovery. A version of this is at play in Afghanistan, where the Asian Development Bank is advising the government to entrench pastures as government property, and to remind those communities granted access rights that they may have to surrender those lands to investors in due course. In contrast, the Food and Agriculture Organization (FAO) of the UN has been urging the same government to restore as much pastureland as possible to community ownership to remove a cause of conflict and to provide an incentive for rehabilitation and conservation (Alden Wily, 2008c). Comparable differences exist among actors and agencies with regard to ownership of Liberia's timber forests (Alden Wily, 2007). Either way, humanitarian agencies need to tread a wary but informed path.

## **What to do? Selected strategies**

### ***Get in early***

The outstanding requirement is to give the 'property project' the priority it needs – and from the outset. This means ensuring that it is placed high on the peace-making agenda. All too often, a great deal of damage is done to property relations in the first two years of peace as confused conditions reign and critical decisions not taken become more difficult as political will flags. The free-for-all impulse of the war years may continue. Land-grabbing is the commonest symptom and is difficult to undo. Thus far, peace accords, while more alert to property concerns, still largely fail to address the issue of tenure at all (Afghanistan, Liberia), fail to sufficiently prepare for long-known realities (Rwanda, Burundi), leave loopholes through which recalcitrant parties may clamber to avoid compliance with even principles they have agreed (Sudan, El Salvador, Nicaragua, Guatemala), or (almost always) fail to provide external monitoring with the teeth to discourage abuses.

The North–South peace agreement in Sudan in January 2005 is a good example. Despite several years of expensive 'expert' guidance by a six-nation



assistance consortium, the ownership of underground natural resources and parts of the crucial boundary between North and South were left undecided. Both lacunae threaten peace today. Not unrelated, and potentially even more important, the meaning of customary land rights was left undefined. This has allowed plenty of room for Khartoum to fall back on the pre-war convention that customary property is restricted to residential and cultivation lands. This retains some 80 per cent of Sudan in the hands of the government and assures it continued legal power to allocate customarily owned pastures and woodland savannahs to whomever it chooses, which it has duly begun again to do (Pantuliano et al, 2007; Alden Wily, 2008d). This defeats key objectives for which many, particularly in the North–South boundary zones, fought the long war to achieve (and continue to fight for in Darfur). Perhaps intentionally, it also renders agreed provisions for restitution of wrongfully appropriated lands in these areas largely irrelevant as these mainly comprise the estimated 10 million hectares of land wrongfully lost to government allocation to outsiders (Alden Wily, 2006c). Institutional provisions for land commissions were so incompetently drafted that no such bodies have yet been established in the North, and when they are they will be toothless lackeys of Khartoum, which has steadily demonstrated its repugnance towards real change. This has been especially felt in failed efforts to ensure that the Interim National Constitution and subsequent regional state legislation clarify what now seem deliberate ambiguities (Alden Wily, 2008d). Meanwhile, the international community, in failing to institute conditionalities on such matters, has tied its own hands in accepting the peace agreement without clearer provisions on land ownership.

#### ***Build up core expertise – and tangible lessons***

Concern over property has been on the humanitarian agenda for some time now, supported by a growing number of research reports and sometimes substantial donor investment. As Bruce (2007) has observed that the absence of significant expertise in the sector is therefore puzzling. Given the front-line position of humanitarian agencies in the peace-making and early post-conflict period, this deficiency is sorely felt. Yet few shared protocols exist with which these actors may confidently guide both mediators and disputing parties in comprehending the magnitude of the issues or the options to consider. Surveys in refugee, IDP and home-country areas are now common, but are both insufficient and often ill-informed on property matters. In Liberia, for example, lack of tenure expertise led the World Food Programme (WFP) and its partners to conclude that one-third of the population was landless in 2006 and that one-fifth held land titles, conclusions that were both incorrect and potentially dangerously misleading for policy-makers (Alden Wily, 2007).

Providing the analytical and advisory rigour needed in such situations should not be difficult. There is now enough experience of post-conflict situations to know what to expect and plan for, and sufficient experience

of comparable issues in non-conflict states to draw up a shortlist of critical issues to investigate and practical strategies to pursue. For example, some observers in Sudan were keenly aware of the urgency of laying out precise principles regarding customary land rights, but both mediators and the parties themselves did not see these concerns as important enough to pursue. To tenure specialists at least, it has been no surprise that the matter should have quickly come to the fore after the signing of the peace agreement, as also occurred in Angola, Mozambique, South Africa, Liberia, Guatemala and now Nepal – among many other post-war states.

***Use international power to best advantage while it counts***

There is a short window of opportunity in the few years in which a post-conflict administration depends heavily on the international community for guidance and resources. Maximum advantage should be taken: experience tells us it is wise to have little faith in post-conflict governance institutions in matters of property. All too often, the champions of the oppressed become the oppressors, power corrupts and money talks, as illustrated in Sudan's lucrative oil relations with China, which are doing more to provoke a return to war than any other factor. Routinely, we have seen the proclaimed positions of liberation movements on property rights be diluted once they enter power and the declamatory commitments made in peace agreements fall away (in Namibia, South Africa, Mozambique, Uganda, Guatemala, Timor-Leste, Angola, Rwanda and Southern Sudan). The real difficulties in resolving property issues and making progress cannot be underestimated, any more than the reality that, as now widely recognized, the post-conflict transition is in every way a much longer and more tortuous process than initially anticipated (Robson, 2006). Nonetheless, as earlier suggested, there is much evidence to suggest that rising self-interest on the part of new administrations and their supporters exacerbates the problems.

Steps to counteract the worst ills may be formally entered into peace agreements and the terms of early support to administrations. Ideally, these will include entrenchment of worked-through commitments that protect unregistered customary and long-term urban occupancy, and forbid evictions unless full compensation to those affected has been agreed and paid; prioritize investment in urban planning, including for social housing schemes with preferential categories of applicants agreed; freeze the issue of new logging, mining or agribusiness concessions until procedures that ensure customary interests are properly investigated and accounted for; and lay down the procedures through which the public may bring politicians, officials and military leaders to account, where corruption is suspected. It is normally urgent to provide support for community-based rural demarcation and provisional titling of rural community land areas and collective titling of occupancy in slum neighbourhoods, as a first line approach to majority land security. Laying out exactly how the public will participate in property-related decision-making

is also wisely entrenched and subject to a tangible monitoring plan. The right of donors to withhold funding in the face of failures needs to be embedded.

### ***Focus upon the most pressing realities***

Much can be said about the need for supporting humanitarian actors to contribute by building planning on solid field analysis, to 'think outside the box' to arrive at workable solutions and to adapt their vision to the requirements of 'the long haul' – even though they themselves may not be involved over the longer term. Prioritization and practical focus are necessary. In this, three key tasks keep presenting themselves. These are the need to prepare for the consequences of rapid post-conflict urbanization; to reform the ways in which customary and particularly common property resources are tenured; and to pursue these and other policy-making and action in a genuinely localized and inclusive manner, which in turn can ensure political will.

### ***Prepare for the 'post-conflict city'***

Even without conflicts UN-Habitat estimates that, by 2030, 2 billion people will be added to the over 1 billion who already live in untenured urban slums (CLEP, 2008). The process is greatly hastened in post-conflict societies. Capital cities have with rare exceptions grown many-fold during and after conflicts (up to eight times in the case of Luanda in Angola, five times in Kabul, seven times in Juba). The crisis evolves at all levels, among people and government, families and neighbourhoods. Without early management, these cities take on a life of their own as centres of dangerously disturbed property relations that take many decades to resolve, a process not helped by violent evictions by panicked administrations. Volatile sectors of the majority poor tend to be most affected: former combatants, youth, some of whom have suffered traumatic war experiences as child soldiers and who come out of the war without families, unemployed and uneducated, female-headed households and the landless, homeless and displaced. Meanwhile, rural communities at the edge of cities also suffer as their lands are coercively eaten up by unregulated development and usually without fair compensation.

What may be done to pre-empt these identifiable trends? First, handling rapid urbanization and squatter cities is hardly unique and planning experience abounds in UN-Habitat, the World Bank and other institutional and national sources. Approaches have altered over the years in ways also reflected in rural sector planning, with a shift away from master planning and costly formalization programmes into programmes that focus immediately upon vulnerable sectors and actions that help them secure rights at least cost and with most speed (UN-Habitat, 2005; CLEP, 2008). Innovations such as the Special Urban Social Interest Zones of Brazilian cities, which prioritize vacant or unused lands for low-cost housing, housing projects in India and the Philippines, where developers are obliged to provide 15–20 per cent of

their developments for housing the homeless, India's street-vending policy, which targets hawkers for credit-based housing developments paid for from their profits and new forms of adverse title in Brazil and India that guarantee occupancy, with the proviso that, should the land be required, alternative areas will be provided (UN-Habitat, 2005; CLEP, 2008). Interim titles in the form of temporary, renewable or other classes of occupancy and housing permits abound. Collective entitlement in slum neighbourhoods, where homes are tiny and often impermanent, is advancing. Some of the systems are well-embedded in law (for example Tanzania, Botswana) and sometimes include explicit measures to prevent peri-urban rural communities wrongfully losing their lands (or, more precisely, their sharply rising values) to developers, governments or elites (including chiefs – for example Tanzania, Ghana) (Alden Wily, 2006b). Significant learning-by-doing continues to take place in cities as far apart as Gaborone, Dakar, Dar es Salaam, Bogota, Windhoek, Rio, Hyderabad and Kabul (Development Workshop, 2005; UN-Habitat, 2005; Payne et al, 2007; CLEP, 2008).

One constraint is that agencies and projects fail to share their experiences, another is that investment is not being brought into play early enough in post-conflict conditions. Nor have such measures as do exist been aggregated and placed within pre-emptive protocols for guidance or to limit the worst abuses and ease conditions in post-conflict societies. Nor do mass social housing schemes, particularly those that directly facilitate self-help developments, feature prominently in post-conflict humanitarian and reconstruction agendas or donor budgets. It is now clearly important to ensure that land rights principles and precise commitments are embedded in early agreements and fleshed out in first-line budgeting and planning.

To the above kinds of action may be added international monitoring of the acquisition of settlement sites for new arrivals; arrangements at peace-making that enable the full involvement of the police and peacekeeping missions in protecting areas; establishment of community-based neighbourhood management regimes; focal support to municipal authorities with monitoring to limit malfeasance in the issuing of permits to settle; publicized measures to bring ministers, officials and militia who abuse the law to court and public awareness raising among peri-urban communities as to their rights against wrongful and involuntary appropriation of their land by developers and the routes through which they may seek recourse should this be denied. The involvement of urban planning and tenure specialists in first-line humanitarian support would be beneficial.

### ***Get to grips with the tenure status of natural resources and customary lands***

A comparable set of issues relates to the vulnerable status of unregistered rights. This is heightened where valuable mineral, pasture and forest resources and extensive fertile land attractive to bio-fuel or other agri-business interests exist, as is the case in many post-conflict economies. Liberia provides a good

example of what can be done. First, civil society actors, with a good deal of assistance from the international humanitarian and aid community, forced a public review of logging concessions and placed the findings in the public arena, thereby ensuring sufficient pressure to coerce the newly-elected president to act (Alden Wily, 2007, 2008d). All logging concessions were cancelled and a pledge was made to investigate and introduce a communal rights law to guarantee customary owners of forest land a role in their future issue, control and benefit. Meanwhile, community definition of the boundaries of large communal properties is being widely adopted as a practical local level strategy to protect customary rights to precious forest and timber resources. This leads logically to the kind of collective titling that has been seen in a number of other states, including Tanzania, Mexico, Guatemala, Mozambique and Papua New Guinea. This will frame the way forestlands are defined and their use negotiated.

***Pay attention to the powerful territorial notion of 'our land'***

In agrarian societies, individual and family interests are almost always embedded within a wider socio-spatial construct of territorial ownership – 'our land'. Although most potent at the village level, this also has larger-scale dimensions in the form of 'tribal areas'. Depending upon the extent of formalized individualization of communal domains and the presence or absence of active collective estates (for example forests, pastures, swamps), 'our land' may be practically exercised or symbolic.

Failure to account for the persistence of this notion has repeatedly exacerbated tensions in agrarian conflicted states (Alden Wily, 2008d). The 2008 crisis in Kenya is one example of this. In Kenya, a tribally aligned political dispute rapidly segued into a tribal land dispute over which part of the country 'belonged' to which (tribal) community (Alden Wily, 2008b). That this has been so even in a country where much of the farmland has been transformed into individualized freehold plot entitlements, is instructive of the tenacity of the overriding power of territoriality in post-customary situations, and suggestive that it is unwise to discount this continuity. In contrast, other countries – Botswana, Ghana and Tanzania in Africa, and Mexico, Brazil and Bolivia in Latin America – have constructed the framework for formalizing rights in ways that attend to such norms, and which self-evidently reduce conflicts around this characteristically agrarian concern (Alden Wily, 2006a, 2008a). This also helps pave a workable path between the principle of freedom of settlement and respect for local tenure, always difficult in transforming states. Structurally, the issue is nested within the larger question of the status of customary property interests overall, and as a corollary to this, where authority over customarily held properties is vested – at community, intermediate or national levels. Sooner or later, all post-conflict agrarian states have to address this issue. Devolution of land authority to the most local community level

possible provides a critical practical path to achieve this (Alden Wily, 2006b, 2008a).

***Make popular empowerment the cornerstone of practical intervention***

All the suggestions above point to a common base approach: the need for the property project in which humanitarian and reconstruction agencies involve themselves to be as devolved, participatory and experiential as possible. Piloting represents a logical and unthreatening framework for this. Real issues are tackled and remedied with real people confronting real concerns. This has a multitude of advantages: it nurtures inclusive and democratic governance, and promotes and takes advantage of the awakening of civil society that follows civil war. It helps work around the problems agencies face when post-conflict administrations are risk-adverse or have limited reach outside capital cities. Where the law is unsound, a community-based approach is often the only way to make progress. This is also so where rule of law is so weak that centrally made decisions or legislation cannot be enforced. Even where formal governance is strong, core property issues may be too sensitive to be successfully resolved at national levels, or decisions may tend towards the lowest common denominator, or they may be strongly biased towards dominant elite or political interests. Above all, such approaches help those affected to clarify in their own minds what is fair and practical, to negotiate constructively where the issue at dispute involves other actors, communities or tribes, and to implement and adhere to the results. Such guided piloting also demonstrates to hesitant governments that such changes are viable and gives them the confidence to pursue policy and legal changes.

Post-conflict Afghanistan offers a concrete example. Pastures constitute the major resource of that dry country and their ownership and access is bitterly contested. Piloting with communities to work through inter-communal conflicts and contested rights with visiting nomads has opened the way to an entirely new paradigm of pasture ownership and which is already proving a useful conduit to resolution and equity in rights, as well as a bulwark against Talibanization of the land issues (Alden Wily, 2008c). The current pasture legislation in draft (Alden Wily, 2008) is starkly removed from existing pasture law and also the revisions initially proposed after the signing of the Bonn Agreement. Piloting showed that restitution of pastures to community ownership is viable, that visiting nomads are able to retain access rights in these conditions, and that it is both unwise and unnecessary for the state to retain ownership, especially given the historical conditions of its ethnic bias to nomads. Should this new paradigm ultimately fail to enter into law, an important tool remains with communities through their active participation, knowledge and empowerment. These are human capital assets that are not easily withdrawn by even the most recalcitrant of post-conflict administrations – as a comparable process in central Sudan illustrates (Alden Wily, 2006c, 2008d). In due course, this empowerment may be put to good

effect through increasingly democratic avenues – unless of course, failure to act on land rights issues returns disaffected populations to war – currently a likely scenario in central Sudan.

### ***Work with women***

In most land-related interventions, humanitarian agencies may also find it productive to focus upon women, particularly in respect of urban property matters. This is not just to help offset the legacy of the immense personal abuses women routinely suffer during war, but also to engage and empower this important source of peace-making and practical and collective decision-making. The large number of widows and female-headed households found in post-conflict conditions, who tend to gather in poor urban areas, makes them an accessible and needy target group. Experience suggests that women are well able to pursue tenure security objectives and become engineers of change in this area. One of the most successful slum interventions globally is the Mumbai SPARC (Society for the Promotion of Area Resource Centres) programme, begun with women pavement dwellers identifying vacant land in the city and, through group solidarity, forcing the government to allocate this land to them, an approach now being replicated in other Indian cities and in Bangkok (CLEP, 2008).

### **How does the humanitarian sector need to change?**

The humanitarian community is broadly definable as those who focus upon the alleviation of human suffering during and after conflicts, and support transitional processes towards peace. In practice, many of the same UN, donor and NGO agencies are involved in early humanitarian work and in reconstruction activity as key implementers of projects in the consolidation period. By virtue of this fact, as well as often being first on the ground in war and post-war circumstances, UN and NGO humanitarian groups cannot escape a role in helping to ensure that housing, land and property issues get fully – and accurately – on the agenda.

A main theme of this chapter has been that the sector's focus upon the displaced and assisting with the restitution of their properties, while admirable, does not meet the demands placed before them, or even necessarily solve the problems of the displaced in lasting ways. While widening their focus is institutionally difficult for some agencies (for example the Norwegian Refugee Council and the United Nations High Commissioner for Refugees (UNHCR)), the sector as a whole has little choice but to dig a little deeper into property issues. To be fair, this is precisely what is starting to happen, for instance by the sector's supporting research centres such as the HPG and the US Institute for Peace (USIP), and through the kind of exploratory exercises that HPG held in February 2008 and which generated the chapters of this book. Through a gathering acquaintance with the structural context and especially tenure

dynamics of property issues, and a steady increase in its capacity to investigate, research and act expertly, a much greater contribution can be made.

In the process, an entirely new route will be opened up to the sector through which it may help post-conflict governments and populations secure the ultimate prize, lasting peace. In operations, a more community-based approach will further heighten understanding and enhance action, including in regard to the displaced population. The disposition of the humanitarian community towards public awareness-raising on land rights will ideally mature into a more concrete involvement in grounded initiatives designed to directly facilitate the securing of vulnerable property rights. So too, the important function of the humanitarian sector in monitoring and lobbying both the reconstruction sector and the host government in regard to the results, cannot be underestimated. An immediate task in launching such initiatives is simply to increase the sector's familiarity with the issues, ideally through comparative exercises among post-conflict states, to enable involved actors to develop analysis of trends and practical experiences in tackling the issues outlined in this chapter.

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PART II

**Humanitarian intervention in land issues:  
Lessons and challenges**



## CHAPTER 3

# Humanitarian approaches to conflict and post-conflict legal pluralism in land tenure

*Jon D. Unruh*

*This chapter provides an introduction to legal pluralism in post-war land tenure, and some of the possible approaches humanitarian actors can take to deal with the challenges legal pluralism present. While suggesting what works in specific cases can be valuable, such examples are actually less common than the examples of problematic outcomes that humanitarian attempts at dealing with post-war land tenure have produced, particularly from the point of view of post-war governments attempting legislative reform. In this regard this chapter also points out a few of the approaches and issues that need to be avoided. Subsequent to introducing the various understandings of what legal pluralism in land tenure are, and how legal pluralism comes about during and after a war, the chapter describes some of the larger general issues important to dealing with post-war legal pluralism in land tenure.*

### **Introduction**

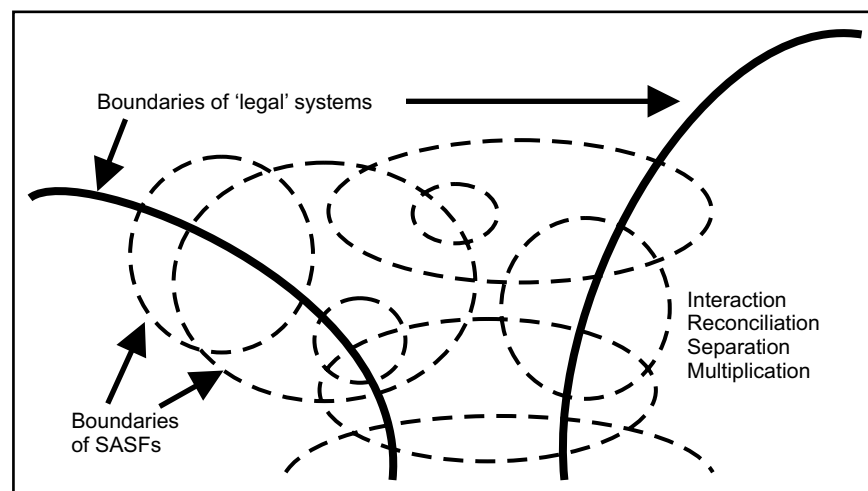
The pursuit of secure access to rural land during and following conflict, and the confusion, competition and confrontation normally associated with such an endeavour, result in the emergence of multiple ways for attempting to legitimize land access, claim and use, with different sets of rules regarding land, property and territory. This will especially be the case where land issues are a significant component of the conflict. In such a situation, legal pluralism with respect to rights to land that are incompatible, opposed or in aggregate add confusion and tenure insecurity can jeopardize a peace process. One of the most acute examples of incompatible legal pluralism regarding land resides in the Middle East, where the Israeli–Palestinian land issue has confounded attempts at peace-making for decades. In essence, armed conflict and its repercussions reconfigure the network of social relations upon which all land tenure systems depend.

One useful way to view legal pluralism is described by Moore (1973) (see Figure 3.1), in which separate social fields of ‘legality’ overlap and interact. Legal pluralism with regard to land tenure is defined by the different sets of rights and obligations concerning land and property, within multiple social

fields. In Figure 3.1, the solid lines represent formal state law, and the dotted lines represent informal 'legal fields'. Such informal legal fields move much quicker than formal law and can change in ways that result in multiplication, merging or change in number of participants. As noted in the figure, there is also commonly a good deal of overlap among informal legal fields, and between formal and informal fields.

When difficulties between legal fields regarding land access, claim, use, disputes and security become widespread and severe over the course of a conflict, the result can threaten a delicate peace. For example, land issues in the peace accord in El Salvador were not dealt with clearly, contributing to different legal expectations. The land issue ultimately became the final sticking-point in the peace process, blocking complete demobilization. In Nicaragua, misunderstandings regarding land access led the *contras* to rearm during the peace process (de Soto and Castillo, 1995). And, subsequent to the end of the RENAMO (Mozambican National Resistance) war in Mozambique, formidable land tenure pluralities significantly aggravated the peace process. Such risks can be especially pronounced when large populations are dislocated during the course of a war because IDPs and returning refugees and other marginalized groups often become more politically aware while dislocated from home areas. As a result, land access problems in a post-war phase can easily become part of the larger political landscape (Ek and Karadawi, 1991; Alexander, 1992; Basok 1994; Krznaric, 1997).

Especially difficult in periods of recovery are disputes over land between participants in different legal fields. Aggravating such a situation is the greatly



**Figure 3.1** Semi-autonomous social fields

Source: Moore (1973)

Note: Formal law is represented by solid lines; informal 'legal fields' are represented by dotted lines.

diminished capacity of a post-war government to enforce the pre-conflict national tenure system. In a peace process, informal legal fields that have been created and maintained during war to meet property, land and territorial needs will usually be stronger than old or new laws. This is particularly the case because the dissemination and enforcement of laws (especially among agrarian, semi-literate, war-weary populations) will be weak or non-existent after conflict.

### **The development of legal pluralism in land during armed conflict**

Population displacement and dislocation due to the effects of armed conflict can play a primary role in the development of legal pluralism with regard to land. The physical separation of people from their home areas and traditions of land use and land tenure can be the first and most dramatic step towards the development of a changed approach to land rights. This occurs in three stages. First, physical separation changes, terminates or puts on hold prevailing social rights and obligations among people regarding land and property, especially where actual occupation or social position forms the basis or a significant aspect of a claim. Second, once dislocated, people seek land elsewhere, but with an approach to access, claim and dispute different from that which prevailed in the home area. This comes about with a change in status, as people who were once community members become dislocatees, combatants, migrants, squatters, female-headed households or refugees. Affected populations (both arriving and receiving) can quickly establish alternative land tenure arrangements that follow newly emerging situations, or pursue variations of old arrangements that work under the prevailing circumstances. The direction that this takes and how rapidly it occurs can depend to a significant degree on wartime and dislocation experiences. Third, the ability to return to a pre-dislocation land tenure system in a home area will depend on the length of the war, the intactness of the return community, relations between those who left and those who stayed and the degree to which individual and community changes during dislocation are still compatible with the previous tenure system.

Such changes can result in significant resistance and animosity towards returnees by community members who chose not to flee. Krznaric (1997) observes how dislocation influenced the development of legal pluralism over land within groups of Guatemalan returnees versus those who stayed, due to the refugees' raised political awareness during their exile in Mexico. This enabled dislocated people to advance interests suppressed under pre-dislocation political arrangements, such as those of women, lower socio-economic strata and other marginalized groups. An organizational capacity also emerged within some sectors of the returnee community, as groups of returnees appropriated and used a transnational language of rights (human rights, refugee rights). Hammond (1993) notes similar contrasts in Nicaragua and El Salvador. Also relevant to 'going back' are the presence and activities of other actors, including squatters, large landholders, ex-combatants and



commercial interests, all of whom may seek access to land thought to be previously unoccupied or abandoned during the war.

A reduction in the power and penetration of state law during war can also result in the emergence of multiple legal fields regarding land tenure. While this may be most pronounced in areas directly involved in a conflict or taken over by opposition groups, or where state enforcement or concern were historically weakest, a federal land and property administration can also experience an overall national reduction in capacity, as the state's financial resources are diverted to the war effort, administrative personnel become unwilling or unable to travel due to security concerns, significant sectors of the population begin to question the legitimacy of state institutions, records become outdated as land and property transactions go unrecorded during the conflict, the state's lands and property administration is seen as unworkable as a national institution and increasing numbers of people abandon the state tenure system.

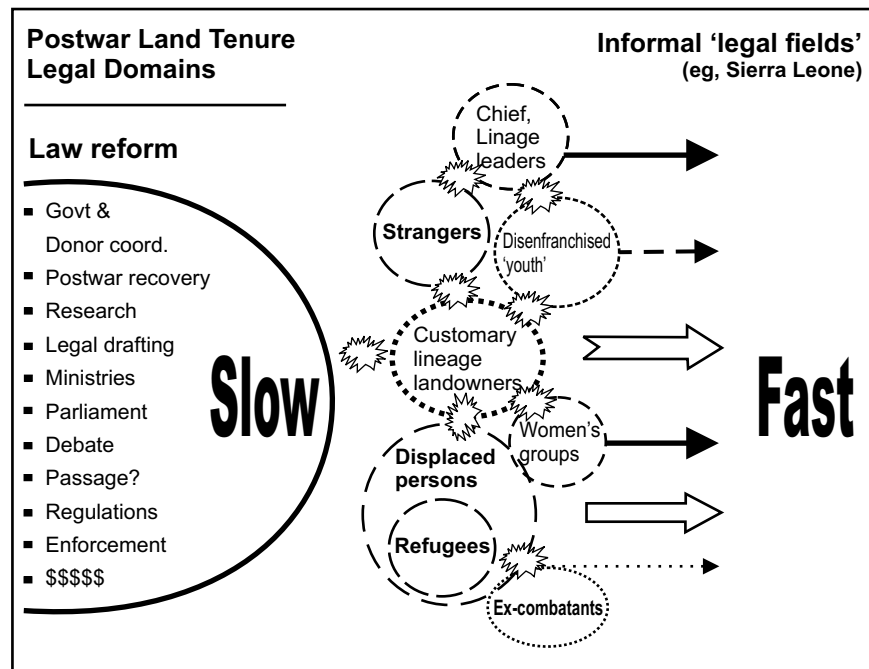
Land-related grievances can also encourage the development of legal pluralism in land. Pre-conflict ideas of the 'unjustness' with which the state dealt with land rights for portions of the population can constitute an important force in the reduction of state penetration in land issues during conflict, and the emergence of alternatives. Such ideas can range from simple disappointment in or distrust of the state to the perception of the state as the enemy. The latter can be especially powerful if there exists an accumulation of land-related grievances against the state brought on by land alienation and discrimination, corruption or state intervention in agricultural production, dislocating agricultural and/or population programmes and heavy-handed enforcement of state decisions and prescriptions regarding land issues. After the end of a war, simple disappointment in the state can manifest itself in different forms of ad hoc local land administration, particularly since the ideology, mobilization and aspirations of wartime are still fresh in the minds of many, and a post-conflict state administration can find that it has limited influence. For example, subsequent to the anti-colonial war in Zimbabwe, Alexander (1992: 14) notes an initial reaction against the state regarding land and property as local chiefs were left out of the reconstituted state due to their alliance with the Rhodesian administration. As Alexander (1992) observes: 'the modernizing agenda and authoritarian practices of the [post-war] development bureaucracies helped to create a disaffected constituency upon which the traditional leaders were able to draw'.

With a reduction in state capacity, identity-based attachments to land can become more influential, especially if there is an identity component to the conflict. Approaches to land employed by one group in a conflict can be rejected by another, leading to opposed legal pluralism over land. In Sierra Leone and Liberia the land tenure approach employed by the paramount chiefs was strongly opposed by disenfranchised youth (many of whom were combatants), who were exploited in the arrangement. As the identities of those involved in armed conflict develop and hostility grows with an opposing

group or groups, approaches to land issues will reflect this and can become a prominent feature in the conflict and subsequent peace process. Smith (1988) notes that ethnic identities are fundamentally tied to territory in Africa. As a result, identity in land is a primary source of legal pluralism with regard to land tenure. In Mozambique, local rivalries between communities were caught up in the war, resulting in some areas in a checkerboard effect of community-level alliances with RENAMO and FRELIMO (Liberation Front of Mozambique) (Hanlon, 1991). The two sides employed quite different approaches to local communities and land administration. FRELIMO replaced local indigenous leaders with locally selected 'officials', whereas RENAMO favoured indigenous leadership. In another example, Cohen (1993) describes the differences between Palestinian and Israeli approaches to land and land tenure, and the ways in which these are grounded in identity. Identity for Palestinians has developed, to a significant degree, to mean opposition to Israel's approach to land administration, especially the construction of settlements.

**Approaches to legal pluralism in a peace process**

Legislative change is one of the more common features of a peace process. Intended to promote social change, new laws or modifications to laws are



**Figure 3.2** Legal pluralism in post-war land tenure: Formal and informal  
 Note: Formal law is represented by the solid line (and the processes contained within); informal legal fields are represented by the various dotted lines, comprised of people with similar experience. The 'flash' symbol represents confrontation between legal fields.

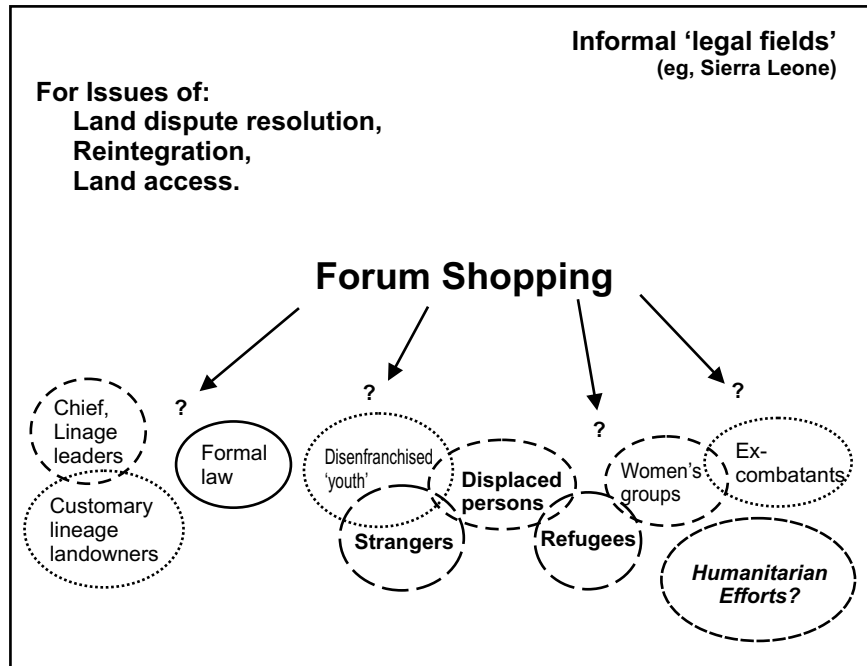
meant to aid in the reconstruction of society. However, such legislative change can be profoundly out of step with emerging plural tenure realities in post-conflict scenarios. A particular problem for the reform of land laws after wars is that it is extremely slow compared to the rapid development and operation of legal pluralism (see Figure 3.2). Forms of formal legal pluralism are developed ‘on-the-ground’ and ‘as needed’ by the population at large, and are connected both to wartime and pre-war experience and group membership. In contrast, formal legal land and property reform after conflict is costly and time consuming, as numerous institutions must be rebuilt, personnel trained and law-making pursued in ways that encourage legitimacy among the population at large. The problem becomes how to connect such a slow-moving process with the much quicker and more fluid behaviour of the informal legal fields. The next sections describe approaches to managing legal pluralism in land tenure after conflict.

### ***‘Forum shopping’***

With a weakened post-war state, and inadequate legislation to resolve important land and property rights issues, engaging legal pluralism during a peace process is often worthwhile. In this context, previous experiences with what is known as ‘forum shopping’ (see Figure 3.3) can be useful. Forum shopping occurs when individuals and communities choose which legal field to go to in order to resolve land rights problems – disputes, claims, restitution, squatting, eviction and so on. Where legal pluralism is present there can be a variety of legal fields to choose from, including formal law and the perceived legal fields associated with humanitarian organizations, donors and NGOs, and the objective third-party presence such actors may offer.

While messy, forum shopping can offer considerable room for manoeuvre or negotiability (Lund, 1996), potentially reducing violence in a peace process if claimants feel that there are no rigid, uncompromising legal structures of questionable legitimacy confining their options. Berry (1993) argues that such negotiability of relationships and associated rules is a fundamental characteristic of almost all African societies. Lund (1996) argues that such negotiation is actually indicative of all societies. Galanter (1981) notes that disputants commonly select fora from any sector – local, traditional, state, etc. – applicable to their own local political agendas. In Ethiopia, for instance, such forum shopping is common, especially in conflict-prone areas of the south-east, where a mix of state, clan, religious, village and regional actors provide a wide choice of arenas in which to pursue land issues.

Forum shopping can be tied to local political manoeuvring between authorities knowledgeable about application of state laws, and authorities connected to ethnicity, lineage, geography, and religion and group experience. This is especially the case in countries with a recent history of colonialism, where the state legal system is almost always a version of the colonial order with a European conceptual foundation (Moore, 1973). Such an order can



**Figure 3.3** Forum shopping in situations of legal pluralism  
 Note: Claimants are able to choose which legal field to pursue land issues with, including formal law and humanitarian, donor and NGO entities.

have less in common with other legal orders indigenous to the country than in Western developed countries, where non-state legal systems ‘blend more easily into the landscape’ (Merry, 1988: 880). In the former, the social distance between state and non-state legal orders will be significant, and as a result addressing the relationship between the two in a peace process becomes more important, as the underlying conceptual foundations do not combine easily with one another (also Hoocker, 1975).

In a variation on the forum shopping approach, Bavnick (1998: 116) describes a case in India whereby local-level state officials are given the discretion to ‘stand at the interface between the two legal systems [formal and customary] and bear substantial responsibility for adjustments’ between systems. In a peace process, specific local-level officials can be charged with facilitating dialogue, interaction and adaptation between the state and other legal fields in place subsequent to a conflict, especially with regard to land disputes. In India, officials do not seek to impose state law, but instead attempt to convince, co-opt or use any legal system or combination thereof to attain the state’s objectives. In post-war Sierra Leone, the role of the ‘customary law officer’ has similar potential in acting as an interface between legal fields.

***From forum shopping to forms of appeal***

Legal pluralism is known for its dynamism, and it is common for a good deal of change to take place as the different legal fields interact. Thus, while at the onset of a peace process there can be multiple approaches to administration, claims and the defence of land and property, over time the relationship between fields change, changes that can be used by humanitarian NGOs in particular. In a number of instances, forms of forum shopping have changed over fairly short periods of time (from months to years) into a relationship between legal fields that operate as forms of appeal (see Figure 3.4). In Somali Region in south-east Ethiopia, ways of pursuing dispute resolution have changed over time into a form of appeal, involving local elders, family courts or other informal groups. If there is unhappiness about the outcome of the proceedings, or if there is disagreement as to which forum to go to, the disputants can pursue the matter in higher clan or religious courts or the state's courts. This realignment of legal fields, from several choices at once to a sequence of choices, can come about particularly when authorities within some legal fields only consider hearing disputes and other matters after one of the 'lower-level' legal fields have attempted to resolve the matter. Recognized legitimacy can be given by one legal field to another when some of the more popular or visible legal fields (for example district courts, chiefs courts) become overwhelmed by the volume of cases – which is inevitable after a war – and seek to decrease the number they must consider by insisting that the first disputants try a 'lower-level' forum. In Sierra Leone, some district courts can insist that smallholders first pursue their claims in chiefs' courts at different levels, prior to bringing them to a district court.

The state, NGOs and humanitarian organizations can contribute to such a realignment by also requiring that parties wishing to engage them in dispute resolution, or use them as an objective third party, first visit a different informal forum. For the state this gives legitimacy to (re)emerging customary legal fields, particularly with regard to land dispute resolution, while also saving the state money and capacity for the purpose of land administration. For NGOs and humanitarians, their mere presence can constitute an additional legal field (see Figure 3.4), even if the specific project they are pursuing is not about land tenure or dispute resolution. Local communities can see outside actors and projects in the context of a third party able to be objective, as well as the perceived connections to or influence with the state, international organizations and local leadership. Thus, by first requiring that claimants visit one of the other customary fora (legal fields), such as (re)emerging customary institutions, local leaders, women's groups and IDP councils, NGOs and humanitarian organizations encourage people to move towards an appeal approach (see Figure 3.4). At the same time, for cases that are dealt with by NGOs and humanitarian organizations, the communication of outcomes to what are perceived to be 'higher-level' legal fields (district/provincial state

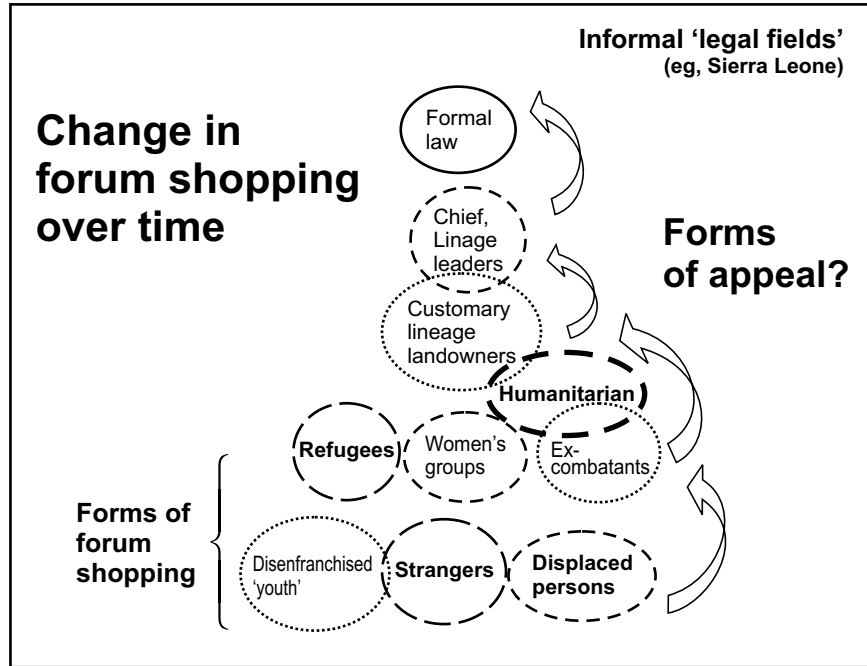


Figure 3.4 Forms of appeal in legal pluralism

representatives for formal law, or chiefs and clan leaders) would further encourage such a realignment.

The 'realignment' from a horizontal to vertical (appeal) arrangement of legal fields can also happen on its own. One example is Somali Region in Ethiopia after the end of the long war with the Derg military government in the early 1990s. Zimbabwe, earlier in its history, experienced considerable success in eventually managing customary land disputes after its independence war, and after initial resistance by chiefs. In this case, 'land boards' were instituted, comprising leaders from different segments of the population, who were responsible for overseeing disputes, allocations and use. Their decisions were then made legal by formal law. The activities and decisions taken by the board were then seen as legal and binding by the state. Such boards can be supported by humanitarian organizations in a number of ways, including providing information, legal and otherwise, advocacy and organizational capacity.

**Mediation efforts**

Humanitarian agencies and NGOs are frequently involved in mediation over problems of land and property after war. Several issues merit attention

here. First, subsequent to conflict, attempts at mediation can often take place without the benefit of formal law as a legal backing to any final resolution or agreement. And because humanitarian agencies are frequently not national organizations, they are not in a position to make decisions regarding the viability of national laws. Thus, mediation efforts depend on the goodwill of the disputants and the ability of the mediation process to cultivate, purchase or otherwise encourage, coax or coerce such goodwill. Such an arrangement can lead to situations where, although good progress is made in the mediation of specific disputes, final agreements often fail or are postponed, negotiation resumes or new issues emerge. This can occur because the different parties to a land dispute can see value in participating in the *process* of mediation, but not in an ultimate resolution, given the possibility that they may obtain a more favourable decision once formal or customary law is re-established. While this can be disappointing for the NGOs and humanitarian organizations running a mediation effort, the value for the peace process is that such mediation buys time in a non-violent way. This was the case in Timor-Leste along the volatile West Timorese border subsequent to the conflict there. An NGO had pursued mediation as an alternative dispute resolution approach for a complicated land dispute, but the effort stalled at the last minute and no resolution was reached. Rather than disengage, humanitarian agencies and NGOs should realize the important role such 'open-ended' mediation efforts play, not only in buying time but also for the positive exposure and interaction between legal fields that can be achieved.

A second issue concerns making any resolution binding for the parties concerned. While formal law would require signatures by local leaders, to serve as symbols of the binding nature of mediation agreements, such an approach frequently does not hold meaning for semi-literate groups. In such cases it can be important to find a locally legitimate and meaningful way of making mediation outcomes binding. Local rituals and ceremonies can be important in this regard, as can ensuring that verbal statements by leaders involved in an agreement are witnessed by others.

## **Interaction between humanitarian efforts and the state**

### ***Law-making and consultation***

Participating in legal reform presents an opportunity to influence new laws so that they are more inclusive. In a variety of post-conflict countries, donors, together with certain parts of government, can push for a broad consultation phase to be included as part of land-law reform. In such a phase, input is sought from various sectors of society, providing valuable information for the drafting of new laws, policies and decrees, and enhancing transparency. Such consultation encourages the interaction of informal legal fields with formal law, allowing formal law to 'borrow' from informal legal fields, as well as the reverse. Such consultative phases have been included in reform processes in

Mozambique, Sierra Leone and Timor-Leste, and more effective land laws have been produced as a result. In Angola, however, there was comparatively little in the way of societal consultation in land law reform. To the extent that the resulting Angolan land law serves the interests of the poor, this is due to the activities of international NGOs. Donors, humanitarian organizations and NGOs, often with significant presence in rural areas, are well-placed to lend support and organizational capacity to such a consultation phase in their areas of operation.

### ***State recognition of legal pluralism***

State recognition of a legally pluralistic land and property situation in a peace process can be important to a weakened state of questionable legitimacy emerging from civil conflict. Legal pluralism has been formally recognized in a number of important domains in Ethiopia, where the constitution accords full recognition to customary and religious courts of law. Litigants are allowed to forum shop because customary and religious courts only hear cases where both contesting parties consent to the forum. In El Salvador's Chapultepec peace agreement, as in the Mozambican peace accord and subsequent legislation regarding land, state recognition of pluralism has contributed to the success of the peace process, particularly considering the large role that land issues have played in these conflicts. In both cases, recognition was a primary vehicle to facilitate the reintegration of much of the population into productive activities.

After the war in Sierra Leone there was considerable separation between the country's two land tenure systems (formal and customary), as well between the many forms of customary tenure practiced in its 149 chiefdoms. This was a serious obstacle to efforts to harmonize, attract investment and promote the rule of law, equity and reintegration. The Law Reform Commission (whose purpose was to find approaches to modernizing laws dealing with the commercial use of land, particularly in the provinces where customary law predominates) saw as the primary problem the low level of exposure, contact and communication between customary structures and leaders, coupled with a lack of documentation and publication of customary and formal land tenure decisions. Had such communication occurred, chiefdoms may have been able to learn about tenurial decisions made elsewhere, promoting the informal harmonization of important aspects of land tenure, as opposed to a multiplication of pluralistic approaches.

### ***Humanitarian agency coordination with government and donors***

Lack of coordination between humanitarian organizations and NGOs and the government and donors is a significant problem in post-war land law reform. While all these organizations can bring significant local benefits for particular groups or villages, the lack of coordination and information flow between



the government and the more local efforts can slow the reform effort; local communities may be misinformed, or the direction of reform misunderstood. For example, while it can seem worthwhile for NGOs to register and obtain title for land in the villages in which they operate so as to protect those lands, the outcome can often be the reverse: these lands become known to individuals well-placed in a war-weakened government who want to obtain land, or the laws that would facilitate such titling no longer apply.

Lack of coordination with the government entity leading the law reform process can generate considerable ill-will. The government may see humanitarian actors as being unaccountable, as taking the law into their own hands, or as providing support to some (often marginalized) groups in the country but not others. In a land tenure context, this can increase tension over land rights, claims and methods of proof. While these are not easy issues to resolve, increased coordination with government can provide for some reduction in the problems associated with information flow, and can provide early warning of possible tensions over land. In a worse case, which is more common than perhaps it might appear, humanitarian efforts can sometimes support one village's land claims against a neighbouring village, lineage or ethnic group, without being aware of the history or validity of all the different claims.

### **Land and property (restitution) as a human right versus a property right**

The difference between land and property as a human right (particularly regarding humanitarian approaches to restitution), as against a property right, is a particular form of pluralism that humanitarian actors encounter. The two forms of 'right' are quite different and have different logical and conceptual foundations, and it can be difficult to move from one to the other. While human rights are generally not seen as a commodity that can be bought and sold, property rights are commonly transferred as a commodity, can be used as collateral in some economies and belong to a wider inter-connected property rights system. Land and property and its restitution as a human right are not connectable to a property rights system, whether customary or formal.

Activities by humanitarian agencies and NGOs that encourage, pressure or oblige national officials and/or customary leaders in a post-war country to provide for property restitution as a human right, without articulating technically how this will interface with existing (and usually rapidly changing) property rights system(s), has the effect of neither moving forward with the human right, nor solidifying the post-war property rights system(s); instead, it can introduce an additional incompatible form of pluralism. Expecting a minister or local leader or his/her staff to derive 'a way' for property as a human right to somehow 'fit' into the technical operation of either a formal property rights system or customary systems after a war is unrealistic, even if the capacity were present. What is needed are ways that humanitarian organizations themselves can 'translate' land and property restitution as a

human right into workable property rights within prevailing tenure systems. In this regard, when those who have received property as part of a human rights restitution programme then sell such property, the programme can often be seen as a failure and humanitarian actors can seek to prevent such sales. In reality what is happening is that the recipients are themselves making the translation from a human right to a property right due to the lack of alternative ways of doing this. This should perhaps not be seen as a 'failure' in a restitution programme. The form of pluralism created by the incompatibility between the human right of property restitution and property rights within a tenure system needs a good deal of additional legal, policy and practitioner work.

### Conclusions

Because humanitarian organizations are familiar with local livelihoods in the areas they work in, they are in an advantaged position to assist with land and property rights recovery after conflict. Important in this regard will be the recognition of the existence of various forms of legal pluralism after conflict, and the different ways in which these emerge and interact. This entails an ability to interface between the various informal legal pluralities regarding land tenure on the one hand, and the state (itself usually one of many ways of engaging in land tenure after conflict) on the other. While this chapter outlines some ways in which humanitarian organizations can pursue land tenure recovery, considerable innovation is also possible because these organizations are most familiar with the local realities. What should ultimately be kept in mind is how the different legal pluralities interact with each other and the place of humanitarian organizations within this interaction.

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## CHAPTER 4

# Land in return, reintegration and recovery processes: Some lessons from the Great Lakes region of Africa

*Chris Huggins*

*The chapter describes some of the political challenges involved in managing the transition from emergency activities to longer-term 'developmental' policies in Rwanda and Burundi. In post-genocide Rwanda, uncompensated expropriation and a nationwide settlement policy may have reduced short-term problems over secondary occupation of property, but have created lingering grievances. International agencies have underplayed the role of state agency in their analysis of these problems. In post-conflict Burundi, many actors view the challenges through a return-focused lens, which fails to recognize the structural dimensions of land disputes. Despite widespread awareness of the importance of land issues, the government and UN agencies have been slow to address them. The implications for programmes dealing with post-conflict land issues in other countries are discussed. The chapter concludes that humanitarian agencies cannot afford to work according to narrow, technical viewpoints and mandates. Awareness of historical and political dimensions, and support for monitoring, are vital.*

### **Introduction**

Issues relating to post-conflict land and property rights are arguably receiving more attention than ever before (UN-Habitat/UNHCR, 2004; Leckie, 2006). The breadth and the depth of resources being devoted to post-conflict land issues continue to grow steadily, especially in relation to the return, reintegration and/or resettlement of refugees and displaced persons. However, post-conflict land issues, like all development questions, remain highly contentious. Post-conflict institutions are divided and overwhelmed by the scale of need, and post-conflict situations can represent particularly fertile ground for those wishing to pursue a preconceived agenda. Some donors have been accused, for example, of insisting upon land interventions that privilege elite interests or the global market, at the expense of community needs (Palmer, 2005). Due to the sensitivity and importance of the issues, relations between donors, national governments and local civil society organizations are in many

cases uncomfortable. Local or national NGOs are often forced to perform a delicate high-wire act, attempting to maintain political independence from governments whilst also resisting donors' attempts to mould them into mere instruments of policy implementation. The 'militarization' and polarization of society that often occur during protracted conflict makes it more difficult for civil society to remain impartial and to resist pressure from political elements accustomed to the use of intimidation.

Other important questions relate to the capacity of different stakeholders to sustain engagement in land and restitution issues over the long term. Preliminary interventions can lead to increased expectations – for land (re)distribution, for example. This can create tensions within government, between government and the population and between government and donors. Immediately following a conflict, the political environment is fragile and different elements within the state jostle for influence, whilst donors also pursue their own agendas. Intentions and policies can change radically within a few years. The tensions caused by this uncertainty are often exacerbated by the return of refugees and IDPs as security starts to improve. Returnees may have to compete with other impoverished households and criminal gangs seeking to take advantage of abandoned property, while illegal occupations and violent evictions risk contributing to a dangerous rise in antagonism.

Rather than attempt to provide a comprehensive examination of the multitude of technical issues involved, this chapter dwells mostly on return and reintegration. The spatial limitations of the chapter do not permit much discussion of the role of land policy development and land administration in post-conflict recovery. However, some mention is made of the transition from emergency activities to longer-term 'developmental' policies, and particularly some of the political challenges involved in managing this transition. The chapter first offers a very brief overview of post-conflict challenges, then provides two case studies from the Great Lakes region of Africa, and finally highlights some key lessons, with an emphasis on the policy 'gaps' that remain.

### **A troubled homecoming: Challenges of refugee and IDP return in Rwanda**

Due to the turbulent history of the country since the 'revolution' of 1959, which toppled the Tutsi-dominated administration, millions of Rwandans have at one time or another experienced forced displacement, either within the country or to a second or even third country. Land has long been an issue of contention between rulers and ruled, and agents of the state have historically tended to be the authors of land tenure insecurity (Vansina, 2004). Hundreds of thousands of Tutsi fled the country after the 1959 'revolution' that toppled the Tutsi-dominated administration and following several episodes of orchestrated anti-Tutsi violence their land was often allocated to Hutu, through a 1966 presidential decree.

Large-scale population displacement occurred in the north of the country following the 1990 invasion by the Rwandan Patriotic Front (RPF), composed of Tutsi refugees. The 1994 genocide saw some 800,000 Tutsi, as well as thousands of Hutu, murdered. There is insufficient space here to discuss the horrors of the genocide, the possible role of competition for land as a background cause of conflict, or the wider Great Lakes crisis in any detail (see Prunier (1996); Human Rights Watch and des Forges (1999). For a discussion of the role of land issues in the genocide, see Bigagaza et al (2002), and for land scarcity, distribution and conflict in Rwanda, see Lind and Sturman (2002)). The RPF came to power militarily in July 1994, ending the genocide, in the face of international inaction. Fearing revenge attacks, hearing reports of massacres by the RPF and ordered to move by the retreating remnants of the interim government which had overseen the genocide, some two million Hutu left Rwanda, mainly heading for the DRC and Tanzania.

After the RPF victory, hundreds of thousands of Tutsi refugees returned to the devastated country. Some of the returning Tutsi refugees settled in the thinly populated eastern province of Umutara, while others identified lands that had belonged to their families; most simply chose conveniently located properties vacated by fleeing Hutu. Probably about 600,000 Tutsi refugees had returned by the late 1990s. According to the statistical data for housing reconstruction established by UNHCR in April 1996, there were 32,958 occupied houses in a single prefecture (Kibungo) and 45,872 hectares of occupied fields (UN-OHCHR, 1997). Meanwhile, Hutu refugees, fearing arrest or execution, were unwilling to return, and displaced Hutu civilians remained in Rwanda in IDP camps along with remnants of the genocidal militia. In April 1995, RPF forces attacked an IDP camp at Kibeho. The government claimed that 338 people had been killed, but independent sources put the figure at between 2,000 and 8,000 (Pottier, 2002; Off, 2000). The EU briefly suspended aid in response to the violence, but most donors continued to tread the easier of path of uncritical cooperation with the government.

The following year Rwandan troops entered the DRC in order to dismantle the refugee camps, which had become heavily militarized. These attacks and other massacres resulted in the deaths of large numbers of civilians, and caused Rwandan Hutu refugees to return en masse in late 1996 and early 1997, at the same time as hundreds of thousands more were forcibly expelled from Tanzania. A total of 1.3 million people returned in a matter of weeks. In the face of this incredible challenge, the government optimistically argued that there was enough land to go around, and that local solutions would be found (Pottier, 2002). The danger with such optimism is that it underestimates the risks and leaves little room for local administrators to admit 'failure'.

Government policy on land was guided to some extent by the Arusha Peace Accords of 1993 that 'recommended' that refugees who had been out of the country for more than 10 years and whose land had been occupied by others, should not claim their property. However, this article, which is a breach of fundamental human rights laws, was not always respected in

practice. Government approaches to restitution of refugees and IDPs was inspired as much by pragmatism and opportunism as by principles. The return of refugees was handled differently across the country. For example, settlement permits would be offered in some areas, but not others; some areas set up informal 'land commissions', while elsewhere traditional *gacaca* (popular courts) oversaw land disputes.<sup>1</sup> In the north-east, RPF military and political leaders took control of large swathes of ranch land, without any legal basis. As Johan Pottier puts it: 'policy *implementation* is more likely than not to be a matter of policy *interpretation*... repossession would be tackled with the protocol, wit and intrigue so typical of local-level debate' (Pottier, 2002: 189, original emphasis). Local-level power dynamics are complex, highly context-specific and change over time. In general, one might expect that Hutu were at a great disadvantage in negotiations over land and property. Human rights activists observed that 'for a house, for a field or a tool, people are denounced [as *genocidaires*] without evidence' (Sibomana, 1999: 107), a fact that even the Rwandan government acknowledged (Sibomana, 1999; Off, 2000). In 1997, the Special Rapporteur of the UN Commission on Human Rights, Mr. René Degni-Ségui, stated that 'violations of property rights take the form of illegal occupation of property and lead to arbitrary arrests and detentions as a result of malicious accusations and to land disputes ending in murder'. However, power relations in Rwanda are complex and ethnicity is only one of a number of factors at play. Vulnerable Tutsi (especially widows and orphans) often found themselves dispossessed by local leaders, who in some cases were Hutu.

### ***Government policy: Land sharing and villagization***

Faced with land scarcity, the government opened up parts of the Akagera National Park for resettlement, and communal areas managed by district authorities were allocated to 'old case' refugees across the country. Truly 'vacant' land was in very short supply. The government therefore decided upon two main mechanisms for addressing the situation. Each is characterized by a lack of monitoring, checks and balances and legal recourse.

The main mechanism for managing land problems was 'land sharing', essentially a form of uncompensated expropriation. According to some, the practice originated as a spontaneous sharing between genocide survivors and returning Tutsi refugees, which was then made obligatory by provincial authorities; others have identified the authorities as the authors of the idea. 'Land sharing' was originally intended to avoid evicting secondary occupants of land belonging to another household by simply dividing the land in two. In some areas it seems later to have been extended into a limited form of land redistribution. Although in general plots were to be divided equally between the various claimants, the means by which the sharing was to be done were not fully elucidated and the policy was not supported by law.<sup>2</sup> The 2005 Land Law attempts to retroactively legalize this process, though the validity of this

step is questionable (Article 87 of the law states simply, 'land sharing which was conducted from the year nineteen ninety four (1994) is recognized by this organic law').

Aspects of land sharing not completely clarified include the ownership of buildings, as well as ways of factoring in differences in soil fertility. There remains widespread dissatisfaction over the policy and the way it was implemented. In Kibuye, an independent study found that over half of all land conflicts were due to 'post-sharing grudges' (Gasarasi and Musahara, 2004). Problems associated with land sharing included land grabbing by local officials, favouritism and corruption, arbitrary distribution of land without regard to former occupancy and the unnecessary displacement of households to distant locations. The policy was still being implemented in early 2008 in areas such as Musanze District, Northern Province, based on the claims of Tutsi returnees to land owned by their fathers or grandfathers (personal observation, Musanze District, February 2008). Fourteen years after the genocide, there is a definite need to 'draw a line' under the land sharing policy and ensure that all land transactions are governed by legislation or written regulations, in accordance with the rule of law (Bruce, 2007).

The second major mechanism utilized by the government was an 'emergency' shelter policy, whereby returnees and genocide survivors, were to live in specially constructed planned settlements, known in Kinyarwanda as *imidugudu* (the singular noun is *umudugudu*). However, without consultation with the donors and NGOs financing construction, this was soon turned into a more widespread 'National Habitat Policy'. The government attempted to oblige as many citizens as possible to live in planned *imidugudu* villages, abandoning their existing homes if necessary. The implementation of the policy nationwide from 1996 was characterized by a number of major problems (see Republic of Rwanda, 2001, for more details on all these problems). First, many people were unwilling to move, and the local authorities forced people to destroy their own houses before moving into new ones (often of inferior quality). In the north-west, the villagization policy became a key part of the government's heavy-handed counter-insurgency strategy to deal with incursions from the DRC. Houses were destroyed even when no state support was available for constructing new dwellings in *imidugudu* (Republic of Rwanda, 2001). Second, *imidugudu* were often built on existing farms. The government decided that residents of the *imidugudu*, and not the state, should compensate owners whose land was used for site construction, but many have never received such compensation.<sup>3</sup> Third, the relocation meant that many people were further from their fields, making cultivation more difficult, especially for women, who have particular security concerns. Production seems to have declined as a result. Fourth, guidelines for the location of *imidugudu* were not always followed, and flat fertile land was often used for construction, leaving only steep slopes for cultivation. Fifth, building standards were often poor and there were numerous allegations of corruption by contractors. Sixth, many villages lack access to basic services. Seventh, many *imidugudu* were



constructed for a single sociological group (for example genocide widows), thereby creating localized ethnic and/or demographic segregation. Some researchers have argued that some *imidugudu* were intended to compensate Tutsi returnees for lack of access to land under the Arusha Accords, although information on socio-economic and ethnic composition and the levels of investment in *imidugudu* is lacking (Pottier, 2002, citing other studies).

International NGOs and the UN found themselves contributing to an abusive policy. By 2001, international pressure and a related lack of donor funds had essentially put a stop to the villagization programme, though the government remains committed to the policy, and there were signs in 2007 that it was being resumed, using unpaid community labour. Neighbouring Burundi has also made plans to implement villagization policies. Meanwhile, independent monitoring of return and restitution has been problematic. A UN Human Rights Field Operation for Rwanda (HRFOR), agreed between the government and UNHCR in 1994, was unable to concentrate on the rights of refugees and IDPs due to its staffing issues and overly broad mandate. HRFOR, which had a difficult relationship with the government, closed in 1998. Coordination between the UN, multilateral and bilateral donors and the government has also been difficult. Human rights groups looking into the practice of 'land sharing' have faced government hostility. In 2004, a parliamentary commission recommended the dissolution of a number of organizations that had conducted advocacy on land issues, including questioning the legal basis for the land sharing exercise (Republic of Rwanda, 2004).

### ***IDPs in Rwanda: A disappearing act***

According to the government and the UN, there are no IDPs in Rwanda, however, some international NGOs dispute this, arguing that many of the 650,000 people displaced in the north-west during 1998 and 1999 remain vulnerable, with inadequate access to land and shelter (interviews with UNHCR staff, Kigali, June 2006). Indeed, a review of UN and NGO engagement with IDPs in Rwanda demonstrates important gaps in international definitions of displacement, durable solutions and voluntary resettlement (see Zeender, 2003, for an excellent summary of the issues). Between 1999 and 2000, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) changed its definition of displacement in Rwanda, instantly reducing the numbers from half a million to 150,000. In 1999, UNHCR categorized some 625,000 IDPs as 'persons of concern', but by the following year, IDPs ceased to be of concern to the agency. Although the government has provided funding for the construction of some homes in the north-west, no transparent or comprehensive study of assistance to IDPs has been carried out by the UN (Human Rights Watch, 2001). The way in which IDPs were swiftly made to 'disappear' from official statistics, without sufficient evidence to show that

they had returned or reintegrated into local communities and economies, is a cause for concern.

### ***Implications for Rwanda today***

The return of Rwandan refugees and asylum-seekers continues today, on both a voluntary and involuntary basis. Some live in poor conditions and have been granted access to state-owned marshlands cultivated by cooperatives, rather than their own fields, which have been occupied by others (interviews with local NGO staff, Kigali, February 2006, and field interviews in north-east Rwanda, May 2007). International and central government monitoring of resettlement and reintegration has been insufficient. Tens of thousands of people of Rwandan origin have been forced from Western Tanzania into Rwanda since mid-2006 (Human Rights Watch, 2007). Some have 'reintegrated' with relatives or have settled in specially planned villages. According to UNHCR, returnees routinely wait two years or more for the administration to provide a response to housing and land claims. Although many Rwandans are reluctant to voice opinions critical of the government, it seems clear that land-related governance remains problematic, with a marked lack of public accountability and a worrying gap between the formal 'ideal' of transparency and popular consultation as articulated in Rwandan policy documents and the reality of informal land-related abuses. The mere fact that such abuses have characterized state intervention in land tenure and agricultural development for decades, and are recognized as part of the state's institutional culture, does not serve to make them legitimate in the eyes of local people.<sup>4</sup>

International agencies seem to have underplayed the role of state agency in their analysis of the problems and abuses related to state intervention in the land sector in the post-conflict period. Where state actions led to a loss of citizens' land rights, these were typically characterized as unfortunate and unintended results of a lack of state capacity in the face of massive logistical challenges. These challenges and limitations were indeed immense. However, they are only one part of the overall equation. Preferring to ignore the state's 'institutional culture' and related factors, most international humanitarian agencies therefore overlooked much of the complexity of the resettlement of Rwandan returnees, favouring an oversimplified version of events. This is partially because of the political repercussions of the world's failure to intervene during the 1994 genocide, and the failure of international humanitarian and development agencies to invest in and advocate for viable land and settlement policies.<sup>5</sup> Some agencies, particularly within the UN system, are unwilling to speak out lest they too are criticized. The Rwandan government has proved itself adept at undermining or neutralizing those who question its version of events. In addition, few international agencies have strong roots in the countryside, as the number of rural development projects seems to have decreased since the pre-war era. International development is Kigali-centric, and there are relatively few opportunities for sensitive information to reach the

majority of the international community. Agencies that should be engaging more robustly with the government over land-related abuses tend to plead ignorance.

Human rights organizations have taken a lead role in critically assessing policy and legal proposals, albeit generally by default as most other civil society organizations, including those with a mandate to address land tenure and agricultural issues, have been unable to rise to the challenge of criticizing a government that has proved expert at co-opting and cowing civil society. Humanitarian organizations, which are everywhere involved in a delicate balancing act between cooperation with the government (in order to guarantee access to vulnerable populations) and constructive criticism, may be most effective working as part of national or international advocacy networks, where there is strength in numbers, while simultaneously ensuring that specific analysis and information is provided to UN agencies, embassies and other major international institutions on an anonymous and off-the-record basis, if necessary.

Especially when seen from the vantage-point of Kigali (less so when seen from impoverished rural areas), Rwanda has achieved a surprising degree of economic progress since the genocide, and the country has been seemingly 'stable' for the past eight years. However, a discourse that emphasizes the success of post-conflict governance in Rwanda obscures numerous uncertainties and injustices. This critique of the government's management of return and restitution challenges is not intended to argue that nothing positive has been achieved; rather, it is an attempt to ensure that the losses endured by Rwandans during the return process are not simply written out of history.

## **Burundi**

The Burundi conflict, though less intense than Rwanda's civil war and genocide, lasted for much longer and has had a terrible effect on livelihoods and social networks (indeed, despite the use of the past tense, it should be noted that political instability and continued sporadic violence warns against an assumption that all is now 'peaceful' in Burundi). A sixth or more of the population has been displaced inside or outside of the country. IDP numbers peaked at 800,000 in 1999, but have since fallen. However, many live dispersed across the country and are largely invisible to agencies (Internal Displacement Monitoring Centre, 2006). The majority of the IDPs did not move far from their place of origin. These IDPs have generally managed to reclaim their lands; the problem is more complicated for those who prefer to stay in IDP camps. Some may stay because they are concerned for their security. Others choose to stay because the standards of living in the camps are better than elsewhere. Many IDP camps were constructed on private land belonging to individuals who were not compensated or were forced to accept a nominal sum, and the legal status of those remaining in these camps is unclear. Some members of the Burundian civil service have argued that the state is not liable

for any compensation claims, arguing that the camps arose spontaneously and that the state had no choice but to support them (comments of participants in 'Forum Sur Le Problematique Fonciere au Burundi', organized by Global Rights/Ministry of Natural Resources and funded by USAID, March 2006).

Before the peace process began, there were more than a million Burundian refugees, according to UNHCR estimates. Most were living in Tanzania. Between 2002 and March 2008, 389,000 returned from Tanzania, 300,000 of them with UNHCR's help (Pagonis, 2008). In many instances, the land they once owned had already been allocated to others by the government; in other cases, relatives had already sold the land to third parties or distributed the land amongst themselves according to customary inheritance regulations (Ligue Iteka, 2007). The technical and financial capacity of local authorities to resolve such problems is limited, and dispute resolution is time consuming. Data from 2006 show that of a total of 44,915 people who returned, about a quarter (some 11,000) had problems gaining access to land. The problems vary geographically – in some areas where land is particularly valuable, the figure rises to 60 per cent (Umwari, 2007).

The ability of the Burundian government to plan for refugee return has been affected by the Tanzanian government's approach to Burundian asylum-seekers and others living outside refugee camps, who were labelled 'illegal immigrants'. Forced repatriation started in May 2006. No legal framework has been agreed between the two countries to manage this return process, which greatly affected Burundi's ability to manage refugee returns.

### ***The wider context in Burundi***

Land-related problems in Burundi go far beyond the rights of IDPs, refugees and other vulnerable groups. The broader institutional and geographical context is very difficult. Burundi is approaching demographic bursting point, its land registration system has historically been highly corrupt and dysfunctional, land law is outdated and the government is new and inexperienced, and faces multiple challenges. Women, particularly widows, and the Batwa minority find it very difficult to claim their land rights due to obstacles in the customary and statutory legal regimes, and the country is rife with land disputes, mostly between extended family members. Indeed, evidence suggests that land ownership issues, including barriers to land access, are surprisingly similar for returning refugees and for host communities (UNHCR/WFP, 2007 citing a study by the Burundian Institute of Statistics, ISTEERBU). Many issues will best be addressed through a new land law, which has been under development for years. It seems that some of the international actors in Burundi are focusing on the local-level institutions dealing with the land claims of IDPs and refugees, without adequately addressing the problems at the political, policy and legal levels. Many actors view the challenges through a return-focused lens that fails to recognize the structural dimensions of land disputes (Van Leeuwen, 2007).

In the past, land disputes were mediated by a customary institution of male elders, termed '*Bashingantahe*'. Recent studies suggest that *Bashingantahe* are typically called to mediate in over a third of land disputes (local courts were involved in 41 per cent of disputes, according to Umwari, 2007). Over time, the institution was undermined, first by the Catholic Church and later by political parties, especially the Tutsi-dominated UPRONA party. Since coming to power, the ruling National Council for the Defence of Democracy-Front for the Defence of Democracy (CNDD-FDD) has reduced the legal powers of the *Bashingantahe*, establishing instead an elected 'hill council' (*conseil de colline*) to manage local problems. The local administrative law establishing the *conseils* states that they should collaborate with the *Bashingantahe* in the mediation of disputes (Republic of Burundi, 2005, Article 37). In some areas, the *conseil de colline* and the *Bashingantahe* are in conflict over roles and responsibilities. In parts of Ngozi Province, for example, the *Bashingantahe* have been prevented from operating at all (interview with international land expert, Maryland, 18 April 2008). In other areas there is greater cooperation, suggesting that this issue, like so many aspects of governance, is very context specific.

#### ***Post-conflict institutions addressing restitution in Burundi***

The Arusha Agreement on Peace and Reconciliation in Burundi recognizes the importance of land issues. While many felt that civil society was excluded from the process, organizations such as the Burundi Women Refugee Network were granted observer status. This resulted in the inclusion in the Agreement of a clause on women's rights to land and inheritance (Stensrud and Husby, 2005, cited in Kamungi et al, 2005).

The Commission Nationale pour la Réhabilitation des Sinistrés (CNRS) – roughly translated as the National Commission for the Reintegration of the War-Affected – was the primary institution in the field of land and property rights for returning refugees and IDPs from early 2003 until early 2006. The Arusha Accords specified that it was to be an independent commission, however, in practice, its structure was the result of a compromise between dominant political parties. The Commission was placed under the institutional control of the Ministry of Resettlement and Reinstallation of IDPs and Repatriates (MRRDR). This political compromise was a breach of the spirit of the Accords (interviews, Bujumbure, May 2004 and March 2006; International Crisis Group, 2003). Both the CNRS and MRRDR claimed that they were responsible for policy-making (Hocklander et al, 2004). This added to the tensions caused by the different political allegiances of their respective directors, and the fact that the MRRDR had not been included in the relevant negotiations during the Arusha process. Under the terms of the peace agreement, staff at the CNRS were political appointees belonging to the signatory parties. This limited the management and technical expertise of the Commission.<sup>6</sup> All of these issues hindered donor funding: donors pledged over US\$6 million for the CNRS, but much less than that was eventually forthcoming, and UNHCR was the

only donor to provide major funding (interview with former member of the CNRS, Bujumbura, March 2006). In March 2004, the CNRS started to develop guidelines for a systematic approach to land disputes. Local solutions are emphasized, including amicable settlement between two or more parties with claims over the same land parcel (a voluntary land-sharing agreement). However, these had only limited impact because of the limited capacity of the CNRS, and refugees were largely unaware of the procedures involved (Ntampaka, 2006). The issue was not only one of dissemination of procedures: some civil society groups have criticized the government's failure to adequately involve representatives of refugees and IDPs themselves in the preparation of guidelines and procedures.

Despite its broad mandate, the CNRS was essentially limited to providing short-term assistance to IDPs and trying to resolve particular cases on demand. With funding from UNHCR, the CNRS provided transport for returning refugees from reception centres to their places of origin, and also directed them to legal clinics. However, reception centres, staffed by local volunteers, barely functioned (UNHCR/WFP, 2007). In theory, the Commission attempted to play a mediation role, but lacked presence on the ground and was generally ineffective (Global Rights, 2005).

Local administrators attempt to find their own means to adjudicate land disputes, especially intra-family disputes, resulting in a variety of outcomes (Centre d'Alerte et de Prévention des Conflits, 2006). However, administrators are generally wary of getting involved in more complex or political disputes. The CNRS ran out of funding and ceased to function in the middle of 2005. A new institution – the National Commission for Land and other Property (known by its French acronym CNTB) – took over the responsibilities of the CNRS in late May 2006, with a broad three-year mandate to address land conflicts arising from repatriation, as well as illegal land transfers.<sup>7</sup> Like the CNRS, the CNTB seems to conceptualize its mission mainly in terms of solving local disputes, which can easily lead to duplication of dispute resolving mechanisms established by NGOs. The Commission is also at risk of being spread too thin and may be better advised to concentrate on a small number of particularly challenging cases that are clearly beyond local capacity for mediation. As discussed further below, ad hoc or informal dispute resolution results in a variety of outcomes, some of which are less equitable and less legitimate than others. Humanitarian agencies may play a role through 'quick and dirty' surveys conducted alongside regular humanitarian activities and support for more focused studies.

### ***International interventions in Burundi***

The UN Operation in Burundi (ONUB) peacekeeping mission was active from June 2004 until 31 December 2006. While it had a sufficient mandate to build Burundian capacity to resolve land disputes, its rule of law section was understaffed and there were many missed opportunities (Huggins, 2008).

It was followed in January 2007, by the United Nations Integrated Office (BINUB), which was officially established as ‘an interim arrangement to allow for a smooth transition from peacekeeping towards a development-focused engagement by the UN’ (BINUB, 2008: 5). BINUB is mandated to address land issues as one of the root causes of the conflict, and some \$35 million has been allocated to the government’s peace-building plan. Although land issues are one of four priority areas in the plan, they have been badly underfinanced. As of early April 2008, some 15 projects had been approved, representing a total budget of almost \$28 million. Of this, only \$700,000 was dedicated to land issues (specifically institutional support to the CNTB), with BINUB and UNHCR acting as implementing agencies (UN Peacebuilding website, [www.unpbf.org/burundi-projects.shtml](http://www.unpbf.org/burundi-projects.shtml) accessed 7 April 2008). In an attempt to remedy the situation, a multi-agency Ad Hoc Integrated Commission for Repatriation and Return was established in July 2007. Also in 2007, the EU committed part of its \$15 million Global Plan to return and reintegration. The CNTB has also received technical and (limited) financial support from the Dutch government and the UNDP (for example, UNDP donated \$100,000 to the CNTB in January 2006) (UNDP-Burundi website, [www.bi.undp.org/fr/don\\_commission\\_terre.htm](http://www.bi.undp.org/fr/don_commission_terre.htm) accessed 7 April 2008). Several other organizations have provided support to existing dispute-resolution mechanisms at the local level, or have created new structures.<sup>8</sup> Support for the *Bashingantahe* has been provided by a number of organizations, and the current UN mission in Burundi (BINUB) recently hosted a conference that called for clarification of their legal status. Time will tell if investment in the training programmes will be undermined by the tensions between the *Bashingantahe* and the *Conseil de Colline* or branches of local government. The most effective approach, taken by organizations such as Global Rights, is to simultaneously engage in research and capacity-building at the local-level, whilst using these data for advocacy at the policy level, particularly in the development of the new land law.

### **Implications for land-related interventions in return, reintegration and recovery processes**

The issues involved in post-conflict land work are many and complex, and there is not the space to discuss them all fully here. Institutions such as UN-Habitat have already attempted to create a framework for sequencing post-conflict interventions, and others are being developed. The discussion of land-related interventions that follows is therefore highly selective and intended to draw lessons from the Rwanda and Burundi case studies provided above. While attempts have been made to identify successes, the outcomes of land-related interventions are highly context-specific, making it difficult to describe one-size-fits-all ‘best practice’.

### ***Documentation***

Although many actors may be wary of investing in contexts where peace has yet to be achieved, it makes sense, at a minimum, for agencies to monitor the situation as a country seems to be exiting from conflict. It is vital that changes in access to land are well-documented, and that warring parties are aware that they are under international scrutiny. In Burundi, local civil society organizations demonstrated the capacity to document and analyse land-related challenges *during the conflict*, prior to the return of refugee and IDP populations. Despite this local capacity, and the emphasis on land issues in the Arusha accords for Burundi, ONUB did not provide support for legal or other kinds of approaches to the land and shelter problems plaguing the country.<sup>9</sup> Despite the emphasis given to land and natural resource in Sudan's Comprehensive Peace Agreement, land issues were not included in United Nations Mission in Sudan's (UNMIS) mandate or in the UN joint strategy for Sudan, and were almost entirely ignored by the UN–World Bank Joint Assessment Mission (Ashley, 2006). Assessment missions for the UN Department of Peacekeeping Operations (DPKO) sometimes have as little as two weeks to compile a report for the Security Council, which includes recommendations concerning anticipated staffing needs. If more is done to develop networks or rosters of local and international country-specific expertise in land-related issues, DPKO assessments could benefit from such networks.

Some best practices can be identified. UN-Habitat, for instance, has led the way in its assessments of the legal framework in Somalia. Monitoring and documentation of abuses can often be linked to awareness-raising or legal aid programmes, as proven by NRC in places such as Eastern DRC. Monitoring programmes can also help to build local and international capacity to analyse and address land issues, and if momentum can be sustained over time, this could result in the creation of networks of experienced local, national and international specialists ready to assist in more comprehensive interventions. Due to their experience in operating in conflict zones, humanitarian organizations have a major role to play in this regard.

### ***Land and property rights issues in peace agreements***

The rights and concerns of IDPs and refugees, and wider concerns related to land and reconstruction, were addressed to some extent in the Burundi peace negotiations. During the Burundi process, refugees were included, and women's groups were able to have an influence largely due to the support of the United Nations Development Fund for Women (UNIFEM) and the personal support of Nelson Mandela. However, the slow or partial implementation of many aspects of the accords raises questions as to the extent of 'ownership' by the signatories, and the mediators essentially forced the parties to agree to problematic clauses (Van Eck, 2007). Many aspects of the agreement are



vague, suggesting that, in the face of stalemate, the mediators chose to disguise disagreement with general statements.

Sudan provides an example of a peace agreement that emphasizes the importance of land issues and provides a framework for future development of land-related institutions, but it too lacks specific provisions. With all parties under pressure to secure an agreement, it was felt that these sensitive questions could best be negotiated after peace had been achieved.<sup>10</sup> However, faced with the rejection of progressive provisions in the Interim National Constitution and State Constitutions, the Southern Sudan government settled for minimalist provisions that do little to clarify the peace agreement. The lack of effective monitoring mechanisms for implementation of the CPA is leading to considerable frustration, especially within the government of Southern Sudan and administrations in the transition states.

Guatemala provides a rare example of direct IDP and refugee participation in 'track one' negotiations, as a result of pressure from guerrilla groups participating in the talks (Brookings Institution/University of Berne, 2007b). UNHCR also facilitated women's groups in advocating for gendered approaches to land titling. In the Guatemala case, the promise represented by the peace agreement has not borne fruit because of the political intransigence of the government, forcing donors to threaten to withdraw some aid. Again, this raises the question of political 'buy-in' during negotiations and implementation.

Comparison of the Sudan agreement with the Mozambican peace accord demonstrates the importance of recognizing multiple tenure systems, or multiple legal regimes, in peace processes. Unruh provides an example, arguing that, 'in the Mozambican peace accord and subsequent legislation regarding land, broad state recognition of multiple approaches to tenure has contributed much to the success of the processes' (Unruh, 2004). In Sudan, too, multiple and overlapping institutions and legal regimes create a complex and dynamic mosaic of land claims. If peace agreements refer to land issues in ways that are overly vague, differing expectations can prove dangerous to post-conflict stability. The challenge is to find a balance; agreements should provide space to allow inclusive and pragmatic approaches involving all of the institutions operating on the ground, but must not be so open as to create confusion and post-conflict deadlocks over interpretation.

### ***Coordination among stakeholders***

The Rwandan experience shows the difficulties of aid coordination, and that the 'technical' questions of coordination cannot easily be disentangled from the politics of aid. Following the genocide, many of Rwanda's major donors reduced their funding (Hayman, 2007). Simultaneously, new donors have become involved. Currently, the UK and the US are the most significant donors due to the large amounts of money disbursed directly to the national budget and their political support to the government. Donors with the greatest depth of knowledge about Rwanda have been eclipsed by others with less experience

in the country. The shift towards direct budgetary support has also had an impact. Donors providing direct budgetary support can claim a greater degree of involvement in policy-making, but engagement is now exclusively at the headquarters level in Kigali. Reduction in donor support to projects has led to reduced interaction with middle-management or field-level staff who have a better grasp of rural realities. An external evaluation of the UK's Department for International Development (DFID) in Rwanda between 2000 and 2005 found that, on average, staff spent little time 'in the field' and were hence 'distanced' from the results of programme implementation (Kanyarukiga et al., 2006).

In Burundi, some donors have channelled funding through local 'democratic' administrative structures, whilst others have bypassed the administration. Some commentators have argued that excessive donor reliance on civil society structures, along with overly ambitious objectives imposed from outside, has resulted in undemocratic NGOs which lack local accountability. Their recommendation is that donors work through the local administration instead (Uvin, 2006). Each country is different. In Rwanda, state structures have a reputation of being less corrupt than elsewhere in Africa, but lack of effective and independent civil society monitoring means that local implementation of policies can be coercive and abusive. In Burundi, freedom of expression is less of an issue, but corruption and abuse of office are not unknown. Experience suggests that a combination of approaches is necessary, though modalities of support must be consistent and transparent. Support to local administrative structures would have the benefit of improving monitoring of the administration's activities, assuming that 'gate-keepers' at the national and provincial levels can be bypassed.

### ***Support to civil society platforms and common advocacy approaches***

Civil society organizations (CSOs) can play a variety of important roles in the design and successful implementation of any major land-related interventions, particularly in terms of monitoring and evaluation. The form and the political positioning of CSOs are often linked to the evolution of the conflict and will change as a country exits from the emergency phase and moves towards greater stability. Often, CSOs will find themselves in an increasingly weak position relative to government as the state builds capacity. As they shift from an implementation orientation towards greater emphasis on advocacy, they are likely to require political support from donors, in addition to financial support.<sup>11</sup>

CSOs are generally gaining better access to policy formulation processes, and in countries such as Mozambique, Kenya and Rwanda, alliances of CSOs have influenced government policies through agreeing on a common position on strategic issues. However, CSO influence has typically diminished once policies and laws are finalized and implementation begins. In some cases, direct budgetary support to governments has reduced support to NGOs; in

others, the greater technical capacity of international consulting firms has garnered them the lion's share of donor funding, with local CSOs as 'partners' playing a limited role.

The funding cycles and internal policy realignments of donors are ill-suited to the long-term nature of land tenure activities, and CSOs can often find themselves losing support at crucial moments. For this reason, 'road maps' for land interventions represent best practice. Such road maps should be negotiated by all stakeholders as the first stage of land reform activities, and should map out roles and responsibilities of all stakeholders over different phases of activity, including implementation of policies and laws (Lumumba et al, 2007). Humanitarian actors can play important roles in the early stages of network development, and can ensure that networks can directly or indirectly access areas affected by conflict or state repression.

### ***The rights of women and specific vulnerable groups***

The example of Burundi demonstrates what we know already – women face far more obstacles to claiming their land rights than men. Female-households tend to come under pressure to give land to relatives or neighbours. Women who began to cohabit with men in the refugee camps often find a first wife awaiting them upon return to Burundi, and may then be denied access to land.

Awareness of gender inequalities and issues specific to other vulnerable groups should be evident in every activity, post-conflict or otherwise, and ample handbooks and analysis tools exist to guide policy-makers and practitioners. However, in reality, post-conflict interventions often exhibit only a minimal degree of gender awareness. Humanitarian agencies are often left to assist those who have fallen through the gaps and thus have the responsibility to collate data on those they work with, and use this in an advocacy context.

In Rwanda, a directive on provisional land management was issued acknowledging that wives and children are entitled to manage family land in the absence of the male head of household until the return of the titular owner. While orphaned children are minors, their parents' property can be managed by their guardians (Lastarria-Cornhiel, 2005). However, even in a country that has demonstrated its political will for reforming gender relations, the technical issues involved have proved formidable. The 2005 land law has at best vague gender objectives, and provisions outlawing the subdivision of parcels of one hectare or smaller are likely to result in women being denied equal inheritance rights.

Efforts to register women's land rights in the pilot land registration exercise include registering polygamous family land under the names of wives, with the husband registered as having an interest in the land. Time will tell whether this will result in increased control over land by women, or whether customary norms will prove more important in the long run. Whilst in many countries political will remains the main barrier to gender-sensitive policies,

the Rwandan experience suggests that, due to the complexity of gender issues, technical issues are also a barrier, particularly in polygamous contexts.

### ***Development of land registration systems***

The range of options for the registration of land rights is wide, and any discussion in a chapter such as this is bound to be superficial. In lieu of an attempt to summarize so many diverse models and experiences, a single question will be offered in order to stimulate debate: to what extent are pilot programmes being designed to truly *test* methodologies? If the main purpose is to evaluate and improve technical approaches, monitoring and evaluation mechanisms will be mainstreamed throughout the project cycle, which may last several years. After all, the real impacts of a registration will only be seen months or years after the completion of the exercise, particularly through land transactions. This issue must also be linked to the legal basis – or lack of it – to the land claims registered during the pilot phase. In parts of Asia, preliminary pilot projects have prompted changes to laws or regulations, which then support the later stages of the ongoing pilot programme (Burns, 2006). However, in some cases, pilot programmes seem designed more to prove or to demonstrate a preconceived methodology (with some leeway for adaptation to local contexts) than to comprehensively assess, test and change the systems. A desire to exert influence at the national level, and to gain increased credibility at the global level, may outweigh the desire to fully understand the pros and cons of new approaches. Evidence of this can include a lack of formal mechanisms to provide for external monitoring and, just as importantly, to address external criticism in a transparent and accountable way. The Rwanda pilot programme has an open-door policy in terms of field visits, but lacks these formal mechanisms, and there appears to be considerable political pressure to finalize the pilot and implement national roll-out as soon as possible.

### ***Support to customary and/or local dispute resolution mechanisms***

Customary or local-level systems exist almost everywhere across the globe, and often represent the only option available for local people during times of war, when the state is absent or hostile.

Many institutions have supported local dispute resolution institutions in Burundi, and efforts are underway to strengthen local systems in Rwanda as well. However, support must go beyond training workshops and local-level dissemination of laws. As seen in Cambodia and elsewhere, local dispute resolution systems are rarely provided with the financial, technical or political support necessary even though they represent one of the most challenging elements of any land-related or rule of law programme (GTZ, 2005). There is a risk that a situation of ‘double standards’ will emerge, with the state being content as long as the formal courts are relieved of some of their burden of

cases. Local systems may then be ignored, with the poor left to make do with poorly functioning or corrupt systems staffed by overstretched and under-trained volunteers. The role of local administrators is also critical – their support is necessary if the decisions of local dispute resolution systems are to be respected, but if they become directly implicated as mediators, the independence of the system from the state or from party politics may be compromised. Systematic monitoring and evaluation of local systems is challenging and rarely conducted, but should be a core part of this work.

However, such support can be politically sensitive, as the case of the *Bashingantahe* in Burundi has shown. This is not the only example. In transitional zones of Sudan controlled by the (Northern-based) National Congress Party (NCP), land administration powers usually wielded by local community leaders are being given by the NCP to local political appointees, creating parallel structures (interview with head of Burundi's National Commission for Land and Property, December 2007; and interview with local land expert based in S. Kordofan, December 2008; interviews conducted in Kigali). Decisions over international engagement with controversial local bodies need not be all or nothing: in Sri Lanka, the NRC does not officially recognize quasi-judicial bodies due to their links to the warring parties, but plans to monitor them (Ingunn and Foley, 2005). Such monitoring, which should be adopted by other humanitarian actors, could provide the basis for international 'best practice'.

### ***Assistance to restitution or compensation programmes***

Most post-conflict states suffer from a lack of up-to-date information about land use at the local level. In such cases, donors and international agencies may provide assistance to governments in identifying land for resettlement. Ideally, these will be linked to land distribution systems and regularly updated. The case of Burundi provides a warning: a UNHCR-sponsored inventory of land in the state's private domain, intended to inform the distribution of land to returnees and IDPs, has been used by powerful individuals to identify and acquire parcels through dubious means. Such an inventory should ideally be used not as a stand-alone intervention, but combined with a mechanism to systematically monitor and coordinate allocation of state-owned land, resulting in a live, regularly updated, database. In addition, any land survey should acknowledge and document land tenure disputes involving the state. Throughout Burundi, as elsewhere in Africa, land that the state claims as its own is also claimed by local communities, by reference to customary tenure systems. Studies of 'vacant land' should involve the direct participation of local communities to ascertain local land claims and the past and present usage of land parcels claimed by the state.

In many parts of the world, questions arise where displaced persons originating from rural areas governed under custom, choose not to return. In Burundi, some IDPs who fled to the capital city for security reasons have been

refused the right to remain there after the ceasefire, as city-centre property is so valuable. In general, if restitution is provided, there is no guarantee that IDPs will be able to sell or rent their property, particularly where their properties are remote and land is relatively abundant. Where IDPs reside in camps, host communities are often keen to see the camps dismantled, making the status quo untenable. Government support is important, as market-based strategies cannot be expected to provide solutions in such environments.

The Pinheiro Principles (see chapter 10, this volume) are clear in privileging restitution above compensation (UN Economic and Social Council, 2004). This is one of the positions that has caused some debate over the extent to which the principles are realizable in practice. In some circumstances, particularly when displaced people do not want to return to their original homes, things may become complicated. Whereas some displaced people may be able to sell their properties and buy others, this may not be possible in some cases due to insecurity and different conceptions of 'land rights'. In many parts of Africa, for example, customary inhabitants of land under indigenous land tenure regimes may not view the state's land tenure system as legitimate, and may for example object to those displaced from such land being given payment for such a sale. Where the state's power is weak and custom remains strong, the state may thus be unable to enforce the right to restitution of property.

The handbook on implementation of the Pinheiro Principles advises that cash compensation is to be *avoided* in countries without a functioning land or housing market or secure saving banks, and recommends that the state provide alternative land and housing instead. This is certainly feasible. However, particularly where land access is intimately linked to livelihoods strategies such as grazing or fishing rights, characterized by seasonal and annual fluctuations and complex reciprocal arrangements with multiple communities, identifying alternative areas and negotiating with local communities may be challenging. Whilst maintaining a rights-based approach, it may be necessary to avoid a legalistic stance in such situations and proceed from a livelihoods focus. Solutions are likely to rely heavily on local-level reconciliation efforts. While principles must be universal, the ways in which they are implemented must be based on local realities and much remains to be learnt about implementation of the Pinheiro Principles in the more natural resource-dependent parts of the world.

### ***Addressing situations of protracted displacement***

Communities that have endured long-term displacement can be found in both Rwanda and Burundi, but their treatment by the government and international NGOs differs. In Rwanda, IDPs have been written out of existence, whereas in Burundi, a very broad definition of vulnerable people was adopted in the Arusha Accords, which includes not just IDPs in camps but also people 'dispersed' across the country, living with relatives or in towns.

The question of protracted IDP situations has been historically overlooked, but more attention is now being paid to the issue. The much-discussed disconnect or gap between relief and development interventions remains an issue. In Rwanda, due more to political and financial pressures than principles or norms, there was little transition within the UN from an emergency stance to a development agenda in which IDPs simply do not exist. In Burundi, the question of local integration is of utmost importance. Many IDPs have established homes and livelihoods in camps and are loath to leave.

It is estimated that between half and three-quarters of all conflict-induced IDPs worldwide are living in situations of protracted displacement (Brookings Institution/University of Berne, 2007a). However, it is difficult to gain an accurate picture of the situation, as precise data on the number and the living conditions of IDPs are generally lacking and can be controversial. Even countries that have historically been free from large-scale armed conflict, such as Kenya, have failed to address the needs of IDPs.

UNHCR assists IDPs in some countries but not others. Categorizing households as IDPs does not confer a legal status upon them; primary responsibility for their welfare remains with their government, and the responsibilities of UNHCR towards IDPs remain vague. Humanitarian agencies, which may continue to target IDPs even if they are not recognized as such by governments or multilateral bodies, have a responsibility to provide data on living conditions and property issues for advocacy purposes.

### ***Addressing the protection needs of asylum-seekers***

The definition of 'displaced persons' in the Guiding Principles on internal displacement includes, in addition to IDPs, those who flee across national boundaries but who are not accorded refugee status – a category of people who often fall through the net of UN agency support and are particularly vulnerable to being forcibly repatriated. The Pinheiro Principles have clearly inspired elements of the Great Lakes Stability Pact, which includes provisions for the creation of a regional mechanism for monitoring the protection of IDPs and refugees (IRRI/IDMC/NRC, 2007). However, even as the statements were being developed, tens of thousands of people of Rwandan and Burundian origin were being robbed of their possessions and violently evicted from western Tanzania (Human Rights Watch, 2007). Time will tell whether the political will to put the protocols into practice exists at the national level or within the UN system. At present, those who are refused refugee status by host governments are extremely vulnerable to human rights abuses and are barely 'on the radar' for international agencies.

### **Conclusions**

The case studies demonstrate the continuing difficulties involved in multilateral post-conflict restitution issues. While awareness of the importance of post-

conflict land issues has greatly increased in the decade between the Rwanda case study and the Burundian example, this has not necessarily translated into changes on the ground. For example, despite a progressive peace agreement in Burundi, and the establishment in February 2003 of a commission dedicated to resolving restitutions issues, those trying to address return and restitution on the ground in Burundi have only recently started to receive substantial systematic, coordinated support. There was a gap of almost a year between the collapse of the CNRS and the establishment of the CNTB as a functioning organization. In addition, a UN Ad-Hoc Commission on Repatriation and Return was established much too late. Having invested in support for the development of new land laws and policies, donors rarely devote adequate resources to ensure systematic monitoring of the successes and failures of local-level implementation. This is one of the reasons for the caution in identifying 'best practices' in this chapter.

Often, international observers pay inadequate attention to processes by which guidelines and regulations are put into practice. As noted by Manji (2006: 123):

problems of implementation are attended to only in so far as observers express fears about the workability of proposed bills... it is widely assumed that where difficulties exist or can be foreseen, additional funding and enhanced training of those responsible for implementation will resolve them... the process of implementation itself has remained neglected and little theorised.

Local outcomes are largely a result of local power relations and are contingent, not just on the technical capacities of government, but the wider governance environment and the intentions of local administrators and powerbrokers. In Rwanda, the United States Agency for International Development (USAID) and DFID are allocating resources to developing subsidiary land-related legislation but 'land-sharing' (uncompensated expropriation) continues, undermining the role of legislation, such as the expropriation law. There is a risk that field-level monitoring of implementation is still lacking and IDPs have been written out of history. In Burundi, local administrators have tried to develop their own systems for reducing or adjudicating disputes, but many are wary of intervening. Time will tell whether ad hoc mediation at local level, including so-called 'land-sharing', provides a sustainable response. Observers have already noted that weaker parties in disputes – particularly widows – are liable to lose access to land when disputes arise (personal communication with international observer, January 2008). Once more information is available, comparison with Rwanda will be useful. It is possible that 'land sharing' masks injustices, or provides only a temporary solution, with claims reappearing in future. The portrayal by authorities of so-called 'land-sharing' as a 'local', 'voluntary' or 'participatory' phenomenon may have blinded some to the inequalities it can involve. As noted by academics such as Pauline Peters (2004: 269):



a currently influential approach to 'the land question' in Africa, which privileges flexibility, negotiability and indeterminacy in analyses of social relationships over land, tends to ignore the micro- and macro-level situations and processes that make up power relations between parties in competition for land.

According to Peters (2004: 269): 'More emphasis needs to be placed by researchers on who benefits and who loses from instances of "negotiability" in access to land'.

In recent years most analysts have come to agree that post-conflict land activities must build upon local norms and customary systems. However, given the wide variations at the local level, there is a risk that, in the face of great complexity, the under-funded institutions working on land issues will for all intents and purposes abandon all efforts to achieve universal standards. This would be ironic, given the great investments in the development of principles and norms in recent years. There is clearly an inherent tension between the very real need to insist on rights-based approaches, on the one hand, and on the other reaching locally acceptable, realistic results on the ground.

The Pinheiro Principles, along with a growing body of field experience, provide practitioners with an increasingly solid foundation for land-related work in post-conflict contexts. The principles, and the international laws from which they are derived, are intended to be universal. However, each situation will present different challenges and solutions have to be tailored accordingly.<sup>12</sup> In many parts of the world, for a variety of geographic, economic, socio-cultural and political reasons (not least the ill-fitting governance apparatus inherited from colonial powers), implementation of laws and rules involves significant local-level (re)interpretation and compromise. In some cases, the nature of land-markets differs from the neo-liberal model, and restitution and compensation efforts may take on unexpected forms. In particular, societies in which customary law predominates, and local-level customary authorities enjoy significant autonomy, may have to negotiate different kinds of solutions. Principles of inclusivity should ensure that all voices are heard and that local solutions are not incompatible with international human rights standards. Lessons can and should be learnt from past experience. In particular, mandates and budgets for UN agencies and other international organizations involved in post-conflict activities must reflect the increasingly obvious fact that comprehensively addressing land issues in return and restitution processes can contribute to long-term peace.

However, programmes dealing with post-conflict restitution and other land issues cannot afford to work according to narrow, technical viewpoints and mandates. The subjective, complex and hazardous questions of reconciliation, coercion and political negotiation make 'blueprint' approaches impossible to implement. Especially in countries that have had little international exposure prior to the humanitarian crisis, those working on post-conflict reconstruction can find themselves suffering from a blindness to history – amongst the

shattered masonry and institutional wreckage they imagine a *tabula rasa*. The temptation is then to assume that a pre-packaged plan for return, reintegration and resettlement can be easily implemented. Instead, experience shows that an awareness of historic and political dimensions is vital.

## Notes

1. These traditional gacaca are not to be confused with the government-initiated gacaca established to try genocide suspects.
2. Although there is a popular belief that there was a set of written principles to guide the land-sharing process, key government institutions are unable to provide copies, and it seems that they may never have existed in the first place (interviews, Kigali, August 2005).
3. In a sample of some 500 imidugudu residents in late 1999, only 8 per cent of those who had been expropriated for imidugudu received something in exchange (Human Rights Watch, 2001).
4. Rwandan officials have at times acknowledged in small public meetings that the implementation of agricultural policies have been 'unpopular' (confidential interview with Ministry of Agriculture official, Kigali, September 2007).
5. Bruce (2007) notes that the international community failed to provide guidance on land issues during the Arusha peace agreement negotiations, and that a focus on emergency shelter blinded international agencies to the wider land tenure issues involved in the 'villagization' policy.
6. Training and scholarship opportunities have in the past been monopolized by a clique (composed mostly of Tutsi) associated with the inner circles of power.
7. Under law n°1/18 of 04 May 2006, the CNTB was given several responsibilities, from providing technical and material assistance to returnees and IDPs, to updating the existing inventory of state land and reclaiming illegally occupied land.
8. These include for example the Catholic Peace and Justice Commissions that have been installed across most of the country, the local peace commissions created by the Agency for Cooperation and Research in Development (ACORD) and the Ministry of Peace and Reconciliation under the Cross (MiPAREC), and the Councils of Leaders put in place by Search for Common Ground.
9. The UN Peacebuilding Commission has since developed the Strategic Framework for Peacebuilding in Burundi, which identifies land issues as a key challenge to peace. Donors are supporting the National Commission for Land and Property and further development of the draft land law.
10. External pressure on the parties to sign an agreement increased during the build-up to the US Presidential elections, with the US seeking a pre-election peace deal. According to some analysts, excitement about the peace deal led people to sign quickly without due attention to the details (see Prunier, 2005)
11. The situation in Rwanda illustrates this point. Rural NGOs have been accused of harbouring and promoting 'genocide ideology' for defending

rights to private property and for constructing local-level food security granaries. Donors have been inconsistent in defending civil society organizations from persecution (personal observations, Rwanda, 2005–2007).

12. Many of the examples cited in the Handbook (UN-FAO et al 2007) on implementing the Pinheiro Principles are taken from Eastern Europe. Without underestimating the constraints in these countries, in general these are societies where legal and administrative measures can rapidly be effected at the local level, and where financial and market-based solutions are generally appropriate. In addition, most discussions of housing land and property rights have been characterized by case studies of countries where urban or agricultural livelihoods predominate. More analysis is needed of experiences from those parts of the world where grazing, fishing, hunting or other complex kinds of rights are to be found.

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## CHAPTER 5

# Leader of the pack: Who will take the lead on post-conflict HLP issues?

*Scott Leckie*

*HLP rights issues are invariably affected by conflict and in the various steps to build post-conflict peace. As ubiquitous as they may be as issues of war, however, HLP rights still do not enjoy the benefits of a lead agency within the UN system that is willing and able to take coordinating responsibilities for securing these rights within broader peace-building objectives. While considerable progress has been made in terms of programming and policy, peace-building exercises on HLP issues tend to be ad hoc, incomplete and all too often ineffectual in achieving their avowed aims. This chapter looks at these issues and proposes both an agency that might be most well-suited within the UN system to be the lead agency for HLP rights and the exploration of the basic HLP policy infrastructure that should be in place within all post-conflict societies.*

### **Introduction**

Much has been written in recent years about the central importance of HLP rights issues in conflict and post-conflict peace-building (Fitzpatrick, 2002; USAID, 2004; FAO, 2005; Philipott, 2005; UN-Habitat, 1999, 2008; Williams, 2006; Leckie, 2003, 2005, 2007, 2009). In addition, a series of HLP gatherings have been held since 2004 in Switzerland, the US, Thailand, the UK and elsewhere. Most important of all, HLP issues have been addressed in a steadily growing number of UN and other field operations, including Bosnia, Kosovo, Timor-Leste, Iraq, Sudan, Burundi and DRC. With this expanding coverage has come an ever-deeper grasp of the issues at play, the causes of HLP crises, their consequences and, increasingly, their cure. HLP issues are present to one degree or another in all of the conflicts that have taken place in recent memory. At long last they are starting to get the attention they deserve.

For many of those working on a regular basis within the HLP sector, the types of HLP issues that are likely to arise within conflict or post-conflict (and, indeed, post-disaster) contexts are rarely surprising. At the same time, however, while our understanding of the issues has surely evolved, it is not particularly clear whether the international community is all that much closer to assuring better HLP performance following the conclusion of



today's ongoing conflicts or in countries that will eventually transition from authoritarian regimes to more democratic forms of governance. We would all naturally hope that the HLP rights that are meant to be enjoyed by everyone, in particular those forced to flee their homes and lands because of conflict, will be taken increasingly seriously in coming years, but whether this will happen in practice remains very much an open question. Obviously, national actors are key in determining how seriously HLP rights will be taken. Nonetheless, the role of the international community in influencing these decisions should not be underestimated.

Where, then, do we turn at the international level to improve the HLP prospects of the tens of millions of people affected by conflict, now that many of the conceptual and normative underpinnings of HLP questions are increasingly clear? This chapter argues that the HLP community needs to begin focusing attention on three inter-related themes: a renewed discussion on ideal HLP policy leading to a Humanitarian HLP Platform; further discussion on the institutional arrangements that would best serve countries emerging from conflict; and a clearer view of the lead agency responsible for addressing HLP concerns.

### **Towards a Humanitarian HLP Platform**

Although much has been achieved, and a degree of consensus is clearly apparent, it is important to explore how to further refine the legal and policy frameworks that guide HLP activities in the field. The humanitarian community has come far, but not yet far enough. Many fundamental questions remain open, and a vigorous discussion is still required to come to a broad mutual understanding and eventual agreement among the multitude of actors that make up the international humanitarian community as to what constitutes essential HLP policy in post-conflict countries and countries in transition. Finding this common ground and bringing donor nations on board will assist greatly in creating better conditions for effectively addressing HLP rights.

### ***Remedy and restore, reform and redistribute... or both?***

One particularly salient element in any emerging HLP platform concerns the issue of restitution, and where and to which degree restitution measures have a place within the country concerned. Restitution rights are considered increasingly pertinent not only as a means of discouraging territorial conquest, ethnic cleansing and demographic manipulation, but also simply as the legal means of ensuring that people maintaining HLP rights are not subjected to their unlawful or arbitrary removal by others intent on confiscating their homes and lands. Beyond this, restitution rights fortify the very notion of HLP rights and tie them to physical spaces such as the houses, dwellings, apartments and land that people themselves deem to be their original homes, while at the same time formally according HLP rights to individuals, families

and larger communities that may have previously not necessarily been treated as HLP rights-holders.

However, some within the HLP sector seek to present the view that restitution, and restitution alone, should form not only a central element of any post-conflict HLP policy, but that it should in fact be the *only* issue within such a plan. This position is perhaps based on a mistaken interpretation of the purpose and intent of the UN's Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons. Restitution rights are, of course, of vital importance to millions of refugees and IDPs throughout the world, particularly those who are not able to repossess and reclaim their original homes and lands, and to argue the contrary is clearly without merit. The remarkable, albeit imperfect, strides in the restitution experiment in the past two decades have been a human rights victory of extraordinary significance, and one that cannot be downplayed (Leckie, 2007, 2003. See Pinheiro, 2005). At the same time, of course, restitution is only one issue among dozens of HLP issues that arise in conflict countries, and thus obviously whatever HLP endeavours are undertaken must never be based solely on initiatives to ensure restitution rights. The HLP canvas is far larger than that; what is needed are creative ways to blend restitution elements into the tapestry of an HLP platform, rather than angry retorts that restitution is somehow suspect.

It is surely true that, in a country such as Afghanistan or Sudan, restitution measures alone would be woefully inadequate as a means of securing HLP justice or broader HLP rights to all of those in need, and in many contexts might – in their standard form – not be appropriate. Far larger and more complex issues are often at play than simply the desire to ensure that people are entitled to return to their places of habitual residence. As we all know, a policy of that nature in overcrowded Rwanda, impoverished south Sudan or troubled Afghanistan will achieve little, and in fact detract from issues that affect more people, result in more human suffering and constitute greater threats to long-term peace. When political change finally comes to Burma, for instance, as it surely will, restitution must invariably be part of the broader HLP programme, both in terms of domestic measures and those guided and supported by the international community, but it will only ever be *part* of the broader HLP equation.

At the same time, restitution's critics, particularly those from progressive circles, need to reconsider the fundamental nature of restitution and how, in legal, conceptual and practical terms, such rights strengthen the hand of all those who believe in just peace and sustainable economies. Where restitution critics are very right, however, is in recognizing that restitution can be a process grounded in cynicism, supportive of economic elites at the expense of middle- and lower-income groups, and a distraction from larger, more ubiquitous HLP concerns. Finding a balance between these and other factors remains a central challenge.

In essence, what is needed is an integral approach to HLP rights in which all of the necessary dimensions are fully embraced and fully addressed. There

is a need for a platform that focuses not only on return or shelter. Neither can such measures aim solely to turn back the clock through restorative justice, nor seek to fundamentally reform what may be perceived to be archaic ways of allocating land and homes. The tactics and strategies of the *shock doctrinaires* so graphically outlined in Naomi Klein's recent book *The Shock Doctrine* all too often win the day, and unless the humanitarian community embraces an integral view of HLP issues, which includes redistribution and steps towards the universal enjoyment of the full spectrum of HLP rights, solutions will remain partial, unsatisfactory and at times detrimental (Klein, 2007).

In developing a Humanitarian HLP Platform it is important to take full cognizance of both the victories, failures and many unexpected outcomes of previous HLP efforts and to be aware of how best to obfuscate the efforts of the promoters of neo-liberal property rights who see private property rights as the next giant leap for societies emerging from conflict. It is therefore essential to combine the forces of HLP practitioners *of all persuasions* in a manner hitherto untried. The vast majority of HLP field workers in post-conflict countries, for instance, have never set foot in a slum nor have they necessarily worked on the types of tenure, rights and upgrading issues that are part and parcel of housing rights work. The same applies in reverse: very few of those well versed in the intricacies of security of tenure provision to slum dwellers, community mobilization and measures to prevent forced eviction have ever worked in post-conflict or transitional settings. Far too often, the still rather small cadre of HLP practitioners and consultants jump from country to country, conflict to conflict, sometimes learning, often forgetting, and frequently applying their own personal blend of HLP sauce to the very different challenges that face the humanitarian community. In some cases this works, but in others it can just as easily fail. The weakest among us, especially the agencies, follow ideology, desires for conquest, hegemony and profit in determining the policies they choose to pursue, while the worst among us not only take the path of enrichment without consequence, but happily do the dirty work that no UN agency or government would ever publicly pursue.

It is clearly crucial to move beyond the ad hoc, inconsistent and unprincipled approaches to HLP rights that have characterized most post-conflict operations. So too must we move beyond the traditional shelter approaches to broader HLP concerns as if tarps and tents were a sufficient response to the deep structural HLP challenges that emerge in all post-conflict settings. The humanitarian community needs to acknowledge and act upon the fact that in no two post-conflict peace operations during the past two decades have consistent policies on these complex HLP concerns been put in place. One peace operation consciously chooses to downplay HLP rights issues, while another attempts (or is forced) to tackle some of the challenges head on. As we know, most post-conflict approaches to these issues are at best piecemeal, earnestly embracing some concerns and overlooking others. Arguably, no post-conflict operation implemented by the international community has tackled HLP rights issues in an integral, comprehensive manner.

No single measure alone is going to instantly change the approaches and structures employed by the international community in achieving greater impacts upon the HLP sector. But one broad measure that may assist in generating the basis of consistent, principled and more effectual action is the development of a UN-wide policy – an HLP Platform – to guide all international involvement (UN, other inter-governmental agencies, states, NGOs and others) in future small-, medium- and large-scale operations in conflict, post-conflict and related settings (Leckie, 2005). This would aim to create administrative and institutional structures that ensured that HLP rights were treated equitably in all countries. One concrete proposal is the idea of ensuring that HLP rights and competencies are enshrined within the organizational and administrative structures of future peace operations, and in particular that a Housing, Land and Property Rights Directorate (HLPRD) forms a central element in all future peace and related operations. An HLPRD would effectively constitute the functional implementation arm of the agreed terms of the Humanitarian HLP Platform. Wherever they were eventually established, HLPRDs would rarely if ever have precisely the same shape or size, but would *always* have the competencies required to address a standard list of the primary HLP challenges, and at the same time be pliable enough and sufficiently resourced to carry out or facilitate all major legal, policy, administrative and governance functions associated with a fully equitable rights-based HLP system. The HLPRD would not necessarily be a UN institution, but would aim to win the support of all agencies working within the HLP sector, evolving into an institutional framework governed exclusively by national institutions in the country concerned.

A fully functional HLPRD may not invariably bring residential justice to all countries where it is in place, but at the very least it could assist in providing a measure of political certainty with regard to housing, land and property rights issues and put post-conflict societies in a far better position to secure HLP rights for all. It would assist in providing greater political stability, enhance the prospects for economic development and expedite the re-establishment of national capacities to restore peace, justice, governance and rule of law. Wherever constituted, the HLPRD should be headed by an executive office comprising an executive director and deputy director and legal and support staff. Each of the seven departments within the HLPRD (see below) should be headed by a department coordinator, who in turn would be responsible for determining precise staffing needs in each area of competence. Ideally, staffing should comprise nationals of the country concerned, with technical assistance and advice provided by the UN and international experts. The financial requirements of the HLPRD should be included within the overall budget of the peace or other operation concerned, and listed as a separate budget line item. Specific funding requests should be developed by the HLPRD to supplement ordinary budgetary allocations. Financing HLP activities has proven difficult in the past and new methods need to be found to adequately resource these new bodies. Adequate space for the HLPRD central office should

be identified in the capital city. Once secured, additional office space should be sought in other major population centres. Additional offices may be required in other countries where refugees are resident.

In terms of functional arrangements, the HLPRD could comprise seven departments: Policy, Legal, Housing, Land, Construction, Claims and Records. Each of these would have the functions discussed below.

The *Policy Department* would carry out housing, land and property rights policy initiatives and develop or assist local authorities with the development of HLP policies consistent with international law. Convening all stakeholder *National Housing, Land and Property Rights Consultations* would be a key function of the Policy Department. These consultations should develop into a national discussion on the most effective means of addressing HLP rights issues within the institutional framework being put into place and the contours of a national legal and policy framework on housing, land and property rights matters. Following the national HLP consultations, a mutually agreed *Housing, Land and Property Rights Plan of Action* should be concluded by the Policy Department in partnership with the national authorities and international actors concerned.

The *Legal Department* within the HLPRD would be entrusted with developing a democratic, fair and equitable legal framework on HLP rights themes, fully consistent with international human rights and humanitarian laws and other relevant legal standards and norms. It would monitor the implementation of relevant law, identify laws in need of repeal or amendment, draft new legislation and undertake any other measures to develop a consistent legal framework. The Legal Department would encourage the national authorities in the countries concerned to adopt a *National HLP Rights Act* as a means of consolidating all relevant law affecting the enjoyment, in particular, of housing rights. Such an act would enable the development of a consolidated law governing all constituent guarantees comprised under the rights to housing, land and property ensured under international law, and could provide a clear basis for coordinating joint international and local efforts towards protecting HLP rights.

The *Housing Department* would coordinate additional activities in support of HLP rights, beginning initially with a nation-wide Housing, Land and Property Rights Assessment. At a minimum, the type of information that needs to be collected within such an assessment would include: housing stock status, emergency housing needs, land allocation and administration, housing records, availability of building materials and other related measures. The Housing Department would also be entrusted with identifying all abandoned housing and other public and private buildings that could be used for housing purposes, and allocating such premises, (generally on a temporary basis) to displaced and/or homeless persons and families; the provision of other forms of transitional/emergency housing or land for those in need, including secondary occupants of refugee and displaced person's property; protecting all persons against forced evictions and other forms of arbitrary and unlawful

displacement; identifying state land for use in constructing affordable social housing and for allocation to homeless and landless persons and families; administering and managing all public housing resources; monitoring housing affordability and intervening within the housing market to keep residential prices at reasonable levels; and developing housing finance systems accessible to the poor to enable them to construct adequate housing resources and to repair damaged homes.

The *Construction Department* would be responsible for repairing infrastructure and services, repairing damaged or destroyed homes, assisting the housing construction sector to function optimally and developing affordable building materials for lower-income groups. While the actual building of new homes may be opposed by those favouring more minimalist approaches to peace-building, it is vital to remember that the physical reconstruction and expansion of habitable housing stock in a peace conflict environment must necessarily form part of a broader housing rights policy framework. The Construction Department would also maintain responsibility for securing appropriate building materials for the repair and construction of residential dwellings.

The *Land Department* would maintain institutional competence on all matters relating to residential, agricultural and commercial land, focusing in particular on issues of land administration, dispute resolution and broader land policy, including possible measures of land reform and land demarcation. The Land Department would be mandated to address all HLP issues that were not in a structural way addressed by other departments within the HLPRD, in particular the Policy and Housing Departments respectively. Issues relating to customary land allocation and control in areas governed by custom would also be overseen by the Land Department.

The *Claims Department* would be entrusted with collecting and processing HLP restitution claims, resolving HLP disputes linked to restitution claims, the enforcement of successful claims in coordination with other bodies and backstopping traditional forms of mediation and dispute resolution when these proved inequitable or otherwise unable to resolve longstanding disputes. The Claims Department would also be responsible for helping manage the work of any claims tribunal or commission that may require establishment to ensure the existence of an impartial and independent adjudicative body to issue binding decisions on restitution claims that could not be resolved through mediation and other means.

The *Records Department* would be entrusted with re-establishing (or establishing) the housing, land and property registration system, updating the national land cadastre, carrying out GIS (geographic information system) surveys of the country or territory and all other matters concerning the administration of the housing, land and property arrangements. This department should also ensure that all public housing resources are properly administered and managed. Measures should be taken to ensure that any suggested privatization of such resources is made solely by and for the benefit of the local population.

Some will surely argue that a seven-armed monster of an institution with such an expansive and extensive degree of activities will never be accepted by the international community. Likely objections by local political elites and officials may be seen by others as reason enough for not pursuing such an integral approach to HLP rights. Others will simply assert that such an institutional arrangement is utterly naive, given all of the complexities and intricacies of HLP issues in countries the world over. While still others will maintain the view that institutional and policy prescriptions such as these serve little purpose, and that history has shown the value of ad hoc, personality-driven approaches to post-conflict work in the field.

And yet whilst doubts and outright opposition to such an endeavour can be expected and in part understood, can we really afford not to at least attempt to improve international involvement concerning HLP matters? It may appear to some that the proposed HLPRD institutional framework resembles a sort of gargantuan super-structure that few post-conflict peace operations could realistically establish. In actual fact, however, what is proposed here is not an unwieldy, prohibitively expensive bureaucracy, but rather a basic framework – which will take different forms wherever it is established – that is designed to ensure that all relevant HLP rights issues are for once taken seriously and applied with the same degree of consistency and common commitment as other measures that have come to be central functions in all peace operations. Some – such as the HPG of ODI (the sponsors of this volume) have spoken of the ‘uncharted territory’ of the links between land, conflict and humanitarian action, while I have addressed what I see as the ‘delicate embrace’ of HLP rights by the peace community. In a way, both of these descriptions are correct; indeed, we still have a long distance to travel before we fully grasp all the implications of effective HLP programming. At the same time, significant strides have been made and many agencies that had traditionally ignored HLP concerns are beginning to accept their central importance in peacekeeping and peace-building. Where we need to turn next, then, is to have an in-depth, realistic and concrete discussion about how to expand knowledge of HLP issues, how to consistently incorporate these issues within peace-building structures and, above all, consider how best in institutional terms to arrange an enhanced approach to HLP questions in post-conflict settings.

### **Who will lead the way?**

Opponents of international involvement within the HLP sector are becoming less vocal, and the centrality and complexity of HLP issues is clearly being recognized. But the question of precisely what form such sustained involvement should take, and ultimately which institution or institutions should play the lead agency role in this regard, remain unanswered.

***Fire-fighters, architects or engineers?***

Any determination of the agency best qualified to lead on HLP matters depends firstly on the degree to which the international community wishes to engage on these issues. Are humanitarians expected to be fire-fighters, dousing the flames of HLP disputes and crises; architects responsible for designing the framework of an acceptable HLP system; or are we, in fact, best suited to be engineers entrusted with facilitating the creation of systems and institutions that will bring stability, security and residential justice to all with HLP worries? Coming to terms with questions such as these and discerning where majority support lies in this regard within the international humanitarian community will, of course, influence decisions on who the lead agency should be.

Although humanitarian involvement in HLP matters is relatively recent, the number of agencies that have been involved in one way or another in post-conflict HLP efforts is far larger than many realize. While this is not the place to examine the details or relative merits of this involvement, its scale is impressive. In terms of UN agencies, UN-Habitat, UNHCR, FAO, OCHA (Displacement and Protection Support Service – DPSS), UNDP (Bureau for Crisis Prevention and Recovery – BCPR), the Office of the High Commissioner for Human Rights (OHCHR), United Nations Office for Project Services (UNOPS), DPKO, WFP and others have all had direct involvement in the HLP sector in recent years. UN Transitional Authorities including the United Nations Mission in Kosovo (UNMIK) in Kosovo and the United Nations Transitional Administration in East Timor (UNTAET) in Timor-Leste were extensively involved with HLP themes, as was the Office of the High Representative in Bosnia. Specialized international bodies such as the Kosovo Property Agency, the Housing and Property Directorate and the Commission on Real Property Claims have been formed to adjudicate HLP disputes and claims. As a sign of its potential interest in these questions, the recently constituted UN Peacebuilding Commission has initiated HLP activities in Burundi. Non-UN inter-governmental agencies such as the International Federation of Red Cross and Red Crescent Societies (IFRC), International Committee of the Red Cross (ICRC), International Organization for Migration (IOM), the World Bank and others have also become increasingly engaged in HLP efforts. NGOs such as the NRC, Displacement Solutions, the International Rescue Committee and others have also increasingly worked on HLP issues in the field. Consulting firms such as Development Alternatives, Inc. (DAI), Associates in Rural Development, Inc. (ARD), Terra Institute and others have also been active on certain dimensions of the HLP equation.

Each of these and other agencies maintain permanent or ad hoc HLP competencies, combined with permanent or ad hoc involvement in post-conflict transitional programming. It is difficult at this juncture to determine which of these or perhaps other agencies might be best placed to take the lead role in this regard, but given their lead agency status with the Humanitarian Cluster System on HLP issues under both the Protection and Recovery



Sub-Clusters, UN-Habitat could be seen as a leading candidate to carry out these functions. The recent inclusion of UN-Habitat on the Inter-Agency Standing Committee (IASC) strengthens the case for such a proposal. Although a comparatively small UN agency, lacking the clout or stature of some of the larger and more influential actors, UN-Habitat has led the way in advancing HLP concerns within a growing number of UN peace operations (Iraq, Kosovo, Timor-Leste, Sudan, Crimea, DRC, etc.), and its mandate as the UN housing agency and UN city agency places it in perhaps a better position than many other agencies in this respect.

This does not mean that UN-Habitat should be the only agency involved; far from it. As the lead agency, it would be UN-Habitat's crucial role to coordinate the multi-armed efforts of all the agencies that are, and in most senses *should be*, engaged in the HLP sector in post-conflict settings. There is a place for all types of expertise and assistance, but what remains missing is the agency to design, establish, implement and coordinate a full HLP spectrum approach that ensures that all HLP rights issues are addressed, that a HLPRD is established in all relevant settings and that everyone dealing with HLP rights within a post-conflict society has somewhere to turn in the hopes of finding support and relief. In this way, HLP rights will finally get the attention they clearly deserve. UN-Habitat may well fail in such a role, but at least a structural effort will have been made to consciously fill the lacunae existing within the international community on HLP issues. Alternatively, UN-Habitat may succeed and bring global attention and support to HLP concerns to another level. Until an agency finally takes the lead, we will never know.

***Making a real difference, leaving a light footprint or simply leaving no footprint at all?***

Sustained, comprehensive and effective involvement by humanitarian agencies in the HLP sphere will come down to improving overall UN competence, capacity and political will to deal constructively with the severe problems that face millions of victims of war. When the UN has decided to engage in these matters, notable successes are occasionally identifiable, and these contributions by the UN are widely seen as at least partially responsible for the emergence of stronger and more effective peace operations that actually address day-to-day concerns affecting very often large numbers of people. When considering the areas of the world in 2009 where peace processes, peace agreements, peace implementation and humanitarian actions will be needed – Darfur, Iraq, Palestine, Burma, Zimbabwe, DRC and beyond – all of these conflicts have at their core severe disputes, conflicts and inequities within the broader housing, land and property rights domains. Failing to address these issues within the context of peace-building or political transition, as will eventually take place in repressive countries such as Burma or Zimbabwe, is truly no longer an option. Such failures will themselves only lead to plans and missions that bring results in some sectors, but that will be virtually assured

of neglecting HLP concerns, in turn bringing highly undesirable results, including even a return to violence.

Ultimately, involvement by the international humanitarian community must be designed such that it has a marked impact upon the HLP sector, which makes a real difference in the lives of the broadest cross-section of people. Leaving a 'light footprint' as the UN Mission in Afghanistan has sought, or leaving no footprint at all, as far too many UN and related missions have done when their impact is viewed through an HLP lens, is no longer good enough. Every conflict involves stresses within the HLP sector. These countries will also, without exception, have often severe imperfections within the HLP sector which are not necessarily caused by conflict, but that nevertheless deserve serious attention and assistance. If HLP issues are also *rights*, which indeed they are, there are no reasonable grounds on which to justify inaction or non-involvement in their improvement.

We need an approach by the international humanitarian community to HLP issues that once and for all views these rights in their entirety, as one holistic, inter-related and mutually inter-dependent system of rights that are meant to drive policies and laws that positively affect the residential life of dwellers everywhere. To date, HLP interventions have been far more haphazard than this and have *never* embraced the totality of these concerns in anything close to a comprehensive manner. Building an Humanitarian HLP Platform, agreeing on the institutional HLP steps that are required within countries emerging from conflict, and determining the agency best placed to lead these processes will put us in a far better position to build the necessary foundations within the global humanitarian community for a sustained, embracing and effective approach to the HLP challenges that are ubiquitous, but which have been sidelined for too long.

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PART III  
**Case studies**



## CHAPTER 6

# **International standards, improvisation and the role of international humanitarian organizations in the return of land in post-conflict Rwanda**

*John W. Bruce*

*Refugee return and land access in Rwanda has been an extraordinarily complex matter, with some refugees leaving just in time for others returning to take up their homes and lands. In Rwanda, as in Sudan, Burundi, South Africa and Mozambique, land issues were addressed in the peace negotiations to end the conflict. Tensions can emerge between international standards regarding the rights of refugees and displaced persons to return to their land and the compromises that needed to be struck and honoured to obtain (and maintain) peace. This chapter examines that tension and its implications, and assesses the response of international humanitarian organizations and NGOs involved in reconstruction. It seeks to draw from that experience some lessons that may be valuable in future refugee returns.*

### **Competition for land as a cause of the conflict**

Rwanda is the most densely populated country in Africa, with the lowest ratio between people and arable land. It has a population growth rate of 3.1 per cent, and population density has increased from 101 people per square kilometre in the early 1960s to 303 people per square kilometre today.<sup>1</sup> In the last 50 years, the population of Rwanda has almost quadrupled. As the population has grown, land has been subdivided among heirs, and in some cases sold. The average size of a family farm holding fell from 2 ha in 1960 to 1.2 ha in 1984, and to just 0.7 ha in the early 1990s. In 2001, almost 60 per cent of households had less than 0.5 ha to cultivate. The FAO's recommended minimum size of an economically viable cultivation plot in Rwanda is 0.9 ha. Land has historically been distributed unequally, and growing land markets may be increasing land accumulation. In 1984, it was estimated that 16 per cent of the population owned 43 per cent of the land, whilst the poorest 43 per cent of the population owned just 15 per cent. Estimates of landlessness range

from 10–20 per cent. While 47.5 per cent of the population was categorized as ‘poor’ in 1990, this had risen to 64.1 per cent by 2000 (Musahara and Huggins, 2005; Huggins, no date).

There is fundamental agreement among scholars that land scarcity and consequent poverty and desperation have played a role in persistent social and civil conflict in Rwanda. However, different authors see the connection between land and conflict in different ways.<sup>2</sup> Some emphasize roles played by population growth and absolute land scarcity (Andre and Platteau, 1998), ‘environmental scarcity’ (Percival and Homer-Dixon, 1995), social construction of ethnicity, elite capture of land and power, poor land governance and emerging class tensions due to inequality and poverty (Gasana, 2002). Past conflict and the potential for conflict over land in Rwanda in fact involve a convergence of these factors, and it is not the purpose of this chapter to try to assign relative weights to them. The government recognizes the role of competition for land both in its policy documents and in the priority it has given land as a policy issue, and few would dispute that effective management of competition for land will be critical to the maintenance of peace.<sup>3</sup>

The story of the civil conflict and the return of successive waves of refugees to Rwanda will only be very briefly summarized here. The Tutsi (14 per cent of the population) had ruled Rwanda at the advent of colonialism, dominating the Hutu majority. The Belgian colonialists gave preference to the Tutsi in matters of governance, exacerbating ethnic distinctions and tensions, but in the run-up to independence embraced majority rule, shifting power to the Hutu. Pogroms against the Tutsi began in 1959, and by the end of the 1980s an estimated 700,000 Tutsis, perhaps a third of the Tutsi population, were in neighbouring countries, primarily Burundi, Zaire, Tanzania and Uganda. Those who remained, both Hutu and Tutsi, moved onto the land the refugees had left behind. Extensive Tutsi royal pastures were converted to farming and occupied by predominantly Hutu cultivators.

The Hutu-dominated government from time to time invited exiled Tutsi populations to return. In 1966 the government issued legislation on the reintegration of refugees (Presidential Decree on the Reintegration of Refugees, No. 25/10, 26 February 1966), but this severely limited freedom of choice of residence and freedom of movement. It provided that in no circumstances could returnees reclaim the lands they had been using where these had been occupied by others or designated for some other purpose by the authorities. The government was determined to protect ethnic land gains; one president of the period compared Rwanda to a full glass that would only overflow again if refugees returned (Prunier, 1997; Semujanga, 2002). In 1990, the RPF, recruited from the Tutsi diaspora, launched an armed struggle against the government. More killings and displacements followed. The insurrection was waged primarily in the northern part of the country, and the government found it increasingly difficult to contend with the Rwandan Patriotic Army (RPA). Peace negotiations began in Tanzania.

### **The 1993 Arusha Peace Accords and their sequel**

In August 1993 the Arusha Accords were signed. The provisions of the Accords have had a decisive influence on land access for returnees. The Accords consist of a general agreement and six protocols. The Protocol on the Repatriation of Refugees and the Resettlement of Internally Displaced Persons in Article 1 affirms the right of return, with each person free to 'settle down in any place of their choice'. They only enjoy this freedom, however, to the extent that they do not 'encroach on the rights of other people' (Article 2). Article 3 states:

For purposes of settling returnees, the Rwanda Government shall make lands available, upon their identification by the 'Commission for Repatriation' so long as they are not currently occupied by individuals. The Commission shall be at liberty to explore and choose, without any restriction, resettlement sites throughout the national territory.

The Protocol further specifies, in Article 28, that housing schemes in settlement sites should be 'modelled on the "village" grouped type of settlement to encourage the establishment of development centres in the rural areas and break with traditional scattered housing'. The Protocol did not provide for how land would be given to the returnees for agriculture or cattle (Jones, 2003). A joint RPF/government team travelled throughout the country in the months following the signing of the Protocols, identifying potential settlement sites.

Most striking, however, is Article 4 of the Protocol, which states that each person has a right to reclaim his or her property upon his or her return, but then goes on to 'recommend' that, in order to promote social harmony and national reconciliation, all refugees who left the country more than 10 years ago 'should not reclaim their properties, which might have been occupied by other people'.<sup>4</sup> They were instead to be provided with land elsewhere. This was a major concession from the RPF. An RPF stalwart from that period explained: 'We had been told that "the glass was full". How could we come back? Rwanda is small, but it can accommodate us all if the land is better managed. We made this decision because we did not want to create new refugees. It would not have been intelligent'.

Jones (2003: 203) concludes:

The 'ten-year rule' was painfully negotiated primarily as a pragmatic (and political) solution for achieving peaceful return. Given the ethnic tensions that existed and the history of past and recent conflict, it seems highly likely that if complete restitution of properties had been allowed immediately, there would have been considerable social upheaval and further outbreaks of violence – particularly as there had been a concerted redistribution of properties.

The 10-year rule was and is often presented as 'a reconciliation measure', and is so described in a National Unity and Reconciliation Commission (NURC) survey on land, property and reconciliation from 2005 (NURC, 2005). This



provision did not, it should be noted, affect refugees who had left the country in the 10 years before the signing of the Protocol, nor those displaced internally; their right to reclaim their land was not affected by the Protocol.

Despite the concessions on land made by the RPF in the negotiations, Hutu extremists in government and the armed forces saw the Accords as a betrayal by their government. In April 1994, they responded to the peace accords and the prospect of Tutsi return by launching a rampage of killing by Hutu militia (*interahamwe*). Over 800,000 Tutsi and moderate Hutus throughout the country died in the ensuing communal violence. The genocide was brought to an end by the disintegration of the government and the national army and the occupation of Kigali in July 1994 by the RPA.

In the wake of the RPF victory, around 700,000 refugees returned to Rwanda, primarily Tutsi returning from Uganda, Burundi, Zaire and Tanzania. They are referred to in Rwanda as the 'old caseload', the 'old case returnees' or the '1959 refugees' (referring to the year when many of them fled the country). At the same time, between 2 million and 3 million Hutu fled Rwanda for Zaire and Tanzania, some fearing retribution for the genocide, others forced to flee with retreating militia and remnants of the former army.

### **The 'old caseload' returns**

The genocide and the collapse of the Hutu government and army led to a more rapid advance by the RPA than anticipated, and the RPF suddenly found itself the government. A minister in the first post-genocide government remembers:

The government was set up after the genocide. The NGOs and international organizations had a more powerful presence than our government. We just had guns to provide security. I belonged to the first government. We negotiated with the International Red Cross. We had no salaries, nothing. We needed beans and maize for six months to survive. We got major assistance, and it was really appreciated. But there were so many NGOs operating. We didn't know how many, we didn't know where they were or what they were doing, but we met and met and finally reached understandings.

Asked about the handling of land issues, he continued:

The international community did not seem to understand the land issue. The claims were social and political. The international community was preoccupied with the size of the return and how many would have to be accommodated. After the genocide, there was a total loss of focus on land. There had been plans for land to be identified beforehand, for the refugees and cattle to wait at the border, to be provided with goods and funds, their animals vaccinated. None of this happened.

Another minister in the first post-genocide government remembered: 'RPF when gaining territory said that it would gather returnees into camps, but after

1994 many people just went home'. The return was for all practical purposes uncontrolled. Refugees flowed into the country in the wake of the RPF as it occupied territory in its advance towards Kigali. International agencies had fled the country during the genocide and in its immediate aftermath. They returned within months, but there was a hiatus. And the government took time to get organized. A veteran RPF politician recounts the difficulty of the early days in government and of getting a handle on the resettlement: 'We had just arrived. There were only a few of us who were politicians. We were running here and there. The returnees cut down much of Gishwati Forest before we even knew about it'.

One consequence of the massive outflow of Hutu from the country after the genocide was that many returning Tutsi found that their lands, even if they had been occupied by Hutu for many years, were now available for reoccupation. Jones (2003) notes that there were some cases in which some Tutsi returnees simply took houses and land from Hutus, but that the majority of the returnees did not resort to violence and did not seek to occupy their old homes.<sup>5</sup> Tutsi refugees who had left the country after 1983 (10 years before the Accords) could reclaim their lands, as could those who had been internally displaced or had simply lost land.<sup>6</sup>

Under the Protocol on Repatriation, the government was to compensate those who could not reclaim their old land by 'putting land at their disposal and helping them to resettle'. The new RPF government was responsible for providing unoccupied lands as resettlement sites. In fact, there was little in the way of unoccupied land. Another veteran RPF official remembers:

Akagera Park was one-seventh of the country, too much compared to parks in other nations. So we reduced it. In other areas, we assumed that if land was free, people could recover it. If the land was taken by government or the church, it would need to be returned or compensation provided.

The Minister State for Lands described the process as follows (Hajabakiga, 2004: 8):

As they returned, some of the former 1959 refugees briefly occupied land and property that had been abandoned by the refugees in 1994. Other former refugees were granted public state land, and vacant land on which they could resettle and produce. They received to this effect: the Mutara Game Reserve, two thirds of the Akagera National Park, and the Gishwati Mountain Forest; as well as land belonging to certain state-owned projects that were partitioned and distributed to the 1959 refugees. Communal land, woody areas on fertile land, pastures, and areas near the shallow sections of marshlands were allocated to the 1959 refugees.

Some of these areas of spontaneous resettlement have required continuing government attention. For example, an estimated 8,000 displaced families who settled within Gishwati Forest in north-west Rwanda had to be expelled

later for environmental reasons and, after substantial delays, were resettled in Gitarama (UNHCR/Rwanda, 2000).

A UNHCR/Rwanda retrospective on the process describes these refugees of 1994–96:

These returnees had no land and property to go back to and installed themselves in houses deserted in towns, commercial centres, and in rural areas. Mostly, they did not believe that Rwandans who had fled in 1994 would return and made little effort to take up the often marginal land allocated to them by the government. (UNHCR/Rwanda, 2000: 24)

But in other areas, returnees, with the help of international humanitarian agencies, settled in villages, *imidugudu*, as envisaged in the Arusha Accords. They formed the nuclei of new resettlement villages. Sites were identified in a hasty process by government teams, based in part on visits made by teams during the period between the Arusha Accords and the genocide.

UNHCR and other humanitarian organizations launched a major shelter programme, involving the building or renovation of over 100,000 houses, most of them in the *imidugudu*.<sup>7</sup> The owners of land acquired for the *imidugudu* were never compensated. Because land was considered to be state-owned, in theory even those displaced had claims only to compensation for houses and crops. An NGO worker involved in providing food and shelter to the new *imidugudu* remembers: 'At that time, no one even asked, whose land is this being allocated?' Another NGO worker involved recalls:

We were assisting them. Many things had been destroyed, we were starting from zero. At first it was pure relief, providing pots, jerry cans, blankets, cups. Then the shelter programme, and houses built to government specs. The '94 returnees first had to stay with family, but wanted housing in the *imidugudu*. Some '94s also occupied houses and others had to stay outside. You still see these lines of houses with no services. The NGOs backed off because of lack of services. Government was very unhappy; it was very contentious.

It is remarkable that, during this period, the RPF government remained fully committed to the provisions of the Arusha Accords, including the 10-year rule and provisions on resettlement villages. After all, the government with which the RPF had negotiated the Accords had collapsed. Assumptions that the parties had shared at Arusha were no longer valid; no one had anticipated the genocide and the dramatic outflow of Hutu refugees. Jones (2003: 206–207) observes that 'despite the conditional wording, the [10-year] provision has largely been treated as mandatory in its implementation'. A former minister from this period explained: 'Arusha was well negotiated. It offered the promise of political stability. It was our Bible'. When the new Fundamental Law, the Constitution, was drafted, many of the provisions of the Accords were incorporated verbatim.<sup>8</sup> The continuing commitment of the government to the principles of the Accords appears to have stemmed from the RPF's

consciousness of a need to build trust among the Hutu population, given the narrowness of its core ethnic Tutsi constituency.

### The 'new caseload' returns

The second major wave of returnees, called the 'new caseload', was composed of the Hutu who fled the country in 1994 and then returned, largely in 1994–97. This return came in a number of stages, the first a sudden and unanticipated mass return from Goma in Zaire in July and August 1994 following attacks by the army on the refugee camps and the insurgents, and a cholera outbreak in the camps in North Kivu. There were further huge returns in November–December 1996, following an illegal *refoulement* by the Tanzanian government, continuing through 1997.

Most of the Hutu who had fled to Zaire came from central and northern Rwanda, and few Tutsi returnees had resettled in that part of the country. The Hutu returning to those areas were able to reintegrate without too much difficulty. But in other areas of the country, Hutu returned to find land occupied by recent Tutsi returnees. Especially in late 1996 and 1997, the two waves of returnees to some extent overlapped. In September 1996, the Ministry of Agriculture issued an instruction that established communal commissions to find abandoned land for returning refugees, giving priority to Tutsi returnees, and allocating it to them on a temporary basis until the return of the owners. When Hutu began to return, however, fears of retribution for the genocide meant that, at first, few Hutu returnees were brave enough to press their claims. By the end of 1997, however, a presidential address threatening action by the army against Tutsi who refused to vacate formerly Hutu-held properties upon the return of the rightful owners resulted in more claims and evictions of temporary allottees (Hajabakiga, 2004).

Those Tutsi moved into the early *imidugudu*, as did some Hutu who had failed to find accommodation elsewhere. But in some areas, an expedient called 'land sharing' was initiated. This was done initially on local initiative. Kibungo Prefecture in eastern Rwanda had received large numbers of Tutsi returnees in 1994, and in 1996 there began a major influx of Hutu refugees, who found their former lands occupied. A veteran politician reported: 'We tried to implement the Accords, but in some areas like Kibungo we needed to do land sharing. We had to adapt. Even now we have to adapt'. The local prefect (governor of the province) launched a series of community meetings to encourage the earlier Tutsi returnees to share their land with the returning Hutu. Hajabakiga (2002: 7) writes: The government policy of plots sharing has been encouraged to allow old case refugees of 1959 to get a piece of land in order to earn a living'. One former official remarked: 'Those '94 returnees who had occupied land and houses in Kibungo knew that it was temporary. They knew the houses and crops did not belong to them. We managed to convince them to share. It was very satisfactory'. This approach was adopted sporadically elsewhere in the country, including in Kigali Rural and Umutara.

Compliance with land sharing was in theory voluntary, but pressure from officials is said to have been intense. A UNHCR staffer familiar with the process explained:

Regarding land access, local officials tried to negotiate access to land for returnees. But some parties were threatened by occupants or neighbours. Authorities got involved, and these situations were resolved not legally but by negotiations. People had no choice. It's all about access to services. If you didn't do it, you would have a problem. You go along to get along.

It is not possible to determine the extent of land sharing. It was done on local initiative, and this makes it difficult to quantify the process. What is clear is that those who lost land in the land-sharing process did not receive compensation. As Jones (2003) indicates, this was a violation not only of Rwanda's obligations under international agreements but also of the new Constitution's property guarantees. Nonetheless, the government clearly considers land sharing an acceptable expedient, and still resorts to it in special cases, without compensation. Some such cases are noted later in this chapter.

### **Imidugudu and the Habitat Policy**

Article 28 of the Arusha Accord's Protocol on Reintegration states that settlement sites should be 'modelled on the "village" grouped type of settlement to encourage the establishment of development centres in the rural area and break with traditional scattered housing'. This reflected a policy dating back to the colonial period, when the Belgians had sought to group peasants in *paysannat*.<sup>9</sup> In 1996, the new government adopted a National Habitat Policy that stated that dispersed patterns of homesteads in the countryside were an inefficient use of land, and called for the regrouping of all inhabitants into villages. This converted a programme of refugee resettlement into a major social engineering initiative. The Policy was adopted by the Cabinet in 1996, but was never debated or endorsed in parliament or in public, and implementation proceeded without a solid legal basis.

From the beginning, there were problems with sites and services. An NGO worker who provided services to the programme remembers: 'Mistakes were made. Houses were put in with no services. You need water, you need a market, and a health centre nearby. People were promised electricity but never got it'. And while it was said that compulsion would not be used, the Ministry of Interior and Communal Development issued an instruction prohibiting people from constructing homes on their own land, if these were outside *imidugudu*. Refugees who returned after January 1997 to find their homes destroyed could not simply rebuild on their former land, but were required to construct new homes in *imidugudu*. Some households moved voluntarily, but in other cases forced removals to *imidugudu* occurred. While the villagization programme was supposed to allow for more efficient land use in rural areas, those who were forced into villages usually never gave up their old land, and

just had to go further to farm it. And while the Habitat Policy recognized that expropriations of land were involved in villagization, and stated that compensation would be paid, this happened only in a small minority of cases. If compensation was received, it was in the form of compensatory plots in the *imidugudu*.

One of the first signs of unease with *imidugudu* in the international humanitarian community came in 1998. In April ACORD, one of the international NGOs working in the country, published a study which raised serious questions about the wisdom of the villagization programme (ACORD, 1998). The study was initiated in response to early drafts of a land law that contained articles that would have legitimated some of the abuses associated with the creation of *imidugudu*. The report raised numerous concerns about the implementation of *imidugudu*, including poor choice of sites; sites lacking economic opportunities or raising environmental issues; failure to involve the concerned populations in the choice of sites; negative effect of distance from homes in the villages to productive resources; failure to systematically address issues of landholding; weak policy development resulting in inconsistencies and disorder in implementation; and the creation of some settlements consisting entirely of widowed women. It also noted the failure of the government to address more fundamental land reform issues, such as the holdings of the Roman Catholic Church and political and economic elites.

Forced relocation became a much more serious issue when, in the north-west, villagization became a counter-insurgency strategy in the context of the 1997/98 insurgent incursions from Zaire. Jones (2003) probably reflects the opinion of most of the international humanitarian community when she describes the *imidugudu* process as a reasonable expedient, but says that this changed when the army began large-scale forcible relocations in the north-west. In May 2001, Human Rights Watch issued a report claiming that tens of thousands of people had been resettled against their will, and that many of them had had to destroy their homes as part of the government's efforts to control the population (Human Rights Watch, 2001). It urged the international community to press for a re-examination of the programme. The Rwanda Initiative for Sustainable Development (RISD) and Oxfam also raised concerns about resettlement. In the end, donor assistance for the programme dried up.

What was the extent of implementation of the programme? It varied widely from province to province. Alusala (2005) notes that 90 per cent of the population in Kibungo and Umutara prefectures lives in grouped villages, reflecting the large number of Tutsi who fled to Uganda and who, when they returned, were accommodated in the villages. Ruhengeri is third, with more than 50 per cent, and Gisenyi fourth, with 13 per cent. Only a very limited number of people live under this programme in other areas. While the programme still has its proponents, the government is not expanding it but is instead concentrating on provision of long-overdue services to existing villages.

### **The role of international humanitarian organizations**

What influence has the international humanitarian community had over these events? In 1992, UNHCR was mandated in the Arusha Protocol on Refugee Return as the lead agency for organizing the repatriation of refugees over a six-month period and to provide shelter and related social infrastructure in new villages. UNHCR in collaboration with the UN Research Institute for Social Development (UNRISD) was mandated to prepare a socio-economic profile of the refugees and a study of the country's absorption capacity in order to facilitate reintegration and plan international development assistance.

A major UNHCR/Rwanda retrospective on its role in Rwanda stresses the size of the task: an old caseload consisting of 608,000 returnees in 1994, 146,476 in 1995 and another 40,000 in 1996–99, for a total of over 800,000; and a new caseload of 600,000 returnees in 1994, 79,302 in 1995, 1,271,936 in 1996 and over 200,000 in 1997, for a total of over two million (UNHCR/Rwanda, 2000). The total number of returnees was over three million. Over six years, UNHCR spent US\$183 million on projects to help reinstall the three million returnees and reconstruct the country (UNHCR/Rwanda, 2000).

The United Nations Assistance Mission for Rwanda (UNAMIR), established to assist with the implementation of the Peace Accords, was withdrawn at the commencement of the genocide but returned in July 1994. By the end of 1994, UNHCR had begun organizing repatriations and, at the end of December, through Operation Retour, UNHCR, with the IOM and British direct aid (BDA), began to coordinate transport for internally displaced persons back to their communes of origin. In September 1994, the United Nations Human Rights Field Operation in Rwanda (HRFOR) was established and was in place through July 1998. Its work focused on gross human rights violations and did not extend to land issues.

In November 1995, UNHCR embarked on a rural shelter programme. It supported the construction or rehabilitation of around 100,000 houses over a five-year period between 1995 and 1999, providing shelter for half a million Rwandans. Of those, the 2000 report indicates, 27 per cent were in resettlement sites, while 73 per cent were in scattered or clustered locations throughout the country. UNHCR helped with site identification and planning as well as technical and supervisory support during construction.<sup>10</sup> That shelter programme drew UNHCR into land matters.

The UNHCR/Rwanda (2000) retrospective touches on land sharing. It remarks that, following the mass return of the refugees in 1996, there were conflicting claims and the government adopted different policies in different localities. While in some cases people were moved onto recently opened public land, in others 'land had to be shared by mutual consent'. It concludes: 'The latter worked fairly well in Kibungo Prefecture, for instance. After verifying that land was being shared by consent of the rightful owners, UNHCR quickly proceeded to distribute shelter materials and helped returnees to build houses' (UNHCR/Rwanda, 2000: 26).

UNHCR and other UN agencies strongly supported the *imidugudu* programme. In 1997 the programme was endorsed, with some qualifications, in a report commissioned by FAO's Land Tenure Service (Barriere, 1997). A 1999 report by a UNHCR-funded shelter evaluation team (quoted in UNHCR/Rwanda, 2000: 42) argued that there were no viable alternatives and that 'Rather than discussing the policy, the international community should ensure provision of the technical backstopping and training to allow the policy not to become a failure'.

The UNHCR/Rwanda report (2000: 42) acknowledged that 'the perceived involuntary nature' of some resettlement activities had caused several governments to withhold support, but argues that by 1999 the Rwandan government was paying more attention to the need to respect individual rights. UNHCR, it suggests, made an effort to distinguish between cases of voluntary and coerced villagization schemes, and in effect supported *imidugudu* when it appeared to be voluntary and with the consent and knowledge of the beneficiaries. The report states that local authorities were encouraged to ensure that farm plots were allocated for each family near the villages, noting that 'UNHCR facilitated the provision of farm plots to residents, but it was and continues to be the government responsibility to carry out the distribution process' (UNHCR/Rwanda, 2000: 46). The report admits that some beneficiaries had to walk up to several kilometres to their farm plots, and that this was 'indeed an inconvenience and an issue to be addressed'.

UNHCR in the end remained a supporter of *imidugudu*. In 2000 a Thematic Consultation on Resettlement was launched as a means of continuing the dialogue and reaching a consensus among the development partners. The Framework adopted in February 2000 contained a number of cautionary points but reaffirmed the UN commitment to support the programme. In 2000, the United Nations Community adopted a Framework for Assistance in the Context of the Imidugudu Policy, which encourages the government to continue a dialogue on the issue, to adopt a more participatory rights-based approach and to resolve legal issues related to land ownership and use. The 2000 UNHCR/Rwanda retrospective concludes that the *imidugudu* contributed to the peaceful resolution of a number of land disputes between old caseload refugees, new caseload refugees and survivors of the genocide. It asks (UNHCR/Rwanda, 2000: 47–49): 'Was the shelter program in Rwanda a success? So far, property-related conflict has been avoided, unlike in the former Yugoslavia'. This seems spurious. The absence of overt conflict in response to the *umudugudu* programme probably had less to do with the virtues of the programme than with the general atmosphere of fear and exhaustion.

UNHCR is no longer a major player in land policy in Rwanda. Other donors, such as USAID, DFID and the European Commission (EC), stepped into its shoes as relief and reconstruction gave way to development programming, and have been far more wary of *imidugudu*. Opposition to the programme has also developed within the government. In 2006, a Law on Habitat was proposed by the Ministry of Infrastructure (MININFRA) that might have revitalized the



programme, but it contained substantial provisions that weakened property rights and was strongly opposed by the Ministry of Land, Environment, Forestry, Water and Mines (MINITERE). It was withdrawn from parliamentary consideration in December 2006.

A thorough examination of the *imidugudu* experience by Human Rights Watch (2001) concluded:

In an ironic twist, the program which donors supported in the hopes of ending homelessness covered another which caused tens of thousands of Rwandans to lose their homes. Praise for the generosity and promptness with which donors responded to the housing program must be tempered by criticism of their readiness to ignore the human rights abuses occasioned by the rural reorganization program that operated under its cover.

The facts seem clear enough and it is important to understand better why the mistakes were made, not in the interest of assigning blame but in the interest of avoiding them in the future.

UNHCR's concern with the immediate needs of returnees for shelter appears to have overridden any qualms it may have had regarding the potential land problems of a resettlement programme. Recall the comment by a minister in the first government quoted earlier: 'The international community did not seem to understand the land issue. The claims were social and political. The international community was preoccupied with the size of the return and how many would have to be accommodated'. This preoccupation is understandable, given the chaotic conditions in which it was initiated. Faced with the huge challenge of delivering shelter – which UNHCR documents repeatedly emphasize as its priority – the delivery of that housing is obviously far easier if it can be done in concentrations rather than in scattered hamlets. The simple logistical advantages of the approach the government proposed must have been very seductive to UNHCR.

Why, when it became a major social engineering exercise – and in one part of the country became central to an anti-insurgency strategy – did the international humanitarian community not more critically examine its role? The Human Rights Watch report (2001) concludes that, ultimately, human rights seem not to have been a priority of donors, who failed to mount a serious critique of the policy. A number of factors may account for this failure. One is guilt over the international community's failure to mount an effective response to the events leading to the genocide. The new government had moral authority as the representative of those who had been brutalized, and a clear sense of what it wanted to do. That combination would not have been easy to resist, and with early information from the field being patchy and inconsistent, it would have been easy to set aside misgivings. In addition, the same Human Rights Watch report cites competition in resettlement, between UNDP and UNHCR in particular.

In the end, UNHCR seems to have provided little by way of a moderating influence. It was instead the NGOs working in rural development and human

rights, and academic researchers, who raised concerns about its implementation and provided critical intelligence. The Lutheran World Federation had by 1997 issued instructions to staff that they could only assist in resettlement where movement into the new villages was voluntary, where those who moved into the villages were not required to destroy their existing housing, and where there was a reasonable level of service provision (Human Rights Watch, 2001). In April 1998 ACORD published its critique of the viability and technical soundness of the programme. A 1999 study from the Rural Development Sociology Group at Wageningen University (Hillhorst and van Leeuwen, 1999) also raised concerns. It is difficult at this remove in time to tell how aware most donors were of the issue, but a 1999 retrospective study by the Organisation for Economic Co-operation and Development (OECD) (Baaré et al, 1999), examining the ability of donors to influence policy in the pre- and post-conflict contexts, makes virtually no mention of the land issue. The first full documentation of the human rights abuses associated with the programme emerged in 2001, in the Human Rights Watch report.

There is a further contribution by the NGO community in this area that deserves attention. Rwanda has some multi-purpose membership organizations that have made important contributions to the debate on land, such as the national farmers' organization, the Union for Agriculturalists and Stockholders of Rwanda (IMBARAGA), but the post-conflict period saw the emergence of the first specialized 'land' NGO, LandNet Rwanda. LandNet Rwanda was created in 1999 in connection with DFID-initiated work to establish an Africa-wide network of national chapters of LandNet Africa. Its specialization in land has made it a valuable player in policy discussions. It is itself a network of local and international NGOs dealing with land policy issues in Rwanda, and has strong DFID and Oxfam connections. In Rwanda, CARE International provided early support, detailing a staff member to work on setting up the organization, providing initial office space and services and modest initial funding.

While selected NGOs have provided alerts and important information on land issues, they have not programmed significantly in this area. CARE has supported LandNet Rwanda, and in the context of its other programmes is to a limited extent addressing land dispute resolution. The International Rescue Committee co-sponsored with DFID and Swedish International Development Cooperation Agency (SIDA) a 2005 opinion survey on 'Land, Property and Reconciliation'. Oxfam has engaged primarily through support of LandNet Rwanda. The Norwegian Relief Association is providing funding to support studies by Africa Rights at several sites in Rwanda on the land access issues facing women, widows in particular, as well as monitoring by CAURWA (Community of Indigenous People of Rwanda) of Batwa land access.<sup>11</sup> NRC (2005) and Swisspeace (Wyss, 2006) have published studies seeking to draw attention to continuing land-related human rights violations. The limited operational engagement of these organizations with land issues is not surprising, given the sensitivity of the issue and the uncertain policy environment of the past decade.

There are local CSOs through whom such NGOs could work, but they are weak and reluctant to assert themselves. Musahara and Huggins (2004) note that, even when CSOs have had opportunities to put forward their views on land in contexts such as the Poverty Reduction Strategy Paper (PRSP) process leading to the 2002 Poverty Reduction Strategy, they have hung back. The authors attribute this to damaged social structures from the genocide, links between government and most CSOs, and the centuries-old tradition of centralized, exclusivist governance.

### **The continuing return: The ‘new new caseload’**

Most of the publications on refugee return and land tenure in Rwanda seem to assume that returns are substantially over. While most refugees have returned, quite large numbers continue to do so, and this has important implications for land tenure security. In June 2006, Tanzania expelled 500 Rwandaphones by force. In July 2006, a convention was signed between Tanzania and Rwanda, and in September 2006 6,000 Rwandaphones were expelled from Tanzania. They came from the Karagwe District of Tanzania, bordering Rwanda, and were part of a predominant Tutsi pastoralist community with origins in the colonial period, a community that had quietly absorbed large numbers of other Rwandans leaving the country more recently. Those who returned included a large number of women, children and the elderly; 80 per cent were recent migrants (1995 and 2005). UNHCR estimates that some 40,000 may be returned to Rwanda. Tanzania says that it considers them illegal immigrants. UNHCR staff note that there is an urgent need to identify parcels to cultivate and to provide incomers with cultivation kits. UNHCR was told by the Rwandan government that over FRW24 billion had been budgeted for the resettlement of more than 60,000 Rwandans and 80,000 head of cattle that may be repatriated from Tanzania (UNHCR/Rwanda, 2006). Staff at UNHCR’s Kigali office in December 2006 wondered: ‘Shall we call these the “new, new caseload”?’

Considerable numbers of Rwandans remain outside the country. UNHCR’s ‘Rwanda at a Glance’ summary for November 2006 notes that some 48,435 refugees and 4,721 asylum-seekers from Rwanda were in other African countries. Of these, the largest numbers and those most likely to return home live in the DRC, Uganda and Burundi. (These include recent and continuing flows from Rwanda to the countries of those concerned that they would be implicated by the 1,545 *gacaca* courts discussing and now bringing indictments against those involved in the genocide.) UNHCR is tracking current returns. The same summary document indicates that, during 2005, 9,600 refugees returned, and 5,620 have returned home since January 2006. In October 2006 alone, over 3,000 refugees and asylum-seekers returned, and late 2006 saw the voluntary return of 13,200 asylum-seekers from Burundi. The Tanzanian case mentioned above is instructive in that very few of those expelled from Tanzania appear in the UNHCR statistics, as they are not officially refugees and did not request

asylum. UNHCR thus understates the scale of the problem significantly, albeit the actual extent is not clear.

The minister of state for MINITERE indicated that an inter-ministerial commission including MINITERE and MINAGRI (the Ministry of Agriculture) is trying to identify land for these returnees, and is looking into land held by the army, research farms and possibly land sharing of allocations received by earlier returnees in portions of Akagera National Park. Some of those expelled from Tanzania are being settled in Akagera under the 'land sharing' principle. Informants reported many small huts in the park, and many cattle going into the park. The refugees have brought substantial numbers of cattle with them, though theirs are certainly not the only cattle going into the park; there are regular rumours of large herds in the area belonging to military commanders. Bugesera, near the border with Burundi, is another area to which these returnees are said to be going in significant numbers. While land is available there, the area is drought-prone and poor.

Land sharing is also still being carried out in the densely populated Musanze District in Northern Province, where old-case refugees are now pressing land claims. Local officials explained that these old-case refugees had been back in the country since 1994 in most cases, but had come to this area in 2001. Due to insurgency in the area, they had not then been able to obtain land. Now that things were calmer, they had asked for land and needed to be accommodated. A farmers' union worker explained: 'When an old case refugee comes and claims land, and the occupants refuse, and say "I don't know you", then you go to the authorities for mediation. They rely on local elders'. One official noted that local residents had complained that 'these are people whose families came to this area as feudal officials; how can we be asked to share land with them?'. But, he said, they must share and the sharing has begun. The process had begun in two sectors, and there are four where it will be carried out. Another official explained: 'No one likes giving up land, but people have a good will and it is going smoothly. It will be finished in a year. Of course the land plots are very small, no one can get as much as a hectare'.

### **Drawing a line under crisis: No easy task**

MINITERE, the national land agency, understands the urgent need to re-establish stability in landholding, to affirm property rights and to create security of tenure, and a 2005 Land Law provides for the systematic demarcation of holdings, the issuance of long-term leaseholds and their registration. MINITERE is moving to implement these objectives. Pilot work under the new law has begun with substantial support from DFID. The programme detailed in MINITERE (Republic of Rwanda, 2006, 2007) and Pottier (2006) provides a thorough critique of the new law in terms of the practical problems that could arise in its implementation in the Rwandan context.<sup>12</sup>

At the same time, however, proposals for 'land use master planning', villagization and land consolidation threaten new dislocations. Ordinary

Rwandans hear about these proposals in an atmosphere of uncertainty and mistrust. One informant spoke of Rwanda as 'a culture of rumours'. Programmes that interfere with landholdings will be viewed with suspicion, and planners will find ethnic motivations attributed to them.

Unfinished business from the conflict also continues to create insecurity. The government has launched the *gacaca* process to prosecute those guilty of genocide, and the National Service of Gacaca Jurisdictions estimates that some 761,000 people will be indicted during this process (on the *gacaca*, see Wolters, 2005). It is possible that the *gacaca* will order remedies which return land, creating further uncertainties. A number of local situations contain seeds of conflict. In the north, in former Rukungeri, resettlement abuses during the Hutu insurgency have never been satisfactorily resolved (NRC, 2005). In the east, a traditional expansion area with substantial pastures, there are said to have been land grabs by elites and the military after 1994 (Musahara and Huggins, 2004). At the same time refugee return continues, increasing the pressure on land.

Ethnic tensions persist, and NGO reports castigate the government for ethnic favouritism in land matters. The NRC report on resettlement (2005: 12) complains generally of 'the blatant protection of the interests of returning Tutsi refugees to the detriment of the Hutu – their preferential treatment in allocation and distribution of assistance, in land sharing and resettlement'. Similarly, a Swiss Peace report (Wyss, 2006) asks, in an accusatory tone, whether the government's land reform programme represents 'the restoration of feudal order or genuine transformation'. These statements are neither constructive nor accurate. This chapter suggests that, while the RPF government has certainly been most concerned with finding land for the 1959 refugees, it has done so with restraint and with some attempt at even-handedness, to an extent remarkable in the wake of the genocide.

Although overt conflict over land is no longer taking place, there is still very real competition for land and many disputes over land, coloured by past events. One hears widely differing assessments of the potential for a return to conflict. One informant spoke of continuing tensions over land, tensions being passed down generations: 'A father walks his son past a house he had owned, or land the family had owned. He points them out to his son, and says, "This was ours, and then they took it". The boy will remember'. Another informant, an NGO worker with long experience in rural communities, reports: 'The mentality has changed. Post-genocide work has helped so much, because victims were supported. When you go to the hills, you feel no identity differences'. Another informant acknowledges continuing tensions and insecurity over land, and argues: 'Land registration is our last chance'.

### ***Pace Pinheiro: Rules, improvisation and international humanitarian agencies***

What can international humanitarian agencies involved in conflict and post-conflict situations learn from the Rwanda experience?

First, there is for people on the ground no clear-cut distinction between conflict and the post-conflict period: these states do not exist on a spectrum, but overlap. Countries that have been in serious conflict may suddenly find peace, but peace is not the absence of competition and even limited conflict, just the absence of war. Competition over land, expressed through disputes, continues after peace and may threaten to regress into conflict. Land claims and grievances must be addressed promptly, but with restraint and balance.

Second, inputs from the international community on land tenure best practices and lessons for post-conflict situations should begin – at least in countries where land has played a significant role in conflict – during the peace-making process. In the case of Rwanda it is clear that the international community did not provide the expertise that would have helped the parties at Arusha arrive at more adequate formulations and solutions.

Third, the focus on the shelter needs of returnees must be supplemented by a well thought-through strategy for access to productive land resources for returnees, a strategy sensitive to the rights of existing land occupants. In Rwanda, it seems that a narrow focus on shelter led humanitarian agencies in an unfortunate direction. Shelter was most easily provided in the village context, and this may have delayed recognition by UNHCR and others of the shortcomings of villagization.

Fourth, where land issues are likely to surface, it would be prudent to involve some NGOs with substantial experience in land tenure issues. In Rwanda, the input of such NGOs was critical in eventually identifying the serious shortcomings of well-intentioned programmes. In the case of resettlement, the alert provided by such players was effective in causing a withdrawal of donor funding. Subsequently, human rights organizations have taken a lead role in critically assessing policy and legal proposals in the land sector.

Fifth, NGOs with an interest in these land tenure issues should seek to develop sustainable and informed input from civil society. In the case of Rwanda, international NGOs contributed to the creation of a national 'land' NGO, LandNet Rwanda. Such NGOs/CSOs may be more constrained by political pressures than their international counterparts, but they can play a critical role in informing government action.

Donors and international humanitarian organizations can do several things to be more effective, both during the run-up to peace and after the conflict comes to an end:

- Raise awareness of international standards during peace negotiations. Parties should work with these standards in mind.

- Inform participants of current trends in land policy and land law reform, and provide them with opportunities to discuss these with knowledgeable individuals in relation to their country.
- Involve NGOs and others with strong competence in development and land policy, in particular in the planning for return and its implementation.
- Remind negotiators of the needs of those who may not be at the bargaining table, such as female-headed households and forest-dwellers.
- Approach proposals to fund resettlement programmes cautiously, watching out for compulsion and the appropriation of land from existing users. Restitution of prior landholdings is the preferable solution, and is required by international standards where possible.
- Support, in the post-conflict period, programmes that re-establish security of land tenure, and discourage programmes that undermine security.
- Support the development of local civil society organizations with expertise in land, and with constituencies who rely on the land for their livelihoods, and encourage public consultation on changes in land policy and law.
- To the extent possible, ease pressure on land by supporting non-land-based solutions for returnees, for example, training and micro-funding, and skills that are often in demand in post-conflict situations, such as the building trades, simple machinery repair (bicycles, tyres, fishing equipment) and mobile phone access provision.

There is a final issue that deserves highlighting here, a cautionary tale relating to international standards and political reality. In Rwanda, the government has tried to adhere to the land provisions of the Arusha Accords even where these provisions, such as the 10-year rule, have been labelled a violation of human rights. When officials in the first RPF government were asked why they had persisted in attempts to see that the provisions of the Accords on land were honoured, when conditions had changed so completely, they emphasized that the new government considered that its political legitimacy in the eyes of many Rwandans hinged upon its compliance with the Accords.

Critical analyses of post-conflict programming in Rwanda tend to highlight non-compliance with international standards. These standards tend to be stated unconditionally. Most recently, the Pinheiro Principles (the United Nations Principles on Housing and Property Restitution for Refugees and Displace Persons)<sup>13</sup> provide that:

- 10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, land or places of habitual residence, in safety and dignity...
- 10.2 State shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of

state succession, nor can it be subject to arbitrary and unlawful time limitations.

- 18.3 States should ensure that national legislation related to housing, land and property restitution is internally consistent, as well as compatible with pre-existing relevant agreements, such as peace agreements and voluntary repatriation agreements, so long as those agreements are themselves compatible with international human rights, refugee and humanitarian law and related standards.
- 21.1 All refugees and displaced persons have the right to full and effective compensation as an integral component of the restitution process. Compensation may be monetary or in kind. States shall, in order to comply with the principle of restorative justice, ensure that the remedy of compensation is only used when the remedy of restitution is not factually possible, or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, or when the terms of a negotiated peace settlement provide for a combination of restitution and compensation.

Note the tension between the terms of the Arusha Accords and international standards such as those enunciated in the Pinheiro Principles. Section 10 makes unconditional statements about the right to return to residences and lands, and 18.3 suggests that peace agreements must be honoured in national legislation only where they do not contravene international standards reflecting those rights. But in 21.1 the possibility of compensation in case of failure of restitution is admitted, and one of the narrow cases in which it is said to be allowable is 'when the terms of a negotiated peace provide for a combination of restitution and compensation'.

In this context, it is important to recognize that, in situations such as Rwanda, people who occupy the land of those who have fled do not necessarily do so without legal sanction. Their occupation may be entirely legal under the law at the time it occurs. In other cases, occupation may not have had legal sanction initially, but may be viewed under national law as having acquired legitimacy by the passage of time. One is thus often faced with the need to balance two inconsistent set of rights, both valid under national law and whose justice is deeply felt by claimants. It will not be possible to fully satisfy both claims, and negotiation is required.

The Pinheiro Principles are quite right to insist upon restitution as the preferred solution. But those principles must be understood as principles rather than strict rules requiring compliance. How should one look at a provision such as the 10-year rule in relation to these principles? It is certainly an arbitrary limitation on the right of restitution. It was politically necessary at the time of the peace negotiations, and the government sought to honour it, suggesting that it retained some political importance in the post-conflict period. Political bargains in peace negotiations may contravene international standards, and yet may be needed to find and maintain peace. As Jones (2003)



notes, some of the solutions brought forth by the Rwandan government have raised valid concerns, but critics have not always been able to propose convincing alternative solutions to the country's land and economic crisis.

Finally, it is important to recognize that there is a discrepancy between the international standards relating to the right to property of returnees and displaced persons on the one hand, and those standards applicable to citizens who have remained in place on the other. Standards applying to the former group, the returnees, are more highly developed, presumably because the returnees are more vulnerable and have more often been abused. In contrast, international law provides little effective protection to the property rights of ordinary citizens (Seidl-Hohenveldern, 1999). While the Universal Declaration of Human Rights, in its Article 17, provides that citizens should not be 'arbitrarily deprived' of their property rights, there is no clear standard for arbitrariness and no universally accepted requirement of or standard for appropriate compensation for the compulsory taking of land by the state. Returnees and displaced persons may enjoy a legal and sometimes a practical advantage here because international humanitarian organizations are on the ground to take their part. While protecting returnee rights is entirely appropriate, care must be taken to balance this with respect for the land rights of those who have remained behind. The rights of both groups must be balanced, and as a result it may not be feasible to fully honour the claims of either.

It is important that the international community approach future situations of refugee return with a strong commitment to international standards, but also with a thorough understanding of the history of land claims and a realistic appreciation of what is politically possible.

## Notes

1. Many estimates are higher, often up to 320 people per square kilometre.
2. Wyss (2006) provides a good short summary of the literature on land as a cause of conflict in Rwanda at pp. 10–11.
3. Much of the recent literature has pointed out that the conflict was neither a simple conflict between Tutsi and Hutu, nor was it exclusively over land. Musahara and Huggins (2005) provide a nuanced discussion.
4. It was suggested to the author that it had some legal basis in a prescription rule, but most dismissed this as a post-rationalization.
5. Jones (2003: 206, note 32) notes that there were some violent property takeovers by Tutsi returnees, and that a few did challenge the 10-year rule, but rarely successfully.
6. Sorchá O'Callaghan in comments on a draft of this chapter noted that there were many new households among the returnees created by marriages in exile, which had never had their own landholdings in Rwanda though they would have had claims to parental land.

7. UNHCR/Rwanda (2000) indicates that a little over a quarter of these units are in the *imidugudu*, but other sources suggest that most, and possibly a large majority, were in the *imidugudu* (Human Rights Watch, 2001).
8. It is not clear whether the government continues to consider the Accords operational or whether they have effectively been replaced by the new Constitutional provisions, which vary them in some respects. A number of officials consulted were of the latter opinion.
9. One of the objectives of the *paysannat* was to establish minimum holding sizes, creating farms deemed large enough to be commercially viable by colonial authorities. The programme has been criticized, and in the event has proven impossible to sustain (Blarel et al, 1992). The holdings in the former *paysannats* were gradually subdivided and are indistinguishable from other holdings.
10. Human Rights Watch (2001) suggests that the 27 per cent figure may refer to houses actually constructed by UNHCR, the remainder being houses constructed by local people with building materials distributed by UNHCR through local authorities, and that some – perhaps most – of those building materials were provided in connection with *imidugudu*.
11. Rwanda's indigenous forest dwellers, the Batwa, have suffered land loss as a consequence of refugee return. Disadvantaged for many decades with respect to land access, they found their forest habitats seriously reduced by the resettlement of returnees in parks and forest reserves.
12. The discussion in this section of current land policy initiatives exists in a much more extended version in Bruce (2007).
13. The Principles are named after Paulo Sergio Pinheiro of Brazil, and were approved by the United Nations Sub-Commission on the Promotion and Protection of Human Rights (a sub-committee of the Committee on the Elimination of Racial Discrimination) in August 2005 (FAO et al, 2007).

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## CHAPTER 7

# Land rights in Angola: Poverty and plenty

*Conor Foley*

*This chapter outlines the problems related to land rights in post-war Angola. Although Angola suffered massive destruction during three decades of civil war, the post-conflict period has not been marked by the sort of land disputes in rural areas that have affected similar societies elsewhere. This is mainly because Angola has a very low population density and so there is no shortage of arable land, although a lack of investment in rural areas means that much of this cannot be farmed commercially. A bigger immediate problem is that Angola's lop-sided economic development, which has largely relied on exploiting its oil and diamond reserves, has caused a huge increase in prices for land in urban areas. This has led to large numbers of people without formal titles being forcibly evicted from their homes. Similar problems could spread to the countryside if the ripple effects of the economic boom also spread.*

### Introduction

Angola is still suffering the effects of three decades of devastating civil war. The conflict killed up to 1.5 million people and displaced 4 million more. The war also destroyed much of Angola's infrastructure and left a deadly legacy in the form of landmines, which have maimed an estimated 80,000 people. By the time the war ended, in April 2002, the FAO estimated that just 3 per cent of arable land was under cultivation (FAO, 2002). More than 2 million Angolans were on the brink of starvation, and at least 3 million were receiving direct humanitarian assistance.

The UN Development Report currently ranks Angola 161 out of the 177 countries on its human development index (UNDP, 2006). Two-thirds of Angola's 14.5 million people live in rural areas and subsistence agriculture sustains one-third of Angola's population. According to the World Bank, approximately 70 per cent of the population lives on less than US\$2 a day, and the majority of Angolans lack access to basic healthcare. A third of the population are illiterate; in rural areas, this climbs to 50 per cent (World Bank, 2006). About one in four children die before their fifth birthday, mainly from malaria, diarrhoea and respiratory tract infections. The maternal mortality rate (at 1,800 per 100,000 births) is one of the highest in sub-Saharan Africa, and three in five people do not have access to safe water or sanitation.

Yet Angola's economy has grown rapidly over the last few years and is predicted to grow by over 20 per cent in 2008, the highest growth rate of any country in the world (*The Economist*, 2006). Angola is now producing approximately 1.4 million barrels of oil per day and production is expected to reach 2 million barrels per day during 2008. Oil production accounts for 52 per cent of the country's \$24 billion economy, while oil exports accounted for over 80 per cent of fiscal receipts in 2005. As production increases, Angola hopes to soon replace Nigeria as Africa's largest producer. It is the world's fourth-largest exporter of rough diamonds, which bring in export revenues of around \$1 billion a year. The country is also well endowed with agricultural resources. Unfortunately, this has turned into a 'resource curse' that is seriously distorting the rest of the economy. Unemployment is high and the country is a net importer of food. The vast majority of its population work outside the formal economy.

Angola has a very low population density; there is no acute shortage of arable land of reasonable quality and there have been comparatively few recorded cases of disputes over land between returnees in rural areas. Yet there has also been little investment in rural areas and rural Angolans enjoy virtually no security of tenure, which gives them little incentive to develop their own land themselves (Clover, 2005). There is also currently little economic incentive for land-grabbing, although this could change as the country's infrastructure improves or due to changes in the global economy. Angola's experiences highlight the importance of ensuring that issues in the emergency relief phase are more closely integrated into longer-term planning. Dealing with the issue of land rights will be central to this challenge.

### **Land tenure, governance and conflict in Angola**

Angola has adopted a new economic model in recent years, based on encouraging private investment and a reduced emphasis on central planning. The market, rather than the state, is now regarded as the main engine of economic growth, and the concept of a 'right to private property', which was previously regarded with considerable suspicion, has been officially embraced by the authorities. However, most land in Angola is held under customary title and people do not have documents proving their rights to it. Customary land tenure is currently not recognized by Angolan law, and this risks creating a gap between the formal legal situation and the reality facing most people living without formal tenure rights.

Many Angolans have squatted on land without official permission, often for many years. In some cases they may have bought this land in good faith from others who were illegally occupying it. Many people have lived all their lives on land that they do not have any official right to occupy, and they may have invested considerable sums of money in what they regard as their only economic asset. People may also be on land that has been designated for other purposes, such as the construction of roads or public buildings.

Angola, like many other countries making the transition from humanitarian relief to development, does not have a functioning system of land registration because its records have been destroyed or are incomplete. The system that it inherited from the period of Portuguese colonial rule is out of date and suffered considerable damage during the war. It also failed to keep up with the government's changing policies towards land ownership. The Angolan government sees the establishment of a national cadastral record as a priority task. A national registration and titling system could bring greater security of tenure, encourage people to invest in their land and allow them to use it as collateral for investment loans. Most people know the borders of their own land, and that of their neighbours, even if they do not have the documents to prove it. But in situations where large numbers of people have been displaced by conflict, often for long periods of time, attempts to draw up a new centrally imposed system of land registration are fraught with difficulty. Lessons from elsewhere show that, if the state does not have the administrative capacity to create a comprehensive, fair and transparent registration process, this could make things worse for the affected population. Such systems are vulnerable to fraud and corruption, and can be used as a cover for land-grabbing (Alden Wiley, 2003; Adoko and Levine, 2004; Foley, 2004; Fan, 2006).

One important difference between Angola and other conflict and post-conflict states is the absence of any straightforward competition for scarce land in rural areas. Angola has one of the lowest population densities in the world, at 8.6 people per square kilometre (World Bank, 2006). This is far lower than many other countries that have experienced comparable conflicts. Rwanda, for example, has a population density of 303 people per square kilometre. The land is also fertile. Before the war, Angola was a net exporter of food. It was once the fourth-largest producer of coffee in the world, and the third-largest producer of sisal. Cotton, tobacco, oil palms and citrus fruits were also grown (Clover, 2005). Other staple crops included cassava, maize and sorghum/millet. Potatoes are still an important crop, and cattle are raised in the central plateau and the southern provinces of Cunene, Huila and Namibe. Agricultural production was badly disrupted during the conflict and has never returned to former levels. However, this appears to be less because of a shortage of productive land than a lack of investment, both in the land itself and in the infrastructure necessary to bring goods to market. Many roads and bridges that were destroyed during the war have still not been repaired. Transport is expensive, meaning that the retail price of food is so high as to be unaffordable to many. An estimated 85 per cent of rural Angolans live off subsistence agriculture, growing just enough to feed their own families (Clover, 2005).

There has also been a very large movement of people from rural to urban areas, and many peri-urban areas were rural/agricultural only a decade or so ago. According to some estimates, the population of Luanda has doubled in the past 10 years, from around 2 million in the mid-1990s to around 4 million today. It is predicted that the city will reach 7 million by 2010 (Development



Workshop, 2005). Many of these people first came to the city to escape fighting in rural areas, but urban migration is continuing for economic reasons as the oil and construction industries develop (Amnesty International, 2007). The increasing urban population is generating a strong demand for land and housing in the cities. Most settlement and housing plot acquisition has been through the informal land market, and only a small percentage of settlers have acquired full legal title to the land they occupy.

In 2003, the government established a new Ministry of Urban Development and Environment. This was followed by the establishment of a National Reconstruction Office in 2005 to oversee post-war rebuilding. This reconstruction has included the forced eviction of thousands of people from informal settlements. These evictions have made the issue of urban land rights a major political concern, and much of the research into land rights has focused on urban tenure. According to a report by Human Rights Watch in May 2007, the government has:

forcibly and violently evicted thousands of people living in informal housing areas with little or no notice. In violation of Angola's own laws and its international human rights obligations, the government has destroyed houses, crops and residents' personal possessions without due process and has rarely provided compensation. (Human Rights Watch, 2007: 1)

To set these issues in the context of Angola's transition from humanitarian relief to development, the following sections detail the humanitarian challenges that Angola faced and the measures taken by the Angolan government to tackle land issues in the context of substantial economic reform and governance challenges. This is followed by an analysis of the efforts of national and international relief agencies in addressing land-related issues.

### ***Humanitarian challenges***

According to OCHA (2004), at the height of the emergency in 2002, more than 2 million Angolans were on the brink of death, through malnutrition and disease, and at least 3 million were receiving direct humanitarian assistance. The situation stabilized during 2003 and humanitarian agencies gained access to all affected populations. In its 2004 Consolidated Appeal for Angola, the UN noted that more than 3.8 million war-affected Angolans had resettled or returned to their areas of origin during the previous year. Some 70 per cent of these returnees resettled without any aid from local authorities or humanitarian organizations, and concern was expressed that the conditions they faced were below internationally accepted standards. The UN appeal requested \$262 million, about half of which was earmarked for food distribution. A report compiled by OCHA (2004) stated that around half a million people had been temporarily resettled in camps for IDPs, while 400,000 were staying with host families in towns and cities and 350,000 remained refugees in neighbouring countries.

In March 2005, a report by Human Rights Watch (2007) claimed that the conditions facing returnees were still dire. It noted that families were returning to devastated communities and settling on land that was heavily mined. Nevertheless, international organizations had begun to significantly reduce their activities in Angola by this stage. The relief effort was intended to consolidate support for the peace process, but then phase out rapidly as the country recovered. One USAID mission suggested that assistance should be cut by half during 2003, and half again following the harvest in early 2004. This suggested a transition from emergency to development over a three-year period (USAID, 2002).

The World Bank continues to fund a number of humanitarian projects, including a demobilization and reintegration programme for former combatants, an emergency multi-sector recovery project and a social action fund. However, most donors have significantly reduced their support to Angola and there is broad consensus that the country has now moved beyond the emergency crisis phase. On 26 March 2007 UNHCR officially marked the end of its repatriation programme for Angolan refugees, and announced that it was scaling back its activities. According to the agency, the return and resettlement of refugees and IDPs has proved durable. According to a UNHCR spokesperson:

Securing the future of the returnees – as well as the millions of internally displaced who have come home – is a long-term development need that is beyond the resources or mandate of UNHCR. The government and its development partners are expected to take the lead in rehabilitation and reconstruction efforts as these programmes proceed.

Future activities would focus on the continued protection needs of refugees from other countries inside Angola (UNHCR, 2007).

OCHA has closed its Angolan office. Other UN agencies that still have a presence in Angola include OHCHR, the UN Children's Fund (UNICEF), WFP and the FAO. OHCHR has a comparatively large presence, but this is largely for historical reasons, when it was used to maintain some form of UN presence in the country after the withdrawal of the UN Observer Mission to Angola (MONUA) in February 1999. The Angolan government had refused to extend the mandate of this mission because of its perceived failures and this also left a legacy of significant mistrust between Angola and the UN. Those humanitarian organizations that remain in Angola are increasingly working on rights-based programmes, some of which have a focus on land rights.

### ***The political and legal framework***

Land was regarded as a common resource in pre-colonial Angola, with a system of communal possession in which any member of the community had the right to cultivate parcels of land occupied by the community (Clover, 2005). Under Portuguese colonial rule, land in the north-west of the country was gradually

appropriated, mainly to establish coffee plantations. In the aftermath of the Second World War, the price of Angola's principal crops – coffee and sisal – jumped dramatically, and the Portuguese government began to reinvest some profits inside the country. Portuguese citizens were encouraged to emigrate to Angola, where planned settlements (*colonatos*) were established for them in rural areas. At the height of the colonial period, 300,000 colonial families occupied approximately half of Angola's arable land.

Angola gained independence from Portugal in November 1975, prompting a massive exodus of Portuguese settlers. Thousands of plantations were abandoned, and were promptly 'nationalized' by the new government (Hodges, 2001). According to the new Constitution:

All natural resources existing in the soil and subsoil, in internal and territorial waters, on the continental shelf and in the exclusive economic area, shall be the property of the State, which shall determine under what terms they are used, developed and exploited... Land, which is by origin the property of the State, may be transferred to individuals or corporate bodies, with a view to rational and full use thereof, in accordance with the law... The State shall respect and protect people's property, whether individuals or corporate bodies, and the property and ownership of land by peasants, without prejudice to the possibility of expropriation in the public interest, in accordance with the law... Any nationalization or confiscation carried out under the appropriate law shall be considered valid and irreversible for all legal purposes, without prejudice to the provisions of specific legislation on re-privatization.

This meant that the state became the owner of lands that were not definitively privately owned. Abandoned private land could be appropriated 'because of the unjustified absence of the proprietor for more than 45 days' (Clover, 2005). However, the legal procedures surrounding such appropriations were unclear, and in practice many people simply seized abandoned land and properties for themselves. Sometimes these were the original owners of the land, who had lost it to the Portuguese colonists, or landless or homeless people displaced from their homes by fighting elsewhere. In other cases they were people connected to the dominant political and military group in the area, who took the lands as 'spoils of war'.

After 1975 individuals were no longer able to buy private land, but were instead granted 'surface' or 'possession' rights, which meant that they had the exclusive right to use the land, although it formally belonged to the state. These provisions were included in Angola's Civil Code, inherited from colonial times, which remained the legal framework governing land rights until 1992, when a new constitution was adopted, together with the country's first law on land since independence. The Land Law 1992 (Law 21-C/92) based itself on the former colonial cadastral record, which has not been updated since independence, and tried to restore some order to rural land relations. The law was adopted as one of a number of legislative measures passed in the few

months before the 1992 elections. There was little public debate, however, and it was approved without much scrutiny. The country was still at war and the Popular Movement for the Liberation of Angola (MPLA) retained a monopoly of power in the areas it controlled. Angola's legislature was still unelected and civil society was practically non-existent.

The preamble of the 1992 law stated that local community land rights would be protected and recognized some different forms of tenure. However, it remained heavily based on the old ideals of state central-planning principles, requiring, for example, that land conceded by the government must be 'put to effective use', and retaining the right to subject production to the 'requirements of national development'. The attempt to make security of land tenure dependent on land use was based on a general hostility towards both the concept of private ownership and the social and economic position of rural smallholder producers, a hostility shared by many of Africa's post-colonial governments. Similar provisions, which attempt to boost agricultural production through coercion, can be found in the early land laws of a number of other African countries.

The law failed to include customary land rights in rural areas, or the rights of those living in informal settlements in urban and peri-urban zones. It was also unclear about the legal status of communal land. Urban land issues were almost completely ignored, despite huge population drift to the cities. One observer concluded that the law 'was not rooted in any formal, written policies that might have explained the priorities to be promoted through land use, tenure or transactions... it was not so much a land law as a set of regulations for access and titles' (Clover, 2005: 357).

Perhaps the biggest single weakness of the law was its failure to acknowledge customary practices and the role of the village elders (*Sobas*) in adjudicating on disputes. Customary law often expands during a conflict, to fill the vacuum caused by the weaknesses of the official legal institutions. This can lead to a growing gap between 'legality and legitimacy' when the majority of land adjudication decisions are made outside the formal system. Many of the 1992 law's provisions were not enforced and it soon became clear that the legal framework it provided was inadequate.

By the end of the 1990s there were discussions about a new law between the Ministry of Agriculture, the FAO and the National Directorate of Territorial Planning, the body responsible for issuing land titles. This resulted in a series of amendments to the law. A land titling project was also started that, in 2001, began issuing deeds to some communities, based on their customary rights. At the same time, President José Eduardo dos Santos appointed his own advisor to prepare a new draft land law in a process that paralleled the work of his own ministry, and may have been intended to undermine it.

In December 2001 an ad hoc Land Commission was formed to combine the two drafts, which eventually emerged as the draft Land Act and draft Territorial Planning Law in July 2002, three months after the formal end of the war. The government announced a three-month period for public consultation on

the draft laws, and this provided a rallying point for civil society groups. A national network of NGOs, Rede Terra (Land Network), was formed in August 2002, and there was strong pressure to extend the deadline before the laws were finalized.

In December 2003 the Cabinet approved revisions to the draft Land Act, which included some improvements such as the recognition of the traditional collective rights of rural communities, but also some measures that could weaken the protection of people's rights. The new act was approved by parliament in August 2004, and was finally passed into law that December as the Land Law and the Law of Territorial and Urban Management. Although many land rights activists have expressed disappointment with some of the law's provisions, others feel that it does at least provide some basis for protecting people against the worst excesses of arbitrary expropriations and evictions. Many organizations are now concentrating on disseminating its provisions as widely as possible, so that people at least know their most basic rights, while continuing to advocate for amendments and improvements.

According to the 2004 land laws, the state can only expropriate land for specific public use, and it must declare this purpose when it does so. Anyone whose land is expropriated for public use has a right to compensation. Where the state grants land concessions for urban development projects, it has a legal duty to publicize this widely. Any infrastructure project that may have a significant social or environmental impact must be subject to an impact assessment, which must include hearings with the local population affected. These specific requirements reinforce the general principle in Angolan law that public administration must provide adequate notice to people whose rights are likely to be affected by its actions. While these provisions, if implemented, should provide people with more procedural protection against forced evictions, a requirement that everyone must complete the official process of registering their land and securing title within three years has been greeted with dismay as entirely unrealistic.

The law places the onus on individual citizens to seek regularization, and states that irregularly occupied land may be subject to forcible requisition after the three-year period. Angola's official bureaucracy is slow and inefficient and lacks administrative capacity. Many Angolans are illiterate and most do not have formal identification documents, either because they never had them or because they lost them during the war. Without a massive public awareness campaign, it is difficult to see how this proposal can be implemented. Human Rights Watch (2007: 6) concludes that:

Unless the Angolan government takes deliberate steps to approve the remaining regulations and prioritize resources to ensure effective land registration for all those requiring regularization, insecurity of tenure will continue to be prevalent in Luanda and the city's urban poor will remain vulnerable to forced evictions such as those described in this report.

The government has begun a dialogue with some NGOs over the problem of the vast number of people living in urban and peri-urban areas whose settlements currently lack any legal status, and has promised that issues such as consultation, the establishment of clear rules for expropriations and compensation levels can still be addressed in by-laws that have yet to be published. However, serious concern remains that, given that the vast majority of Angolans currently living on land to which they have only customary rights, an attempt to enforce the law's provisions could lead to widespread and serious social unrest.

### ***Economic reform and governance issues***

The issue of land rights also needs to be seen in the broader context of economic reform and governance. The only democratic elections in Angola were held in 1992, but the polls were abandoned after the first round of voting, giving the ruling MPLA an absolute majority in parliament. Although opposition deputies currently hold 43 per cent of parliamentary seats and substantive debates do sometimes take place, in which government officials are called to respond to question-and-answer sessions, few mechanisms exist to check the power of the MPLA majority or defeat legislation supported by the executive branch (US State Department, 2007). The president, dos Santos, cannot be removed from office by a vote of no-confidence or censure. The executive appoints the prime minister and all other government ministers, who in turn cannot be dismissed by parliament. Although parliament has gained a limited role in discussing and scrutinizing the budget and national plan in recent years, its financial oversight is limited.

The MPLA abandoned its ideological commitment to Marxism-Leninism at its third congress in late 1990, but many believe that it has not shed its authoritarian attitudes and practices. The combination of a long period of first colonial and then single-party rule, the pressures of war, huge inequality and then a sudden influx of vast wealth have also impacted on Angolan society in ways that have encouraged the development of a corrupt, clientelistic, non-transparent and authoritarian culture. Government control over the economy has given it scope for patronage and the buying off of political opponents. Sonangol and Endiama, the national oil and diamond companies, have been described as functioning almost as 'states within the state'. The official bureaucracy is large, and many consider the number of government employees to be excessive, while the structure of the economy encourages rent-seeking and bribery.

Prior to 1992, the only 'mass organizations' tolerated by the government were controlled by the MPLA. Their primary role was to help legitimize the government in areas of the country where it exercised authority. The only independent voices came from a number of Church-based organizations. The constitution was changed in 1992 to allow NGOs to register, although the government retained the right to monitor and direct their activity. An influx

of foreign humanitarian NGOs opened up political space for independent civil society organizations to emerge, and these have grown in number and influence since the end of the war. Religious and secular NGOs have formed effective partnerships on issues such as peace-building and human rights, often with international support. Given the weakness of Angola's formal democratic institutions, these organizations are playing an increasingly important role in holding the executive to account.

### ***Human rights and humanitarian organizations in Angola***

According to the 2006 human rights report by the US State Department (2007), there are more than 100 international NGOs operating in the country, and approximately 350 domestic NGOs. The Angolan government's own directory of NGOs lists 97 international, 78 national and 15 Church organizations. There are probably more national NGOs operating, especially at the local level. OHCHR has a comparatively large presence in Angola, and the ICRC is also active in the country.

The US State Department report (2007) also notes that Angola's human rights record remains poor, although there have been improvements in a few areas. In 2004, the government introduced a new Law on Associations, which was mainly aimed at regulating the activities of NGOs. It specifies that NGOs are obliged to abstain from 'political and partisan actions', and demands detailed reporting to the government's Humanitarian Aid Coordination Technical Unit (UCTAH). The decree states that the role of NGOs is to be partners of the government and its institutions, in projects and activities determined by the government, which is clearly intended to restrict their interventions to humanitarian work. Some observers worry that this might lead to greater restrictions on NGO activities, although previous laws, such as a requirement for NGOs to provide the authorities with details of their banking and financial details, have not been enforced in practice (Amundsen and Abreu, 2006). It is often difficult for foreign aid workers to obtain work visas, and some see this as a sign of government suspicion towards them, although such bureaucratic delays are common in many other aspects of Angolan society.

Many international donors continue to support NGOs as they believe that this is one of the more effective ways to ensure that aid is used where it is most needed, and that it also contributes to the strengthening of governance and civil society. The Norwegian government, for example, supports the work of a number of human rights NGOs including those most active in land rights issues. These include Action for Rural Development and Environment (ADRA), Associação Justiça, Paz e Democracia (AJPD), Development Workshop, Mãos Livres, Norwegian Church Aid (NCA), Norwegian People's Aid (NPA) and the NRC.

### ***Corruption and forced evictions***

The two issues on which human rights and advocacy NGOs have been most active in Angola in recent years have been alleged corruption and forced evictions. Although these are distinct issues, the linkage between them is obvious. Many people have settled informally on land, particularly in urban areas, which has recently become commercially valuable. Human Rights Watch (2007: 4) notes that ‘the government’s conduct in carrying out the evictions documented in this report [is] in clear violation of its obligations under both international and Angolan law’.

Some evictions may have been carried out for legitimate reasons, including that many houses are unsafe or have been built in areas that are vulnerable to flooding and other problems. However, resistance to evictions has become politically sensitive due to a lack of trust about the government’s intentions and a, sometimes mistaken, belief that its officials are always solely motivated by land-grabbing for personal gain. An increasing number of national and international NGOs have become involved in the issue of forced evictions in urban areas.

Amnesty International claims that between 2001 and 2006 thousands of families were forcibly evicted from various neighbourhoods in the capital, Luanda. According to Amnesty (2007), the evictions have left tens of thousands without shelter, and were typically carried out without prior notification or consultation, without due process and with excessive use of force.

These evictions have also been condemned by the UN Special Rapporteur on the Right to Adequate Housing who has accused the police, provincial officials and private security guards of using excessive force, and reports they shot into the unarmed crowd of residents and kicked and hit people with guns and whips. Homes were demolished and, according to reports, residents have not been offered alternative housing or any type of compensation (Kothari, 2006). The evictions also targeted the poorest families who had least access to the means of securing their tenure or of finding alternative accommodation (Amnesty International, 2007). According to Amnesty, hundreds of those forcibly evicted remain without shelter. Some were forcibly relocated to other areas, invariably far away from schools and places of work, and often lacking services such as sanitation. Furthermore, they were not given security of tenure to the new land, making them vulnerable to further forced evictions.

Both Amnesty International and the UN Special Rapporteur on the Right to Adequate Housing have called on the authorities to abide by the ‘Basic principles and guidelines on development-based evictions and displacement’ prepared by the UN, which include the recognition that ‘forced evictions intensify inequality, social conflict, segregation and “ghettoization”, and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society’. The Special Rapporteur has warned that the Angolan government ‘could be in violation of its obligations under the International Covenant on Economic, Social and Cultural Rights, to which



Angola acceded to in January 1992' (Kothari, 2006). He has also drawn attention to General Comment No. 7, which states that 'forced evictions are *prima facie* incompatible with the provisions of the Covenant and can only be carried out under specific circumstances'. States are obliged (Kothari, 2006):

to ensure, prior to carrying out any eviction, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force; equally to ensure that legal remedies or procedures are available and accessible to those who are affected by eviction orders, along with adequate compensation for any property affected, both personal and real; and, in those cases where evictions are considered justified, ensure that they be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with the general principles of reasonableness and proportionality.

The Angolan government has contested the Special Rapporteur's findings and, according to the US State Department (2007), has also restricted some NGO activities as a result. On 22 May 2006 a high-level government official denounced the housing initiatives of local NGO SOS-Habitat for allegedly 'fulfilling an agenda, with a view to tarnishing the image of the government, by constantly and permanently creating difficulties to its performance'. SOS-Habitat continued its activities and public advocacy despite this criticism and has been backed by a number of other Angolan NGOs. The international NGO Christian Aid, which funds SOS-Habitat's work, responded with a statement of support for its partner.

The issue of urban evictions is complicated. Many people are clearly occupying land illegally, but still have the right to due process before being evicted. Others have papers showing they bought the land, but these do not constitute legal proof of their right to be there, even if they have paid for it, invested in it and lived on it for most of their lives. Others have old papers showing that they were allocated land from government-sponsored agricultural programmes in areas that have subsequently become peri-urban. The solution proposed by one NGO, Development Workshop, is to allow people to regularize their occupation rights by issuing deeds to *bona fide* occupants. Where evictions do take place they should follow fair and transparent procedures, and people should be offered alternative accommodation.

Given the rise in property prices in urban areas this could give a significant economic boost to many poor people, as the wealth that is currently locked up in their land and houses is now considerable. By legalizing informal settlements, the government would enable people either to sell their houses on the formal market, or use them as collateral against which to borrow. Regularization of land rights and the, currently informal, real estate market could provide a boost to state revenues by providing an opportunity to levy sales taxes and local rates, which in turn could help tackle the current lack of basic services such as water and sanitation in urban areas. The fear is that, if

the government continues to rely on forced evictions and coercion, clashes will escalate and could eventually result in major conflict.

### ***The demobilization process***

In contrast to these controversies over land in urban areas, the demobilization of 100,000 former rebel combatants of the National Union for the Total Independence of Angola (UNITA) was completed within three years with few serious incidents or controversies. The process, which included allocating land to former combatants, was organized in close collaboration with UNHCR's sustainable reintegration programme, which included surveying and socio-economic profiling of areas for return. Land was widely available in the main municipalities profiled by UNHCR: Lumbala Nguimbo, Luao and alto Zambeze in Moxico, Mbanza Congo and Kuimba in Zaire, Caungula in Lunda Norte, Menongue in Kuando Kubango, and Maquela do Zombo in Uige, and almost 70 per cent of the returnee population settled in these places. More than 50 per cent of the land was deemed fit for cultivation, and there have been no reported incidents of conflict over land tenure. Viewed from a purely geographical standpoint, there is enough land to go around and so no particular reason to fight for it.

As a Development Workshop report notes, Angola's process of demobilization and resettlement occurred remarkably quickly and smoothly. Access is possible to all parts of the countryside and there have been no documented cases of widespread disputes over access to land (Robson, 2006). The report includes a detailed study on the specific topic of access to land by demobilized soldiers in rural areas of Huambo province and a more wide-ranging examination of the issue in four other provinces. It found few cases of conflicts over land, and that traditional methods of conflict resolution, through customary law as interpreted by village elders, seemed able to deal with these. It stated that 'the number and severity of [land-related] problems facing demobilised soldiers was not found to be alarming' (Robson, 2006: 52–53).

The vast majority of those interviewed were returning to their birthplace or the place where they had resided before they joined UNITA (89 per cent). This does not mean that the same proportion of demobilized combatants have returned home, but simply reflects where the survey was carried out. Given its other findings about the harsh social and economic conditions facing returnees in rural areas, and the discussion above about the general movement of people towards urban and peri-urban areas, it seems likely that many former combatants will also have drifted to the cities. However, the study does provide some important insights into the problems of reintegrating former combatants into Angolan society, and some of the obstacles that are likely to face other displaced people who wish to return to their original homes.

Robson (2006) notes that most of the demobilized soldiers had joined UNITA when they were young, and that they had spent an average of 15 years away from their communities. They were returning home with few skills

useful in peacetime. Over three-quarters had not progressed beyond primary education and a quarter had only got as far as the end of one year's schooling. They were now overwhelmingly dependent on agriculture for their livelihood (Robson, 2006: 39):

Non-agricultural occupations were rarely mentioned in the interviews, even in areas near the towns, where some alternative occupations would have been expected. The range of current occupations was noticeably more limited than in the past: 73 per cent said that they had relied on small-scale agriculture before joining UNITA.

The vast majority (87 per cent) obtained land, either through loan or inheritance, from their family. Much smaller numbers bought (4 per cent), rented or loaned (3 per cent) or were awarded land by village elders (3 per cent), while the remaining 3 per cent had no land. Of those who claimed to have a legal right to the land they were occupying, only 3 per cent had any documents, although few of the remaining 97 per cent considered this to be a problem (Robson, 2006).

The biggest threat that those interviewed expressed in relation to their land rights was the possible encroachment of large-scale commercial farmers, whose *fazendas* (large farms) were established during the colonial era. Most were abandoned at independence and many were formally declared to be the property of the state. In 1992, the government 'privatized' this land, which in practice meant that it has now passed into the hands of people with links to the government, the army and the MPLA. Many of the new owners were based in urban areas and were not able to take physical possession of the land until the end of the conflict. Since mid-2002, commercial farming has resumed and some of the *fazendas* have started operations. This is leading to some tensions with local people who had previously been using the land for their own purposes – such as wood-gathering and hunting. There have also been reports that some *fazenda* owners have been attempting to expand the borders of their farms, as happened during the colonial period.

According to one report (Robson, 2006), over half (52 per cent) of the ex-combatants interviewed said that they were only cultivating a small part of the land they occupied. The main reasons given for this were a lack of animal traction to help in ploughing (77 per cent), lack of physical strength to work larger areas of land (17 per cent) and a lack of seeds and tools (59 per cent). Similarly, most of the land of the current *fazendas* is not yet being farmed because its owners do not have the capital necessary to invest in it or to employ sufficient workers. Humanitarian organizations repeatedly stress that poverty rather than a shortage of land was the main problem facing people in rural areas.

Many humanitarian organizations have already attempted to address the problem of lack of investment by small farmers through programmes of seed and tool distribution, but it is clear that this has not been enough to meet current needs. The report (Robson, 2006) noted that only 19 per cent

of those who had obtained seeds and tools had received them from NGOs, while 42 per cent had bought them and 20 per cent had borrowed them from neighbours and family members. The report stated that only 30 per cent of those interviewed considered that they had land of sufficient size and quality on which to earn a livelihood, however, the conclusions tend to reinforce those of other studies, which show that it is a lack of investment in land, rather than a lack of land itself, that appears to be the biggest problem facing rural communities in Angola.

### ***Rural land rights***

As previously discussed, one of the central problems regarding land rights in Angola is that, without an increase in investment, the land that people have access to is insufficient to support them and their families. The solution to this is not, however, simply to give them more land. As one land rights expert has noted, the average Angolan family needs a minimum of about 2 hectares of farming land to sustain itself, but it is difficult for them to cultivate such an area without animal traction, proper irrigation and fertilizers (Pacheco, 2001). This problem becomes even more acute for female-headed households, orphans and other vulnerable groups. The issue of land rights and tenure security, therefore, needs to be seen in a social and economic, as well as a civil and political, context.

As described above, there have been reports of land-grabbing in rural Angola and there are general concerns about the lack of transparency with which land is being allocated. The Ministry of Agriculture has stated that, up to 1999, more than 2 million hectares of land in the country had been granted to commercial farmers, but this largely remains unused. During interviews conducted for this chapter in Bie and Huila province, it was reported that there had been some instances where land close to towns had been taken over illegally, but that there was no shortage of arable land in more isolated rural areas, areas where there were no roads and it was effectively impossible to farm on a commercial basis.

There is little economic incentive for rural land-grabbing. However, given that so few people have documents proving their right to be on their own land, there is a danger that grabbing could increase if strategies to improve the rural economy are successful. The government is developing a major construction programme, heavily backed by Chinese investment, which will involve building roads and other infrastructure. The issue of rural land rights needs, therefore, to be tackled holistically by increasing people's security of tenure at the same time as promoting economic investment in the land. One policy without the other will not help people; if implemented together, they could lead to a virtuous circle where greater tenure security leads to greater investment, which in turn promotes economic and social development.

The FAO has been working in Angola since 1999, aiming to promote a decentralized and participatory system of land management (Deve, 2007). It

believes that Angola could easily become self-sufficient in food, given its rich agricultural resources, but, without a conscious change in policy, the country will remain a net importer. The success of Angola's peace process, and the current investment boom, are bringing new roads and other infrastructural improvements, which could make it easier for farmers to market their crops. But this will also make it easier to import food from abroad, which is often cheaper due to Angola's strong currency. The vast majority of Angolan farmers are subsistence smallholders generally producing little or no surplus, while only 2 per cent are commercial farmers with a paid workforce.

The FAO (Deve, 2007) estimates that 18 per cent of farmers produce some surplus, which they can sell to local markets. The key to their productivity is the ability to use animal traction and machinery. Experience from around the world has shown that people will only invest in their land when they are sure about the security of their tenure over it, and that people can also use their land as collateral for loans to make the land more productive. Encouraging investment seems, therefore, to be essential for the sustainable development of Angola's agricultural sector (Ramírez, 2002). FAO has initiated a number of projects helping communities to map and demarcate the boundaries of their land and obtain titles and certificates of ownership. The decision to start the project in rural areas was taken mainly because the topic is less controversial there than in urban areas. FAO hopes that the scheme can be piloted in rural areas and that this will help to build up experience and trust in working with the official authorities. FAO sees 'trust-building' as a long-term project, which will take several years. FAO also believes that international agencies need to think harder about what land tenure security actually means in practice in countries such as Angola, where the concept of private property is quite different from how it is perceived in the West.

A number of NGOs have also combined the provision of humanitarian assistance with lobbying for a new land law and raising people's awareness of their rights under existing law. The NRC, NPA, Caritas and other agencies are all running training seminars in rural communities to tell people about their rights. This training is conducted at the village level and is interactive and participatory. It aims to communicate legal concepts about land rights in a simple way, and relies on raising knowledge amongst selected groups of community leaders, who can then communicate this message to the wider population. The NRC, for example, is aiming to sensitize 12,000 people through its seminars on land rights. The agency has created a mobile 'information service' that goes from village to village discussing land rights issues. This includes an innovative use of technology and well-structured training sessions, which encourage people to discuss the issue of land rights in an open way.

It is clear from observing one of these seminars that people are concerned that the *fazendas* may encroach on their land, and that traditional communities could face the possibility of land-grabbing in the future. However, this is seen as a potential rather than actual problem. None of the humanitarian NGOs interviewed provides a direct legal advice service for people concerned about

land rights issues, although NRC has established such programmes elsewhere in the world, and any problems are currently being resolved by the *Soba* and village elders.

## Conclusions

Angola accomplished a transition from war to peace, which has included a demobilization, disarmament and reintegration process and the return and resettlement of millions of refugees and displaced people, without experiencing widespread conflicts over land amongst the returnees. The conflicts that have taken place have been in urban and peri-urban areas, where land is most valuable and pressure on space is greatest. However, lack of security of tenure is an issue for both the urban and rural poor. There is general agreement that establishing food security and livelihoods is the priority in stabilizing the population and laying a foundation for sustainable return. As one observer has noted:

Most rural people do not have access to a sustainable income base outside of agriculture, and the high unemployment levels exacerbate the demand for land. Even if food becomes available in the local markets, most households will not have the cash to buy it. There is an urgent need to diversify and expand the agricultural and the non-agricultural base of rural households.

Most humanitarian agencies are phasing out their activities, despite the considerable hardship and poverty that exists. Donors are increasingly funding advocacy work by civil society organizations in recognition of the fact that Angola's two greatest problems are good governance and social inequality. A range of organizations, including UN agencies, the World Bank and international donors, grassroots national NGOs and land rights activists, describe this as the greatest challenge facing Angola as it makes the transition from humanitarian relief to broad-based development.

Angola has ratified a number of international human rights instruments that recognize people's HLP rights, and it is clear that its current policy of forced evictions violates these standards. There is an urgent need to teach people about their rights, particularly because of Angola's widespread poverty and illiteracy. International donors should also support projects that help defend people from land-grabs and forced eviction, advocate for legal reforms and strengthen tenure security. Providing people with legal aid and simplifying dispute resolution mechanisms to deal with land conflicts has been shown to be an extremely effective way of promoting sustainable return and the transition from relief to development.

Angola's problems are complex, but some of the solutions are quite simple. Huge amounts of investment will be needed to develop Angola's economy:

but one of the sources of investment in the sector will come from the people themselves, if their rights are recognized. One of their only ways

of saving – putting aside money – is to invest in houses: people invest in turning a tin-sheet house into a concrete house and upgrading their land. The wealth of all of these poor people is tied up in their land and housing. (Cain, 2002)

If people were able to access this wealth it could provide a powerful boost to the process of early recovery and sustainable development.

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## CHAPTER 8

# Going home: Land, return and reintegration in Southern Sudan and the Three Areas<sup>1</sup>

*Sara Pantuliano*

*The end of the war between the Government of Sudan and the Sudan People's Liberation Army/Movement in 2005 has generated the return of an estimated 2.4 million IDPs and refugees to Southern Sudan and the three transitional areas (Abyei, Southern Kordofan and Blue Nile). Land issues have shown to be of central importance for the reintegration of the returnees both in rural and urban areas. The international community response to returnees has though lacked in-depth land related analysis, as well as adequate leadership and coordination of efforts. This chapter emphasises the importance of resolving land disputes to support reintegration and more broadly peace in Sudan, and discusses the role that humanitarian and development agencies can play to support these processes.*

### **Introduction**

Customary land rights have generally not been recognized by the Government of Sudan (GoS). Statutory legislation has often been used to bypass local customs and expropriate land in favour of elites. In the south, the Sudan People's Liberation Army/Movement (SPLA/M) and later the judicial systems of the Government of Southern Sudan (GoSS) have largely been based on customary legislation, especially when regulating access to land and dealing with land-related problems. During the civil war the SPLM rejected statutory law in its areas of control (De Wit, 2004). Today there is no unified legal framework of land tenure across Sudan. In the north, despite the fact that official land law has been transformed under successive governments, legislation is essentially founded on colonial land laws, according to which the title to land is vested in the government. The Power Sharing Protocol of the CPA signed by the two warring parties in 2005 enshrines parallel legal systems in Northern and Southern Sudan, though the situation in the contested areas (Southern Kordofan and Blue Nile) remains unclear.

Because of its complexity, the CPA defers the problem of land ownership to the post-agreement phase. It does not address the ownership of land and natural resources, but institutes a process to resolve this question through the establishment of a National Land Commission, a Southern Sudan Land

Commission and State Land Commissions in Southern Kordofan and Blue Nile. However, neither the National Land Commission nor the State Land Commissions in the transitional areas have been established as part of the implementation of the CPA. The CPA also envisages the right of each individual state to oversee the management, leasing and use of land belonging to the state, and legislative rights for the Government of National Unity (GNU), Government of Southern Sudan (GOSS) and state governments to proceed with urban development, planning and housing (Power Sharing Protocol, Part V). The CPA Wealth Sharing Protocol stipulates that the regulation of land tenure and usage and the exercise of rights in land are to be a concurrent competency exercised at the appropriate levels of government. These provisions have also been embedded in the Interim National Constitution and in the Interim Constitution of Southern Sudan. However, no new legislation has been passed to enforce and clarify these stipulations in practice. The complex and often unclear delineation of powers among GNU, GOSS and state and sub-state authorities over land regulation and administration is a major bottleneck in the resolution of land problems linked to the return of IDPs and refugees. The current legislative vacuum has also contributed to create tensions between GOSS, state governments and local communities in areas such as Juba.

This chapter illustrates the key problems faced by returnees in two areas of high return, namely Southern Kordofan (rural) and Juba (urban), and discusses the key importance of resolving land issues to sustain the reintegration of returnees.

### **Southern Kordofan**

In Southern Kordofan, competition over land and natural resources has long been a source of tension between different groups, often aggravated by central government policy on land. Legislation introduced in the 1970s and 1980s (particularly the Unregistered Land Act of 1970 and the Civil Transaction Act of 1984) strengthened the privileges of the state and allowed elites close to government to acquire land at the expense of rural people. Expropriations were particularly common in Southern Kordofan (namely in the Nuba Mountains area), where illiterate farmers and pastoralists saw their land assimilated into mechanized farming schemes or simply registered in someone else's name. By 2003, it was estimated that 3–4 million *feddans* (1,260,000–1,680,000 ha), or between 9 per cent and 12 per cent of the total area of Southern Kordofan, were under mechanized farming (Harragin, 2003). Half the total area of the fertile plains is taken up by these schemes. The mechanized schemes also cut across the transhumance routes of Baggara nomads, who frequently rerouted their herds through Nuba farmland. The most serious problems were around the Habila scheme, which according to IFAD data (2000) extends across 750,000 *feddans* (315,000 ha). These land grabs led to massive displacement and were one of the main reasons why, in the late 1980s, people in Southern Kordofan joined the SPLM insurgency.

Local-level conflict between different user groups has remained common during the war. The arrival of great numbers of returnees in Southern Kordofan (an estimated 600,000, according to UN data) has exacerbated long-running tensions between different land users. Four main types of land conflict prevail at present. Such clashes have generated a significant level of casualties between 2006 and 2008 (Pantuliano et al, 2007):

- *Conflict between pastoralists and farmers*, usually between Arab pastoralist groups such as the Misserya, the Humr, the Darajul and the Hawazma and farmers of Nuba origin. This type of conflict was at the heart of the war in Southern Kordofan and is resurfacing. It ranges from low-level tensions between communities in Shatt ed Dammam, El Buram, Angolo and Abu Hashim to incidents of more violent confrontation in the Lagawa area, where the number of pastoralists is higher and several Arab nomadic groups have their *dar* (homeland). The involvement of a number of pastoralist groups in pro-government militia during the civil war seriously damaged their relationship with farming communities of Nuba origin, since pastoralists were often involved in predatory activities and attacks on Nuba villages. Nuba communities today are not prepared to welcome pastoralists on their land again. In several areas, Nuba groups have been building homes on the old transhumant routes. In areas where this confrontation has become violent, insecurity has reduced farmers' capacity to cultivate all the available land, as they do not dare venture to farms further away from the village.
- *Conflict amongst agro-pastoralist communities, exacerbated by return*. Although less widespread, this is serious in some locations where more powerful groups are seen to be expanding their land holdings at the expense of others. In areas such as Saraf Jamous, small Nuba groups such as the Tacho have progressively been losing land to the more powerful Moro and other neighbouring Nuba groups such as the Achiroun and the Tira, with the result that the availability of land for Tacho returnees has been reduced. In the nearby Achiroun area, returnees have found their land occupied by residents who, during the war, lived on the hilltops, and who now were not prepared to return the land to its legitimate owners. Most returnees tend to settle in the valleys rather than on the hilltops, something that is also encouraged by the local administration. The increasing concentration of settlements in the valleys has created tension throughout the Saraf Jamous area. In a couple of locations in former SPLM-controlled areas, such as en-Nugra, returnees have found their land occupied by residents or other households who used to live in areas under SPLM control. Local authorities reportedly find it difficult to reclaim land from people who supported the SPLM during the war.
- *Conflict between farmers and traders*. Insecurity has significantly increased in areas where farmers are clashing with traders exploiting local natural resources, such as in Rashad and Abu Jebaha localities, where traders

have been illegally logging timber, gum Arabic and palm trees (*dileb*), with the complicity of the military. Banditry is also common in these areas. Insecurity deters returnees from coming back to these areas. Key informants attribute the insecurity to groups opposed to normalization for fear that stability would damage the timber and gum trade.

- *Conflict between returnees and labourers (sharecroppers) on mechanized farms.* Access to land for returnees in Rashad and Abu Jebeha is also impeded by the expansion of mechanized farms. IDPs within the state are unable to return to their home areas because their land is now part of a mechanized scheme. Many of these prospective returnees are unable to prove that they have title to land because they only hold customary rights. In Al Goz, near Saraf Jamous, returnees could not access land because merchants from Maflu village had exploited it for large-scale mechanized sorghum production. In Habila, young returnees have been harassing sharecroppers and demanding a payment of SDG3 (US\$1.4) for every ten *feddan* cultivated. Landlords have reportedly been paying because of fear that their crops would be burnt if they refused. Tribal leaders are unable to mediate these disputes as they do not have power over the traders.

### ***Current responses***

State authorities estimate that clashes around land, particularly between pastoralists and farmers, have resulted in between 200 and 300 casualties in Southern Kordofan between 2005 and 2007 alone. Killings and injuries related to land conflict are the single biggest risk to returnees as well as local communities. However, there has been very little effort to date to identify areas of highest insecurity and potential conflict, or to inform returnees where these are. In Southern Kordofan most of the return has been spontaneous, with the joint organized return process led by the GNU, the IOM and UNMIS/Return, Reintegration and Recovery Section (UNMIS/RRR) only reaching about 2 per cent of the total return flow in 2007 (Pantuliano et al, 2007). Some returnees have though been brought back through the joint organized returns to areas such as Habila and Lagawa, where tension around land is already extremely high. Land-related analysis does not appear to be prominent within UNMIS/RRR reintegration policy and field reports. NGO workers observed that there has been very little questioning by UNMIS/RRR of the low level of return to areas such as Kaw Nwaro and Hajar Jallaba, where land conflict is reportedly deterring people from going back despite the high agricultural potential of these areas. Land issues are central to UNHCR's policy for return and reintegration in Southern Sudan, and are recognized as key to the successful reintegration of returning IDPs and refugees.

Despite the lack of attention to land issues amongst the humanitarian community focused on return and reintegration processes, a number of external initiatives are under way in Southern Kordofan to help the state

government address land issues, particularly with regard to customary ownership of communal land. In former SPLM-controlled areas, attempts have been made to demarcate customary land holdings, supported by the US Office of Transitional Initiatives (OTI). Project staff asked communities throughout Southern Kordofan to identify their customary holdings in preparation for the work of the Land Commission. The process was enthusiastically supported, but it also created a number of problems because it led communities to believe that their land is now officially registered. This has heightened tension between Nuba communities living in 'border areas', such as the Ghulfan and Timaean in Dilling locality and Atoro-Lira-Abul in the Heiban area. An expansion of the project into former GOS areas and the establishment of 'boundaries committees' throughout the state had been planned, but the whole project appears to have been put on hold following an external review.

The CPA recognized that a durable solution to the conflict in Southern Kordofan could only be reached if rights and access to land were secured for the majority of people. The absence of an overall framework to deal with land problems is starkly apparent. A review of state land legislation and the establishment of the State Land Commission as well as procedures to arbitrate disputes arising from claims to occupied land are crucial to guarantee that underlying tensions around land are addressed and that returnees are allowed access to land. The demarcation of tribal lands and the opening up of pastoralists' transhumant routes are particularly urgent issues.

## **Juba**

Land issues are not limited to rural areas. IDPs and refugees are increasingly choosing to return to urban areas instead of moving back to their rural home areas. In Juba, the centrality of the land question for the reintegration of returnees cannot be overemphasized. The current legislative vacuum has led to increasing tension over land relations between GOSS, the government of Central Equatoria State (CES) and the Bari community.<sup>2</sup> Tensions with the Bari are mainly related to the allocation of new land to expand the boundaries of Juba and demarcate new parcels for services, investment, government offices, capital infrastructure and residential plots for returnees. Disputes are also rife over plots already gazetted (mostly pre-war or during the war), where ownership is contested as a result of prolonged displacement and ambiguous or absent land documentation. All gazetted land is owned and leased by the government, though leases are transferable once allocated. There is a large disparity between government and market lease prices, with the latter unaffordable for most returnees.

### ***Land and property disputes***

Land and property access disputes in Juba in most cases involve returnees trying to regain access to land they were forced to abandon upon displacement.

Disputes range from illegal occupation to double issuing of leases during the war and land-grabbing by the military or other powerful groups. Main problems include:

- *IDP occupation of abandoned property*: returnees are trying to claim back the land they legitimately owned, which has been occupied by IDPs for more than 15 years, for example in Lobonok, an area on the outskirts of Juba where people were displaced in the 1990s. Returnees with legitimate land titles are trying to regain access to their plots but most IDPs have refused to vacate the land. Many IDPs have also taken in returning relatives.
- *Plots being forcibly occupied by the military or 'powerful members of the community'*: this concerns both returnees and residents as a number of long-term residents are losing their land to soldiers occupying it by force. In a number of cases, long-term residents have lost their land to well-off returnees, who have used the military to force owners to give up their property. Land ownership documents mean little when threatened by a gun.
- *Multiple issuing of leases for registration of a single plot*: during the war Juba town was replanned and new titles were given out several times without any consideration for absentee land owners. This included areas demarcated as public spaces, such as roads and sport facilities. Land was normally used as a form of patronage and reallocations usually benefited individuals or groups close to the government. Plots belonging to individuals perceived to be SPLM supporters were particularly targeted. Such cases contribute to the backlog of land disputes in court. Multiple allocations are also reported since the signing of the CPA. Pre-war owners find it very hard to reclaim these plots, especially because in many cases they lack the appropriate documentation to support their claims. Even individuals with all the proper paperwork find it virtually impossible to retrieve their property since there are often another three or four claimants who consider their claim equally legitimate on the basis of titles issued during the war. People with the best connections usually win claims.
- *Unauthorized building on unoccupied plots*: unoccupied plots are illegally fenced and properties are built or renovated without authorization. Legitimate owners have great difficulty retrieving their land, and in the best-case scenario are expected to compensate those who have built on it. These compensation claims often end up in court (De Wit, 2004).
- *Illegal sale of land*: a number of returnees who had entrusted their plots to relatives have found their land sold upon their return and are having difficulties getting it back. Soldiers are also reported selling unoccupied plots without the knowledge of the owner.
- *Long-term occupancy without registration*: in areas on the periphery of Juba, especially in Munuki Payam, land allocation and registration have been

carried out by chiefs but not formally registered with the *payam* (local) administration. As a result, people who have occupied the land for years or decades are now being evicted by others who have land documents from the *payam*.

- *Women's rights*: despite more progressive provisions in the Interim National Constitution and the Interim Constitution of Southern Sudan, women find it difficult to uphold their rights to land. According to customary rules in much of Southern Sudan, women cannot own, control or inherit land unless they are widowed or disabled; even in the latter cases, their rights are usually limited to temporary usufruct rights. Returnee widows are facing problems trying to recover their land, usually because they do not have the necessary documentation. Resident women are also challenged in their claims to land. Women were not allowed to register land in their own names pre-CPA, and therefore many residents, often heads of household, do not have appropriate papers and are threatened with eviction as the land is registered in a male relative's name. A number of such cases were identified in Tong Ping.

There are also disputes over land access and use in rural areas of Juba County, largely because of encroachment by Mundari cattle onto Bari land. The Mundari complain that their land is occupied by Dinka Bor, obliging them to look elsewhere for pasture. Skirmishes between pastoralists and farmers are common and have resulted in low levels of cultivation. Returnees have little or no difficulty in claiming back their land, but face problems cultivating it because of the Mundari transhumance and increasing settlement in the area.

### ***Creating new plots***

Access to land and securing tenure in Juba is central to the successful reintegration of those who have chosen to seek a new livelihood in the town. The provision of new residential plots in Juba and other urban areas had been identified as critical to facilitating the reintegration of returnees since before the signing of the CPA, as it was apparent that there was a significant mismatch between the expected urban population and the number of available plots in the town (De Wit, 2004). Numerous studies and workshops were undertaken in 2004 and 2005 to ensure that legislative and administrative measures were in place to absorb the new arrivals and minimize disputes, but despite extensive research and preparation, the government has been unable to demarcate enough new plots ahead of the arrival of the returnees. This has largely been a result of unresolved tensions over the expropriation of Bari land for gazetting. Allegations of corruption have also been made, as prime land in Juba has reportedly been allocated to or grabbed by influential members of the community.

The Central Equatoria government has been trying to negotiate the demarcation of new plots in Juba, but has not been able to reach an agreement



with those Bari chiefs who have successfully established themselves as key intermediaries with government as well as international organizations and businesspeople. Returnees from Central Equatoria have been able to obtain undemarcated plots directly from chiefs in some areas (for example south of Lobonok and parts of Gudele), and have taken possession without official registration. But chiefs are only allocating land to Equatorians and are refusing land to other groups, particularly the Dinka.

The great majority of returnees are not getting access to plots and cannot afford commercial rents. Renting can also be risky as owners tend to raise rents at short notice or evict tenants if they need the property or can rent it out for more money. As a result, most returnees cram into relatives' compounds, where up to three families (usually 20–25 individuals) squeeze together in makeshift *rakubas* (shelters made of wood and grass) set up in courtyards. This makes for very congested living, with attendant health and sanitation problems and fire risks. Those who do not have relatives in Juba tend to illegally occupy empty spaces, often in areas designated for roads or public services, or in school courtyards. The Bari community is resentful of those who occupy land without their agreement. In a number of cases, such as in Gudele, SPLA soldiers are reported to be initiating construction without official land titles or the agreement of the local community. Many soldiers claim that they take precedence in ownership of land over those who fled since they were the ones who fought to win it back.

The government argues that, in order to stop land-grabbing, it needs to be able to demarcate new land to allocate it legally. Some officials maintain that predatory practices by powerful individuals are fuelled by the inability of senior government officials to have access to a plot to build a home for their families. The illegal occupation of land has put poorer, more vulnerable returnees at risk of eviction. In April and May 2007 a wave of evictions and demolitions took place in Nyakuron, which affected land-grabbers, but also returnees who were renting accommodation without knowing that it was illegal. People were traumatized, particularly returnees from Khartoum who had previous experience of this in their place of displacement. GOSS was receptive to NGO and UN representations and the demolitions were quickly stopped. The government did not offer alternative land to those evicted apart from suggesting that they move to Gumbo, an area considered too insecure because of incursions by the Ugandan rebel group the Lord's Resistance Army (LRA). A year later, people were still stranded in makeshift accommodation in Nyakuron.

Many returnees expect the government to provide land for them, since the government is encouraging them to return. Others believe it is the responsibility of the UN agency that facilitates their repatriation or return. A number of returnees have complained about the emphasis placed by GOSS on return in the absence of conducive conditions for their reintegration. They point out that land is more abundant in areas of displacement, and that prospective returnees are deterred by the difficulties of finding a plot in Juba.

### ***Town planning***

GOSS recognizes that it is incumbent on both the central and state governments to find a solution to the land crisis in Juba and ensure that returnees have access to land. The government aims at decongesting Juba and encouraging returnees to move back to their rural areas of origin by promoting a policy of 'taking towns to the people'. This was launched by the Southern Sudan Reconstruction and Development Fund (SSRDF) in 2007, as part of its strategy for rural development and transformation. It is based on creating two model towns for each of the 10 states, to include infrastructure such as a functioning market, community centre, primary school, health centre, water supply and electricity. It is an alternative to the normally scattered settlement pattern of Southern Sudan, and is designed as a more efficient way of providing services. The SSRDF describes it as similar to '*ujamma*' in Tanzania, but voluntary (SSRDF, 2007). Funding is expected to come from the Multi-Donor Trust Fund (MDTF), although this policy is still in the planning phase and has met with scepticism from donors.

At the same time GOSS aims to manage the growth of Juba according to detailed urban development plans which build on the colonial structure of the town. The colonial land classification system separates people by socio-economic status and creates cleavages in the community. Services are concentrated in the inner-urban areas where there is a prevalence of high-value, low-density large parcels, whilst high-density plots tend to be concentrated in the periphery away from key services and markets. This distribution has been retained in the master plans for the expansion of Juba, with the support of international donors (Japan International cooperation Agency (JICA) and USAID through Planning and Development Collaborative International (PADCO)/Gibb Africa, with the Gibb Africa plan focusing more on detailed planning in residential areas). The plans maintain the colonial plot zoning system and envisage that existing overcrowded populations will move to new areas in the periphery (USAID, 2007). The plans have been drawn up without engaging communities in the process. As a result, public services have been planned on areas occupied by IDPs and returnees. The Ministry of Physical Infrastructure is trying to reach an agreement with these communities to avoid forcible eviction, though forced removal was necessary to get the rehabilitation of the port under way.

A number of technical UN agencies and NGOs have expressed strong reservations about the top-down master plan approach, both because it fails to involve the community in the urban planning process and because its provisions have no legal basis. The Minister of Physical Infrastructure has pointed out that half the population of Juba would need to be relocated and/or compensated to implement the main master plan, which was developed with the support of JICA. UN-Habitat has called for a strategic spatial planning approach (UN-Habitat, personal communication) that builds on the existing physiognomy of the town, is fair and inclusive and aims to address

inequalities through a more equitable spread of infrastructure and services. In order to implement these policies, it is critical to identify new areas for residential housing to ease congestion in the current perimeter of Juba, build more service infrastructure and roads and make land available for investment. The local Bari community must be enlisted in the search for a solution to the town's development challenges.

### ***Tensions between the Bari community and regional and state government***

The acquisition of additional land appears to have become an intractable issue both for the Central Equatoria government and for GOSS, both of which are having problems with 'the Bari'. The government of Central Equatoria issued a call for land applications in 2005. It was inundated with applications, but did not proceed to allocate the land because Bari communities reacted angrily to the announcement, which amounted to a *fait accompli*. The government has since held several consultations with senior Bari figures, but the problem is still unresolved. A number of Bari chiefs have taken a leading role in negotiating land sales or allocations around Juba, which has led to criticism from some of their communities. Chiefs in CES have not historically had primary responsibility for land, which is instead associated with particular clans or spiritual leaders, who are not always being consulted during negotiations over land (Cherry Leonardi, personal communication).

Some senior government officials feel that the consultations on land access are being used as a delaying tactic by these chiefs. The state government has been trying to get land released in Gudele and Nyakuron, but now says that it is open to receiving parcels in other areas. Reportedly the only place the Bari chiefs have offered is Gumbo (Rajaf Payam), which is considered insecure. The Minister of Physical Infrastructure has pledged to improve security in Gumbo, but feels that land should be released in inner Juba as well.

The Paramount Chief of the Bari maintains that they would be prepared to give land to the government if a number of conditions were met. These include the provision of services on the parcels allocated and the reservation of one-third of the plots for the Bari themselves. The Bari are united in their refusal to see their land expropriated by the government and allocated on a commercial basis. They know the value of real estate in Juba and want to ensure that their community can benefit from it. Even if the government were prepared to compensate Bari communities financially for their land, it is not clear who would receive the money and how it would be redistributed. The lack of land in Juba town is making it impossible to introduce new services, including schools, primary health centres and boreholes. Investors are also unable to get land, crippling opportunities for development.

The wrangle between the Bari and the government also concerns GOSS. The GOSS Ministry of Land and Housing has requested land to develop an administrative district, but no location has been agreed. In 2006, GOSS asked for a 5x5 km plot in Tokimon, on the road to Yei. The transaction was not

finalized, according to Bari informants, because GOSS changed its mind. The Bari chiefs then offered land in Gumbo, but GOSS felt that insecurity made it an unsuitable location for government offices. Latterly GOSS has requested land on the island of Kondokoro, but the Bari chiefs are adamant that they will not release their community's best farming land. International organizations report that the plan for the administrative and business district in Kondokoro was announced without adequate consultation with the 'Bari community'.

The current impasse reflects the lack of an overall land policy and mechanisms to engage with concerned communities. Senior GOSS officials believe that there has been enough consultation, and that it is now time to formulate and implement a land policy. Ordinary Bari people in and around Juba complain that their educated leaders are too busy with 'politics' to really represent their interests. The notion of a single 'Bari community' is idealistic and conceals competing interest groups and their political linkages. It is unlikely that the chiefs alone could block the acquisition of land for the expansion of Juba without significant backing from higher authorities (Cherry Leonardi, personal communication). With some chiefs accused of being corrupt and allocating land to investors for their own personal gain, many Bari insist on a consultative mechanism that involves the whole community in decision-making. Consultation processes have been initiated by Pact and others, and these must be supported and expanded.

The success of Juba will be an important test for the unity of Southern Sudan. Returnees from other areas currently feel unwelcome in the regional capital and question the status of Juba as a symbol of a 'New Sudan' embracing all Southerners. For the Bari, land is not just an economic issue; it is at the heart of their identity, which they feel will be threatened if the expansion of Juba swallows Bari villages. Appropriate mechanisms to guarantee Bari rights must be found, for instance by entrusting land titles in the name of the Bari community and only granting the government time-bound leases.

### ***Individual dispute resolution***

The system of dispute resolution is a hybrid of customary and statutory forms, and there is currently no consensus about how customary and formal institutions should relate to one another. The guidance provided in the Interim Constitution for Southern Sudan is vague regarding the role of customary courts and traditional leaders, and makes state governments responsible for determining their jurisdiction. In Juba, customary courts continue to play an important role in the adjudication of land disputes. Interviewees reported that land dispute cases are first submitted to the chief of the area or the block leader. If the case remains unresolved, it is moved to the *payam* administrator, then to higher authorities in the state government and finally to a court. Local chiefs have significant power in land matters and usually make decisions without recourse to policy. They act as mediator and judge, and hold court in public so that the community can participate. Opinion is divided as to

whether the role of the local chiefs is beneficial. Some consider the courts transparent and accountable, and court decisions generally fair (International Rescue Committee/UNDP, 2006; UNDP Southern Sudan 2006, quoted in Mennen, 2007). However, submitting disputes to chiefs is expensive and decisions are often biased, prompting an increasing number of people to resist the involvement of local chiefs in land disputes. There is also a problem of capacity, as chiefs are often also called to testify in the courts and to refer cases to the Ministry of Legal Affairs. Chiefs are seldom able to arbitrate between soldiers and civilians, and usually discriminate against women.

### ***Current institutional framework***

With legislation on land yet to be approved, the roles of ministries, departments and institutions are still uncertain. The competencies of the Ministry of Physical Infrastructure of Central Equatoria State and GOSS Ministry of Land and Housing are unclear. The Ministry of Physical Infrastructure should be responsible for identifying and allocating new land, but GOSS can request the state government to confiscate land 'for public interest', though it has to offer compensation in return. The state government, more sensitive to the interests of the Bari, does not always respond to these requests. The confusion of roles between GOSS and the state government is discouraging investors, with instances of land allocated by GOSS not being released by the state government.

The role of the Southern Sudan Land Commission (SSLC), established by GOSS Presidential Decree no. 52/2006 in July 2006, also remains undefined. The decree set out the composition of the Commission, but did not elaborate on its role. The CPA and the Interim Constitution of Southern Sudan are equally ambiguous about the roles of both the National and Southern Sudan Land Commission. The National Commission is mandated to arbitrate land claims between willing contending parties, enforce the application of the law, assess appropriate land compensation and advise relevant levels of government regarding land reform policies and recognition of customary land rights or law. It is assumed that the SSLC would play a similar role in the South (CPA Wealth Sharing Protocol; Interim Constitution of Southern Sudan, Part Twelve, Chapter II; Interim National Constitution, Chapter II). State officials see the arbitration function as a duplication of the role already played by customary and statutory courts. The Commission is currently overly dependent on its chairman, who exerts a considerable level of authority. In turn, the chairman is frustrated about the limited powers vested in the SSLC and the restricted scope he is allowed by other actors, especially at state level. The Commission is now focusing on arbitration between individuals and the state, an issue that appears to be less frequently dealt with by the courts, and gives legal opinions to the states on how to proceed. The SSLC is waiting for a new Land Act to be passed before increasing the number of staff (currently 15)

and starting work on a land policy. It is however normal procedure for policy to precede law.

The draft Land Act is being held up at the Ministry of Legal Affairs, which is currently reviewing it. The courts are unable to operate properly because they do not have any laws to guide them. The law as defined by the old GOS is considered exploitative and GOSS does not want to use it. This has created a vacuum. Although there are reservations about the way the new Act has been drafted, as it is said to mix policy and implementation issues and to be overly focused on rural questions, a new law is essential to resolving the land crisis in Juba. No clear policy on returnees' access to land is set out in the Act or in any other document; furthermore, the Act is almost entirely lacking in articles tackling urban tenure issues. At the same time, the draft law provides an excellent basis for the regulation of land issues in rural areas and includes key articles that could be applied in urban areas, although these would need reshaping. Despite the shortcomings of the current draft, it is essential that a legislative framework is put in place as soon as possible, that the roles and responsibilities of the various actors are clarified and that institutions are given the power and resources to perform their functions.

#### ***International assistance on land issues***

The government and international organizations operating in Southern Sudan had anticipated that land problems would arise as a result of the arrival of large numbers of returnees. A consortium of agencies including FAO, UNHCR and NRC undertook studies on a wide spectrum of land and property issues (Abdel Rahman, 2004; De Wit, 2004; El Sammani et al, 2004; Nucci, 2004) and organized workshops on land issues related to returns (FAO et al, 2004). Studies on urban planning were also undertaken by UNDP (Wakely et al, 2005) and USAID (2007). The studies produced abundant and valuable material, but they were not complemented by a clear agenda for action. This was mainly because of a lack of coordination amongst UN agencies (particularly UN-Habitat, UNDP and FAO) (Special Representative of the Secretary General (SRSG) briefing note prepared by the FAO Sudan Land Programme, 02/10/2006 and interviews with senior UNMIS official, Juba). Different UN agencies and donors (particularly USAID and JICA) have been providing technical assistance to different government bodies (including the Ministry of Physical Infrastructure in the government of Central Equatoria, the GOSS Ministry of Land and Housing, the GOSS Ministry of Legal Affairs, the Vice-President's Office and the Southern Sudan Land Commission). Technical assistance, ranging from rule of law to land administration, urban planning and arbitration and legislative reform, has reportedly not been harmonized. Humanitarian actors consider some of this assistance inappropriate and confusing, particularly the master plans developed by JICA and Gibb Africa. Some UN agencies and NGOs expected UN-Habitat to provide stronger leadership on land issues in Juba, but in the last two years the agency has had only one staff member on the

ground. Several expert missions were sent from headquarters. Their analysis and advice is generally well received, but the lack of an appropriately staffed and continuous presence on the ground has reduced the value of UN-Habitat's inputs.

NRC, FAO, NPA, USDA/USAID and UNHCR Protection have formed a Land Forum chaired by the chairman of the Land Commission. The group, meant to support the work of the SSLC, meets on an ad hoc basis, though agencies try to meet at least once a month. So far it has been engaged in supporting the preparation of land legislation through consultative workshops. The agencies involved report that workshops have not been systematically followed up.

A number of organizations have also been helping returnees overcome legal obstacles related to HLP issues. NRC has established Information, Counselling and Legal Assistance (ICLA) centres in two *payams* (Rajaf and Munuki). Although the mandate of the ICLA centres goes beyond HLP, NRC reports that 20 per cent of the cases referred to it by returnees and IDPs concern land. ICLA officials point out that, unlike in other countries, it is difficult to provide legal advice on these issues because no land legislation is in place. UNDP's Access to Justice project has been supporting the Rule of Law Promoters Association (RLPA) in Juba. RLPA is a local organization; its main activities include monitoring customary courts, legal assistance and referral and the management and operations of a Justice and Confidence Centre (JCC). Work by Pact to document the views of local communities on land issues in Juba has been mentioned earlier.

There are a number of areas where appropriate and well-coordinated technical assistance could play a critical role. Some senior government officials feel that the international community could provide support by facilitating a high-level political meeting including all key government and Bari decision-makers to discuss new land allocations, the competences of the different levels of government and the role of customary bodies. Others feel that the emphasis should be placed on involving communities in the search for a solution through more genuine consultation and participatory planning. This seems to be a prerequisite for any strategy, though a two-pronged approach may have some use.

The government of Central Equatoria stresses that most assistance to date has been provided to GOSS (apart from JICA's). However, support to reorganize the cadastre and register community land in rural *payams* of Juba County would be greatly appreciated. All *payams* have been registered in the Land Registry, but with broad maps and without a specific land-use plan. Training and advisory services for the Land Office and the Survey Department would enhance understanding and implementation of the land policy once it is finalized. State officials in the Ministry of Physical Infrastructure felt that UN-Habitat should be funded to provide technical assistance on these issues, mentioning the very positive experience they had with the agency in the 1980s.

A number of GOSS officials would also like to continue to receive technical assistance in the development of land legislation. They are appreciative of the inputs already provided by the EU, but point out that more technical support is needed from qualified individuals to develop the land policy and other legislation. Further refining of the draft Land Act is also required to make it relevant to Southern Sudan.<sup>3</sup> The development of further legislation will not however be sufficient to resolve the current impasse on land issues unless there is strong political will to do so. A complication in this regard lies in the fact that the few people in Juba who have the capacity and seniority to address the land question politically are already overstretched by important issues linked to CPA implementation. The land issue in Juba needs to be recognized as a priority requiring urgent attention at the highest levels of GOSS.

### **Conclusions**

The case studies presented here demonstrate that, across different contexts, the scale of land and property problems has grown as the rate of return to Southern Sudan and the transitional areas has increased. A significant number of displaced people have returned to their areas of origin, where they hold customary rights to land, but where this land is occupied or has been given away to investors land and property disputes have arisen. An even greater proportion of returnees have chosen to move to urban centres where opportunities are perceived to be greater. The Juba situation shows that arbitrary occupation of non-owned plots and commercialization of land currently occupied by IDPs have also resulted in a growing number of disputes. In Southern Kordofan, as in other areas of Sudan, the atrocities committed by some pastoralist groups during the conflict have made it more difficult to generate trust around a possible land settlement that would guarantee the rights to land and natural resources of all communities in the region. Given the lack of an appropriate legal framework and the weaknesses of the administrative system, it is reasonable to expect that land disputes throughout the country will remain largely unaddressed unless there is a considerable effort to tackle underlying problems.

There is a danger that actual or brewing land disputes could rapidly degenerate and add to the already significant number of violent clashes, especially in areas where land rights are derived from individual membership in a wider group. In these cases, individual disputes related to access to resources automatically become group conflicts. The history of Sudan also shows that land conflicts are ripe for political manipulation, as unresolved land disputes have consistently underscored wider conflict. Land issues could therefore once again become an easy way to foment unrest. This is a risk that should not be underestimated given the fragility of the CPA. There are reasons to be particularly concerned about growing tension in the transitional areas, where land issues have been a dominant feature of conflict in the past.



Adequately addressing land issues is a major task that underpins the entire reintegration and recovery process and should be addressed as an immediate priority by all relevant actors. Appropriate legislative, judicial and administrative reforms need to be urgently made that ensure greater respect for the rights of legitimate land owners and users, both in rural and urban areas, and make possible adequate settlement of existing and future disputes through restitution or appropriate levels of compensation. The complexity of the process means that success can only be achieved through the implementation of complementary and mutually supportive initiatives. It is therefore extremely important that the GNU and the GOSS prioritize the development of an appropriate policy framework around land issues. This should be underpinned by a coordinated and sustained effort by the UN, NGOs and donor governments to provide the necessary technical expertise and resources to facilitate this reform process at all levels. Humanitarian organizations involved in return and reintegration processes could help ensure that reforms are supported by genuine consultative processes with communities, and that appropriate solutions are developed that guarantee traditional community rights to land, both in rural and in urban areas. International organizations should also advocate for and support the development of legislation that includes safeguards for women's rights on land issues, particularly succession and matrimonial law. Appropriate technical advice on urban planning should also be made available, especially in areas of significant return. If humanitarian organizations involved in reintegration programming do not have the relevant expertise to offer appropriate advice, they should call upon the services of land tenure experts. The willingness of the GNU and the GOSS to promote a comprehensive reform to suitably address land issues will be a critical factor in effecting any change.

### Notes

1. This chapter draws on extensive research on Sudan's return and reintegration process carried out throughout 2007 and 2008 by the HPG (Pantuliano et al, 2007 and 2008).
2. Juba falls within Bari chiefdoms.
3. The Act was modelled on the Communal Land Acts of South Africa and Belize, the Tanzania Village Land Act and the Mozambique Land Act.

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## CHAPTER 9

# Between war and peace: Land and humanitarian action in Colombia

*Samir Elhawary*

*This chapter provides a historical perspective on the relationship between land and conflict in Colombia, in which land is identified as both a source and resource of conflict. This relationship is central to understanding forced displacement in Colombia and this study argues that in light of significant shortfalls in translating state policy on land and IDPs into practice, humanitarian agencies in both the provision of assistance and wider transitional programming need to fully integrate an understanding of land issues into their programming. Furthermore, any prospects for supporting a transition from war to peace will require a resolution of land disputes, substantial reparation and wider reform.*

### **Introduction**

A highly complex relationship exists between land and conflict in Colombia, where land is tied to multiple social, economic, political and symbolic power structures and processes. These structures and processes have manifested themselves violently when the existing institutional framework has failed to resolve disputes (Richani, 2002; Clover and Huggins, 2005). This has posed enormous challenges for humanitarian organizations operating in Colombia, and the failure to understand and address this complexity can often lead to policies and programmes that are ineffective or that perpetuate violence and civilian insecurity. This case study argues that attempts by humanitarian organizations to alleviate the crisis must incorporate a comprehensive understanding of land issues in their policies and address them in their programming as part of a context-specific, integrated and inter-disciplinary approach (OECD, 2005).

### **Land and conflict in historical perspective**

#### ***Agrarian conflicts, institutional failure and modes of accumulation***

Agrarian conflicts have been a continuous theme throughout Colombia's history, and the institutional failure to resolve these disputes has led to the emergence of violent systems and actors, namely the illegal armed groups

that antagonists use to pursue their diverse interests (Richani, 2002). These conflicts surfaced from the contradictory modes of production that emerged after independence: the *hacienda* system, consisting of large concentrations of land (*latifundios*) and requiring an ample supply of inexpensive labour; and the traditional peasant subsistence economy of smallholdings (*minifundios*). The former started to predominate over the latter as the large landowning elite sought to further concentrate land, thereby ensuring that a sufficient supply of landless peasants could be assured as labourers. This transition in the agricultural economy led to the growing conversion of peasants into wage-labourers on the *latifundios*, and to a process of land colonization whereby peasants (*colonos*) avoided the *latifundios* by migrating from the central highlands to the peripheries, where they cut down vegetation on public lands to prepare new land for cultivation (LeGrand, 1992). The landowning elite sought to benefit from this land colonization by either acquiring these lands or forcing the *colonos* to abandon them, effectively leaving many of these now landless peasants with no choice but to become wage-labourers or sharecroppers on the *latifundios*.

The Colombian government attempted to resolve these conflicts with a series of land reform bills, such as Law 200 of 1936 that aimed at modernizing the agrarian sector by redistributing non-productive land in the *latifundios* and compensating *colonos* for any improvements they had made to the land they had occupied. The implementation of these reform measures was fiercely resisted by landowners, who used their power at the municipal level to adjudicate land disputes in their favour. Meanwhile, large areas of agricultural land were converted to pasture for less labour-intensive cattle-grazing in order to avoid land claims by tenants and sharecroppers. The effects of these changes were aggravated by confrontation between the Liberal and Conservative parties in a period known as *La Violencia* (1945–58), when displacement led to further land concentration and colonization.

Subsequent attempts at agrarian reform failed to resolve the conflicts between landowners and the increasingly displaced and marginalized *colonos*. Law 135 of 1961 is a case in point. It was designed to assist the *minifundios* and increase food productivity after *La Violencia*, for which the Colombian Institute for Agrarian Reform (INCORA) was created. However, INCORA failed to achieve its objectives, distributing less than 1 per cent of the land that was subject to expropriation (Richani, 2002). At the same time, Law 1a of 1968 helped convert *latifundia*, through the expulsion of tenants and sharecroppers, into large commercial agribusinesses, aimed at meeting the food needs of the growing urban population and generating surplus for industrial expansion (Pearce, 1990).

As noted, the persistent failure of state institutions to resolve land conflicts led to the emergence of violent actors. These mainly took the form of guerrilla insurgencies, most notably the Armed Revolutionary Forces of Colombia (FARC), which had a strong land reform agenda, and the National Liberation Army (ELN), which opposed foreign investment and the exploitation of

Colombia's natural resources. In response to growing guerrilla influence, self-defence groups or paramilitaries emerged, and later united under the umbrella organization the United Self-Defence Forces of Colombia (AUC).

### ***Land colonization, resistance and territorial expansion***

Agrarian conflicts have led to various waves of peasant colonization linked to the peasantry's struggle against the expansion of capitalist agriculture, the rise of the illegal drug economy, the development of the extractive industry and an export-led rural development model based on large agribusiness. The nature of the conflict differs by region: in regions where property rights are defined, conflicts tend to revolve around wages and working conditions; where property rights are still disputed, conflicts tend to revolve around land ownership (Sanchez, 2001; Richani, 2002).

Guerrilla groups were used by the peasantry to protect their interests against the large landowners, cattle ranchers and drug-traffickers. They consolidated their presence across large areas of the country due to weak state presence, particularly in areas of land colonization. Furthermore, guerrillas were able to secure steady sources of income through extortion from the affluent. Landowners, particularly cattle ranchers, and drug-traffickers responded to this extortion by forming self-defence groups. These groups, initially legalized by the government and supported by the armed forces, aimed to counter guerrilla influence, protect economic interests and ensure security. This often involved attacking the local population and members of the political establishment who were deemed supportive of the guerrillas. These self-defence groups became progressively more influential across the country as drug-traffickers increasingly supported their organization and professionalization by using their financial clout to provide training and better armament.

As the influence and power of self-defence groups increased, they began actively to expand their control of territory (Cubides, 2001). This further exacerbated agrarian conflicts as they invested their drug money in large agricultural estates. It is estimated that, from the early 1980s until 2000, paramilitaries acquired 4.5 million ha, representing around 50 per cent of Colombia's most fertile and valuable land (Inspector General's Office, cited in Valencia, 2006). Some commentators, in interviews with the author, believe this figure to be currently around 6.8 million ha.

### ***Territorial control, forced displacement and the humanitarian crisis***

Territorial control by paramilitary groups is often directly linked to the expulsion of peasants from their land. This has created a humanitarian crisis of dramatic proportions, with an estimated 2–4 million IDPs and over 500,000 refugees.<sup>1</sup> This makes Colombia one of the worst displacement crises in the world, alongside Sudan, the DRC and Iraq.

There seems to be a correlation between areas of territorial expansion and land concentration and areas with the highest levels of displacement (Fajardo, 2006). Displacement also tends to occur in regions containing important natural resources, such as coal, oil and gold, or because of the viability of developing and expanding cattle-ranching, illicit crops or large-scale agribusinesses. For example, in 2004 it was estimated that 28 per cent of IDPs in Colombia came from areas predominantly composed of cattle ranches; according to the miners' union SINTRAMINERCOL, an estimated 68 per cent of IDPs between 1999 and 2001 came from mining zones (cited in CCJ, 2007).

Methods of displacing populations and expropriating their land include intimidation, forced disappearances, death threats, assassinations and massacres, all of which result in peasants being either forced to sell their land, often below its market value, or simply being compelled to leave. Front-men are used to buy the land, which often changes hands several times in order to obscure the identity of the original owner (interview, Bogota, June 2007). Fraudulent methods are also used, in which documents and signatures are falsified; occasionally, deceased people are named as landholders (interview with Comisión Intereclesial de Justicia y Paz, Bogota, June 2007). Notary or registry offices are sometimes burnt down in order to eliminate any previous registry of the land. The informality of land tenure facilitates its illegal appropriation. It is estimated that only 31 per cent of abandoned land has legal titles (CCJ, 2007).

Most of the displaced flee to the nearest urban centres, some returning, if possible, after small periods of time, while others stay or move to the next, often larger, urban centre. In these areas, the displaced mainly live in impoverished conditions on illegally held property without adequate access to education, health care, water and sanitation facilities, often subsisting below basic nutrition standards (IDMC, 2006). In one town in the district of Bogota, up to half of the displaced population live on non-titled property, where they are targeted by 'urbanization pirates', middlemen who sell rights to build houses on land, which have no legal value. Without legal titles or official addresses, displaced people are often not entitled to economic support through emergency municipal programmes (Fagen et al, 2003).

Displacement has also been caused by guerrillas, who often expel peasants from their land if they refuse to cooperate with them or are deemed to be cooperating with paramilitaries. However, the aim is not to illegally expropriate the land, but rather to occupy it for tactical reasons, establishing a refuge for combatants or seeking to control natural resources or local authorities (Acción Social, 2005). This does not necessarily entail the expropriation of land in the long term (interview, Bogota, June 2007). It is estimated that guerrillas are responsible for 12–13 per cent of displacement, whilst the paramilitaries are responsible for an estimated 46–63 per cent, the state for 1 per cent, and the remainder not attributed to a specific agent (UNHCR figures in Fagen et al, 2003).

### **State response: Theory and practice**

Forced displacement occurred for two decades without recognition by the state of the need to protect and assist the displaced. However, as the international and national environment changed in the 1990s with regard to recognizing the rights of the displaced and refugees,<sup>2</sup> the Colombian government passed a series of laws to protect people displaced by conflict. The current administration has also developed legislation to facilitate the reintegration of demobilized combatants as they negotiated a peace process with the paramilitaries. However, the implementation of these laws and the capacity of some of them to address issues of justice and peace, including return and access to expropriated land, have been weak and have faced severe criticism, particularly from human rights organizations as well as from Colombia's state oversight bodies and the Constitutional Court.

In what is often considered the most advanced legislation internationally for the protection of IDPs, Law 387 of 1997 sets out provisions for the prevention of forced displacement and the protection and assistance of those who have been displaced by violence. With regard to land, Article 19 of Law 387 calls on the responsible institutions to protect land abandoned through forced displacement by ensuring its registration, providing land titles or alternative land, facilitating return and relocation and providing socio-economic security through projects and special access to credits (PGN and NRC, 2006). In 2001, decree 2007 was passed to regulate some of the land-related articles in Law 387. The decree calls on the responsible institutions to identify the owners, holders, tenants and occupiers in areas of displacement or threatened by displacement, and record the amount of time they have been linked to their land. These lands then need to be registered and protected from any transfers in case of illegal appropriation. Alternative land can be provisionally given to victims of displacement, and in case of relocation they should be compensated for the land they have lost. These obligations were further reiterated in decree 250 of 2005, and included the protection and titling of communal land belonging to indigenous groups and afro-Colombian communities.

In practice, however, the law has not been effectively implemented and the responsible institutions have often failed to carry out their obligations. It is estimated that only one-third of the displaced receive assistance, which is often inadequate both in terms of quantity (three months' emergency assistance) and in terms of efficiency (early warning systems often fail due to a lack of political will within the government and the armed forces to intervene) (Fagen et al, 2003). The extent of this failure led the Constitutional Court in 2004 to pass ruling T-025, which found that the state was acting unconstitutionally in its policy towards the internally displaced. Although there have been some signs of improvement, particularly the allocation of US\$2 billion in assistance to IDPs for the 2005–2010 period, the Constitutional Court remains concerned that the government is not fulfilling its legal responsibilities (interview with Constitutional Court, Bogota, July 2007).



A lack of political will within government institutions is often identified as one of the major impediments to the effective implementation of legislation protecting the internally displaced and their land. This can be partly attributed to high levels of corruption and infiltration by illegal armed groups within relevant institutions and to certain elements of the government's 'democratic security' policy. This policy ultimately seeks to defeat the guerrillas militarily and negotiate a settlement with the paramilitaries; although it has improved security in much of the country it has not succeeded in ending displacement and in some instances has perpetuated it (through military excursions and the fumigation of illicit crops). The problem is compounded by a lack of available resources and effective coordination within and between the relevant bodies (particularly between the central government and municipal and departmental entities) responsible for the protection of the displaced and their property.

In 2003, the government carried out various reforms with regards to the main institutions responsible for redistributing and protecting land. INCORA was replaced with INCODER, now responsible for all rural development policies, including land distribution and reparation. Regarding the effectiveness of these reforms, a study by the Inspector-General's Office, supported by the NRC, found they have been ineffective. In fact, INCODER (the Colombian Institute for Rural Development) represents 22.06 per cent of the workforce that had been carrying out these functions under the previous arrangement, and the number of offices across the country declined from 50 to 9 (PGN, 2006b). A lack of resources and effective coordination has also been identified in other protection bodies and initiatives, such as the National Plan for Integral Attention to the Displaced Population, the Interior and Justice Ministry and the National Reparation and Reconciliation Commission (CNRR) (Salinas, 2006).

INCODER gave a mere 0.3 per cent of the displaced population a parcel of land in 2006 (*El Tiempo*, 2007). This failure can in part be attributed to corruption within the institute and infiltration by paramilitary groups, which has resulted in hundreds of hectares of land being handed out to paramilitaries instead. Since 2002, 10 directors have lost their positions on corruption charges, and INCODER has often bought non-cultivable land at excessive prices or with inherited debts, often from front-men linked to paramilitaries and/or drug-traffickers (*El Tiempo*, 2007). Since 2006, over 40 politicians including congressmen, governors and the former chief of intelligence have been charged, detained or are being investigated by the Supreme Court and the Prosecutor's Office for links to paramilitary groups. These events show the extent to which the paramilitaries have been able to infiltrate the highest echelons of the political establishment, and the failure of the peace process to dismantle their political power remains one of the major impediments to the protection of the displaced population and the restitution to them of their land and property.

Since 2002, the government's 'democratic security' policy has achieved considerable results with improvements in levels of security, a weakening of the guerrilla groups and the collective demobilization of 30,000 paramilitaries, plus

around 12,000 individual demobilizations. However, it also involves civilians in counter-insurgency measures through informant networks. Meanwhile, demobilized paramilitaries are rearming into criminal gangs, their political power remains intact and there have been no substantial gains in eradicating illicit crop cultivation, with fumigations often causing further displacement and affecting non-illicit crops. In fact, it is estimated that between 160,000 and 300,000 people have been displaced since Alvaro Uribe's administration came to power in 2002 (IDMC, 2006).

The demobilization of paramilitaries has been particularly controversial, especially with regards to reparation for the victims. Demobilization has been carried out under Law 975 of 2005, better known as the Justice and Peace Law (JPL), which seeks to strike a balance between justice, peace, truth and reparation. Human rights groups claim that the JPL favours perpetrators over victims, a concern also raised by the Constitutional Court, which ordered amendments to the law to ensure that demobilized paramilitaries return illegally obtained assets and pay reparations with illegally obtained wealth. However, the law has so far proved insufficient to dismantle the paramilitaries' powerful political, economic and social structures. Its fiercest critics claim that the JPL is being used to launder illegal wealth (such as land) and legitimize the paramilitaries' political control (Human Rights Watch, 2005a).

According to decree 128 of 2003, only paramilitaries who had existing judicial processes or non-pardonable crimes against them would face criminal investigation under the JPL. This means that over 90 per cent of paramilitaries gain an amnesty. This has particular consequences for the displaced population, as many paramilitaries will not be penalized for their role in forced displacement, and much of the land that has been illegally expropriated will not be returned (CCJ, 2007). Those investigations that are taking place do not seem to be sufficiently rigorous, and as a result have yet to produce a comprehensive understanding of the crimes committed.

The government's development policies, outlined in the National Development Plan 2006–2010, promote large-scale development through large agribusiness in commodities such as African palm, rubber, sugar cane and bananas, the exploitation of the forest reserve and an increase in mining and hydrocarbon extraction. These policies have implicitly further encouraged the expropriation of land at the expense of the displaced population, as they require an increase in the amount of land dedicated to such resources, hindering any process of restitution for the internally displaced. One analyst argues that these projects in fact benefit from the cheap supply of labour provided by the internally displaced; in other words, displacement, in some sectors, has implicitly become part of the mainstream development process (Fajardo, 2007). Companies with alleged links to paramilitaries have been accused of falsifying land titles and displacing peasants from their land in order to set up agribusinesses. One investigation found that up to 80 per cent of land titles for African palm plantations in some areas were irregular, a

problem that could be further exacerbated as the government aims to increase plantations to 400,000 ha (Balch and Carroll, 2007).

A number of laws are being passed to promote this development model, including a free trade agreement with the US (yet to be ratified). Some of these laws have been particularly controversial. One, the rural development law, would reduce the amount of time that land needs to be occupied (from 20 to 10 years and possibly to 5 years) in order to claim legal ownership. Although this process could potentially benefit peasants who have colonized land and lived with informal land tenure arrangements for years, it also provides a means for paramilitaries to legalize the vast amounts of land illegally expropriated in the last decade. Although the government has responded to its critics by amending an article in the law to exclude any abandoned land, little of this is registered and the number of IDPs is disputed (interview Comisión Intereclesial de Justicia y Paz, Bogota, June 2007).

### **Transitional programming: Land-related challenges**

The main challenges humanitarian agencies face in Colombia consist in protecting the lives of civilians and their property, providing relief and securing livelihoods, preparing for return or relocation, facilitating the reintegration of ex-combatants and supporting the government's crisis response. These tasks are made increasingly difficult in a context where protection, restitution, peace processes and return occur alongside insecurity, destitution, armed violence and displacement. These contradictory processes and the protracted nature of the crisis have meant that some development organizations incorporate humanitarian work into their programming, while many humanitarian organizations see providing rapid temporary relief as unsustainable over long periods of time, and seek medium-term solutions or stabilization measures.

On issues of return, the current administration has sought to emphasize the security gains obtained through the 'democratic security' policy and to promote the return of some of the internally displaced in Colombia. The government claims returns are carried out in agreement with the displaced and that their security is guaranteed by the presence of the armed forces. Furthermore, their socio-economic recovery is supported through micro-credit and productive projects (Human Rights Watch, 2005b). However, this approach has been criticized by some organizations, including UNHCR, as the conditions for return set out in the *Guiding Principles on Internal Displacement* (the Deng Principles), such as sufficient levels of security and voluntary nature of return, do not always exist. UNHCR estimates that 90 per cent of government returns do not fully meet principles of voluntariness, dignity and security (ECHO, 2006). This view is echoed by an estimated 65 per cent of IDPs, who say that they are unable to return in either the short or the medium term (Fagen et al, 2003).

In fact, there have been cases where returnees have suffered renewed displacement due to persistent high levels of insecurity (Human Rights Watch,

2005b). The subsidies that promote economic security are sometimes only given to returnees, thereby discriminating against those who do not want to return. This has led some to accept the subsidy despite security concerns upon return, raising questions about whether return is really voluntary (UNHCR, 2004). These subsidies sometimes include land and assistance, but on the condition that the beneficiary produces certain types of crops (often African palm) for a minimum of five years (interview with aid agency, Bogota, June 2007).

For humanitarian organizations, it is important that their involvement in return processes is cautious and adheres to the Deng Principles,<sup>3</sup> and that they ensure that land tenure disputes are resolved before returning IDPs or refugees, particularly as there are flaws in the paramilitary demobilization process and the paramilitaries are still being used to control land, often through 'legal' titles. Abandoned land may have also been occupied by other peasants who have moved to the region; this can cause further conflicts with returnees, and possibly create further displacement if the occupiers are expelled. As the peace negotiations between the government and the ELN advance, these are points that will need to be taken into account as it seems increasingly evident that there will be at least symbolic returns to areas historically controlled by the ELN.

Resettlement is often considered the most viable option for the displaced. Here, however, the above-mentioned problems with INCODER have impeded any effective allocation of alternative land. There have been reports that, when resettlement has occurred, it has often failed because the land given is unproductive, or because rental agreements do not offer sufficient security to IDPs as they sometimes have to pay rent before they produce anything. There have been cases where owners have sought to reclaim their land once the first production cycle is over (Fagen et al, 2003).

There have, however, been some instances where local municipalities offer land on a temporary basis (usually for three years) for IDP families to secure their livelihoods in the short to medium term. The Pan-American Foundation for Development (FUPAD) has supported some of these families in establishing effective agricultural projects on these lands, with a combination of commercial and subsistence farming. These projects have helped secure livelihoods, and can serve as a mechanism to ensure land tenure security as the municipality can offer permanent land titles if the project is economically viable and sustainable; such projects also tend to strengthen families' links to their land, possibly preventing further displacement (telephone interview with FUPAD, July 2007).

Since the demobilization process began, many donors and agencies have been engaging in recovery programmes that seek to secure livelihoods for vulnerable groups (i.e. IDPs and ex-combatants) in what are often called productive projects. USAID and the IOM, for example, have financed and executed a series of these projects as part of their efforts to reintegrate ex-combatants. Projects are often carried out in partnership with the private

sector, which provides resources and technical assistance and often guarantees to buy the products made. Beneficiaries may own the land, rent the land, use the land as part of a cooperative or work as wage labourers on land belonging to others. Some of these projects have also sought to boost reconciliation efforts by offering IDPs and peasants from the region the opportunity to participate.

The land for these projects is provided from a variety of sources, such as INCODER, local municipalities and the private sector. USAID claims that the variety of sources is an outcome of its screening process, which aims to ensure that the land used is not in dispute. The process includes a range of mechanisms that go beyond just looking at the tenure situation (due to the fraudulent methods often used to obtain legal titles), and includes discussions with regional committees, communities and the relevant institutional bodies (telephone interview with USAID, July 2007). However, despite the intent to ensure that the land used is not disputed, using land provided by INCODER is controversial as some critics argue that it should be used to benefit the victims of the conflict rather than ex-combatants, who usually represent 50 per cent or more of the beneficiaries (CCJ, 2007). The projects have also been criticized for supporting a mode of development that promotes certain types of commercial agriculture, such as African palm, with often detrimental effects (Fajardo, 2006). The Colombian Commission of Jurists has claimed that the process is sometimes used as a mechanism for agribusiness owners, often with links to paramilitaries, to legitimize the illegal occupation of land, whilst at the same time receiving government subsidies and international aid (CCJ, 2007). In such highly conflictive situations, sometimes merely the perception of corruption and mismanagement can heighten tensions.

The ability of humanitarian agencies to support transitional processes of return, resettlement and recovery that protect the displaced and their property and ensure their rights are respected is constrained by continued conflict and the limitations of the peace process. Although government efforts to improve security and demobilize paramilitaries have created pockets of security where return is being promoted and efforts are being made to compensate the displaced, the spaces these processes are creating for humanitarian action need to be approached with extreme caution, with particular care not to renew or create tensions over land and property rights or strengthen development processes based on the illegal appropriation of land and structural inequity.

### **Humanitarian action on land issues**

Due to the importance of land issues to the Colombian crisis, a host of humanitarian agencies have sought to directly address land tenure problems as an important component of their crisis response. The following section briefly highlights some of these initiatives to illustrate some of the main strategies and challenges that emerge for these agencies when tackling land tenure in this context.

In directly tackling land tenure issues, most organizations seem to follow three main strategies, either alone or in combination. These consist of: 1) strengthening and supporting relevant government institutions to comply with their legal obligations in the protection of land abandoned by the displaced; 2) supporting the state's constitutional oversight bodies, such as the Inspector-General's Office and the Ombudsman, in investigating the government's compliance with its constitutional obligations with regards to land protection and restitution; and 3) supporting communities in directly protecting their land and resisting expropriation, as well as assisting IDPs in understanding and claiming their rights with regards to housing and land.

### ***Supporting government institutions***

Most humanitarian agencies share the view that government institutions ultimately bear the responsibility for protecting IDPs and their property, and through enhanced capacity-building, accountability and responsiveness, they will be the most effective bodies in ensuring protection in the long term. Colombia is considered to be a relatively rich middle-income country and therefore able to respond to the crisis. As a result, many agencies focus their efforts on strengthening and supporting state institutions to improve their capacity to meet the needs of the displaced and safeguard their property.

The main national humanitarian coordination body in Colombia is Acción Social, a government institution that channels both national and international resources to social programmes for the displaced population and those affected by drug-trafficking and violence. In response to the lack of implementation of decree 2007 (see above) Acción Social set up a pilot project that seeks to protect land abandoned by the displaced by developing a mechanism for registering land both with and without formal titles. The project recognizes the links between territorial control by illegal armed groups and forced displacement, and acknowledges that the lack of effective registration of land abandoned by IDPs (of which over half are deemed to be property holders) is a major impediment to its restitution (Palau Trias, 2007). In 2003, only 150,267 ha had been registered, as against estimates that over 3 million ha were abandoned between 1996 and 1999 alone (Acción Social, 2005).

The project was also set up in response to inefficient coordination between relevant institutions, a lack of knowledge of the relevant laws and processes among victims, the difficulties of collecting data in conflict-affected areas, deficiencies in registry and cadastral information and the predominantly informal nature of land tenure among holders, occupiers and tenants. The project claims to have made some advances in furthering links between key institutions, influencing public policies on the protection of IDPs and in the design of methodologies (Acción Social, 2005). However, the project has been criticised for offering too little too late. It has registered only 281,530 ha, in limited areas of the country, often excluding areas with the highest levels of displacement, such as Chocó, Uraba Antioqueño, Cesar, Atlántico and Nariño

(CCJ, 2007). Although the project can be seen as a step in the right direction, the benefits gained seemed to be undermined by the new rural legislation and reforms mentioned above. One member of the CNRR claimed that ‘an impasse’ exists between the effective reparation of land to the victims of the conflict and the government’s rural development policies (interview with CNRR, Bogota, June 2007).

This impasse limits the efforts of humanitarian agencies to support the state in the protection of IDP land and property rights, and further highlights the difficulties they face in operating in a complex emergency, where the state is both strong *and* fragile. On the one hand, an intricate set of institutions is in place to respond to the humanitarian crisis; on the other, legislation is being developed that sets in place processes that undermine these efforts. The situation is thus one, adequately described by a report on displacement, (Fagen et al., 2003: 53, original emphasis) whereby, whilst the

government fulfils its obligations through legislation, legal recourse, and institutional venues for services, it *denies* its obligations at the same time by narrowly defining the eligible beneficiary group, limiting the attention available, and placing obstacles in the way of claiming rights and services.

These challenges mean that the international humanitarian response cannot merely depend on the government’s relief efforts; agencies are faced with the need to find mechanisms that increase the accountability and effectiveness of the state response and provide direct relief outside of state channels. The following two sections show how some organizations have complemented their support to state institutions by providing support to the state’s oversight bodies and directly supporting communities and the displaced to protect their land and property rights.

### ***Supporting state oversight bodies***

UNHCR has financially supported and provided information to the Inspector General’s Office in its investigations into the government’s compliance with the legal framework that protects the displaced population. This has led to a series of publications assessing the government’s response in protecting the rights of those who have been forcibly displaced, including the protection of their property. One particularly critical report shows how INCODER has regressed in the number of displaced households it has been supporting with land distribution, with the number falling from 36 per cent of households in 2004 to 24.2 per cent in 2006 (PGN, 2006a). The report condemns the fact that legislation such as decree 2007 of 2001 is merely symbolic, and states that IDPs have been forced to abandon more than 1.5 million ha, whilst only 22,000 ha have been given back – less than 1.5 per cent. It calls on the government to respond to such failures and provide answers as to who is controlling and using those lands (PGN, 2006a). Although investigations by these oversight

bodies often lead to favourable legal decisions, these are rarely translated into effective action.

The NRC has also followed this approach, supporting studies by the Inspector General's Office on the efficiency of INCODER and organizing roundtables between key experts, government institutions and civil society to initiate reflections on the weakness of state institutions, the disconnects between them and how they can be improved to effectively resolve land issues related to displacement. The aim is to inform key figures that can influence government policy and legislation that affects the return and restitution of land within the processes of agrarian reform, transitional justice and the establishment of local development plans (interview with NRC, Bogota, June 2007).

### ***Direct support to communities***

Some organizations have supported communities in protecting their land from illegal expropriation by aiming to strengthen their social capital and ties to the land, thereby increasing their ability to prevent forced displacement. For example, Christian Aid and various national NGOs such as the Church-affiliated Comisión Intereclesial de Justicia y Paz are supporting afro-Colombian communities in Jiguamiando and Curvarado (Chocó) that have been displaced by the militarization of their territory and the arrival of African palm and coca growers (allegedly with the consent of the armed forces), despite these communities possessing communal land titles. These communities organized themselves during their displacement and returned to parts of their land where they set up 'humanitarian and biodiversity zones', areas in which they reject the presence of armed groups, promote the peasant economy, reclaim the biodiversity lost to plantations such as African palm and call for the respect of their human rights and of international humanitarian law. The support given to these communities by humanitarian and human rights organizations is both financial and political: pressing their case nationally and internationally and providing international human rights observers such as Peace Brigades International. The Inter-American Human Rights Commission, the Ombudsman and several UN agencies have all recognized the efforts of these communities in trying to recover their land and have their human rights respected.

UNDP, via its Reconciliation and Development programme (REDES), has also supported communities directly through socio-economic programmes in conflict-affected rural areas. The project provides social, technical and managerial assistance in order to identify, formulate and carry out work that can create alternative livelihoods to illicit activities. Under the initiative, farmers are not forced to eradicate illicit crops, but the alternatives provided are seen as an incentive to stop their involvement in illicit activities, a choice they generally accept as it enables them to avoid the many problems that arise from working in illegal areas (interview with UNDP REDES Programme, Bogota,



June 2007). These alternative livelihoods and the consequent social cohesion that arises from these projects are seen as powerful mechanisms to strengthen these communities' social capital and association with their land, increasing their ability to manage risk and reduce political isolation, thereby preventing further displacement. It is also hoped that, if they change from illicit to licit crops, they are also less susceptible to fumigation-led displacement. However, as they do not have formal land titles and the land is often in areas where illegal armed groups are present, banks are often reluctant to provide finance. The risks of the programme failing are also high as the insecurity in these areas often means that the pressure to forcibly migrate is too great for communities to resist.

A network of local NGOs and social movements linked to the Movement for the Victims of State Crimes (*Movimiento de las Víctimas del Estado*) has sought to create an alternative cadastre to quantify and register levels of illegal appropriation of land. The registry has been carried out through approximately 3,000 surveys in regions including Sincelejo, Quibdó, Cartagena, Barranquilla and Bucaramanga. The objective is to provide a sample that can improve information on the levels of land that have been appropriated, the kind of agricultural products that were grown, the number of livestock affected, the properties that existed, the value lost, the tenure situation and current use. This information can then be used to support judicial processes that seek to restore land to the displaced, to advocate for the government to adhere to its legal obligations and highlight strategies used to illegally appropriate land (MOVICE, no date). There is scope for international humanitarian organizations to support this initiative, particularly in developing and improving the methodologies used to collect data, supplying information and facilitating advocacy to government institutions on protection and restitution efforts. These alternative monitoring projects, particularly when carried out with rigorous methodologies and with the support of legitimate organizations, are a useful mechanism to bring state institutions to account, both through judicial processes and advocacy.

As noted above, many of the internally displaced settle in peri-urban or urban areas for many years and are unlikely to return in the foreseeable future, if at all. Living conditions in these areas are often poor, marked by criminality, lack of services and insecure tenure. FUPAD, with USAID resources, has implemented several projects to improve housing for the displaced, though this does not include housing without official titles (telephone interview with FUPAD, July 2007). Yet these are often the houses most in need of improvement. Supporting these families to secure land tenure is also a means of improving their access to services, often dependent on the presentation of a title, and can be used as collateral against loans, fostering opportunities for investment and accumulation. The IOM has attempted to secure titles and improve housing in peri-urban and urban areas in order to prevent further displacement; IOM sees the lack of capacity and political will at municipal levels as a major impediment to assisting IDPs. It has provided housing subsidies in partnership with Acción

Social, the Agrarian Bank and other institutions. The NRC, in collaboration with the IOM, has also set up Guidance and Assistance Units, where IDPs can go to claim their rights, including housing. If municipalities fail to provide these services, the NRC provides legal assistance so that IDPs can make a formal claim, either through the Public Prosecutor's Office or through state oversight bodies (telephone interview with NRC, July 2007).

Some humanitarian organizations, particularly UN agencies, have been criticized by NGOs for focusing the majority of their efforts on supporting government institutions rather than increasing their engagement with communities and the displaced. Although these agencies often support government oversight bodies and help victims claim their rights, critics argue that in an environment of insecurity, fear (where victims often do not denounce or claim their rights in response to threats) and impunity (where the justice system is weak and often unreliable), these policies are not sufficient, and direct support to communities and IDPs is required, and stronger criticism directed at the government is necessary. However, resource constraints, particularly for UN agencies (UNHCR's budget represents around 1.5 per cent of Acción Social's) do not always make it feasible for these organizations to fully engage in providing direct assistance – possibly with the exception of the ICRC and the IOM, with the latter being able to engage in these activities as they receive a large amount of financial support from USAID. It does not seem that the current situation will change, with most donor governments reducing support to Colombia on the basis that it is a middle-income country and is therefore not a key priority.

Humanitarian organizations also face the dilemma that strengthening and supporting IDP leaders and organizations to become more effective can increase the likelihood of their persecution by the illegal armed groups and gangs that operate in urban IDP settlements (Fagen et al, 2006). These challenges, however, are all part of the larger concern of seeking to promote transitional processes that aim to address the consequences of forced displacement when the conditions that cause and perpetuate displacement prevail. As long as forced displacement is part of a policy to illegally appropriate land, and the structures and processes behind this phenomenon are not dismantled, the ability of humanitarian agencies to restore and protect the rights of the displaced, including their land and property rights, will always be restricted.

## Conclusions

This case study has outlined the complex nature of land disputes as they relate to the wider dynamics of conflict and humanitarian crisis in Colombia. First, conflicts over land rights within the context of contradictory modes of production and accumulation and the institutional failure to resolve these disputes can be seen as a *structural cause of conflict*, leading to the rise of illegal armed groups. Second, land in Colombia has become a *resource of conflict*, tied to the accumulation of economic and political power. The violent struggle

for territorial control has shaped the country's development processes and has been characterized by forced displacement and an increase in systemic inequities. Tenure security, the resolution of land disputes and wider reform will therefore play a critical role in resolving the humanitarian crisis and supporting an effective transition to peace.

In response to the humanitarian crisis, the state has passed an array of legislation that sets the framework of response and seeks to address issues of justice and peace in the reparation of illegally expropriated land. However, the case study has shown that, despite the advanced nature of some legislation and the vast network of institutions for its implementation, particularly as regards the displaced population, these have been undermined by corruption, a lack of resources and coordination within and between the relevant institutions and ultimately a lack of political will. This poses huge challenges for humanitarian organizations as they must adapt their response to a context where the state is concurrently strong and weak, the distinction between legality and illegality is often blurred and 'conflict' and 'post-conflict' states exist simultaneously.

This has undermined the effectiveness and sustainability of transitional programming, where returns, resettlement, recovery and reintegration initiatives are hindered by continued displacement and insecurity, illegal appropriation of land and the re-arming of demobilized combatants. Where humanitarian agencies decide to support these processes it is extremely important that land tenure issues are understood and incorporated in their programming. This is particularly the case for recovery and reintegration projects that support the development of certain types of crops on illegally acquired land.

The complex nature of the conflict also means that humanitarian agencies that directly seek to tackle land tenure issues need to ensure that their response is multifaceted: engaging with the state to build institutional capacity to respond, yet at the same time tackling the lack of political will through advocating for change and action, both through support to government oversight bodies and NGOs and by directly supporting communities in preventing displacement and assisting IDPs to claim their land rights.

A recent report (DFID, 2007: 18) on land access and tenure security for poor people remarks that:

If countries emerging from conflict are to begin the process of economic recovery, resettle refugees and displaced people, and prevent land grabbing by the powerful, they will have to deal with land rights. And they have to do this while avoiding further social tensions, injustice or secondary conflicts.

The same applies for humanitarian agencies, however, the context and conditions for a transition to peace will be a major factor in their ability to address these issues.

## Notes

1. For displacement, the Consultancy on Human Rights and Displacement (CODHES) places the number at almost 4 million between 1985 and 2007. The government estimates the number be at 2 million, although they only started counting from 2000 and do not recognize CODHES figures from 1985 to 2000 (interview with CODHES, Bogota, June 2007). The refugee figure is from UNHCR.
2. The work of Francis Deng as UN Special Representative on IDPs, which included a first visit to Colombia in 1994, along with advocacy and pressure from national NGOs, the Church and regional bodies (i.e. the Permanent Consultation on Displacement in the Americas) helped put internal displacement at the centre of human rights concerns.
3. The Guiding Principles on Internal Displacement (Deng Principles), developed in 1998 under the aegis of Dr Francis Deng, provide a rights-based approach to the problem of displacement and emphasize the necessity of preventing displacement and offering durable solutions.

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PART IV  
**Conclusions**





## CHAPTER 10

# Charting the way: Integrating land issues in humanitarian action

*Sara Pantuliano*

*Humanitarian organizations are among the first on the ground in war and post-war situations, and as such can play a substantial role in addressing land and property issues both for displaced and resident populations. The limited efforts undertaken so far in the humanitarian sector have suffered from an inherent bias towards the needs and rights of the displaced, especially through a focus on the restitution of land and property. The concluding chapter draws together the key land issues that humanitarian organizations should consider when operating in conflict and post-conflict contexts, and suggests ways in which humanitarian actors can better integrate land issues into their responses, both in conflict and post-conflict environments.*

### **Overview**

Violent conflict is frequently accompanied by changes in land distribution and property rights. With the end of an armed conflict, especially a prolonged one involving significant displacement, a large proportion of the affected population will claim or reclaim access to land and resources. This has important implications for return, recovery and reintegration processes. Humanitarians have been slow to recognize the importance of land issues, and where they have, their efforts have often been inadequate, with a focus on returning land and property to IDPs and refugees, rather than grappling with land issues more broadly and their effects on vulnerable people. Although these shortcomings remain a significant problem, there are some signs of change. The 2005 Humanitarian Response Review, initiated by the Emergency Relief Coordinator and UN Under-Secretary-General for Humanitarian Affairs Jan Egeland, identified land and property issues as one of the major gaps in the humanitarian response system (Fitzpatrick, 2008a). Following the review, the Inter-Agency Standing Committee (IASC) began a series of initiatives aimed at improving preparedness and contingency planning for land issues in humanitarian responses. Land guidelines for post-natural disaster interventions have been prepared (Fitzpatrick, 2008b), while guidelines for intervention in conflict and post-conflict contexts are being developed.

The chapters in this volume seek to contribute to efforts to improve analysis of land issues in conflict and post-conflict contexts, and to strengthen responses by humanitarian actors. The book offers a varied analysis of the multiple dimensions of land issues in these situations, and presents a rich diversity of policy options aimed at addressing different aspects of the land problem in conflict and post-conflict environments, as well as suggesting specific programmatic approaches. This concluding chapter draws together the key land issues that humanitarian organizations should consider when operating in these environments, and the main lessons that should inform their response. Humanitarian action is understood here in its broader form, extending beyond mere relief to include advocacy, protection and attention to livelihoods and early recovery.

In Chapter 1, de Waal emphasizes three main reasons why humanitarian organizations should consider land issues: first, land tenure lies at the centre of many humanitarian crises; second, humanitarian responses invariably have an impact on land tenure and settlement patterns, both during a crisis and in the recovery phase; and third, understanding how to support secure access to rural and urban land is essential to preserve and rehabilitate people's livelihoods strategies. These are complex and wide-ranging issues, linking land, conflict and humanitarianism, and calling for a multi-disciplinary, integrated and comprehensive approach (OECD, 2005). As Foley observes in Chapter 7, land access, tenure and rights cut across a number of different sectors in a humanitarian response. Besides their importance in relation to the displacement, return and reintegration of IDPs and refugees, land issues play a crucial role in the provision of emergency shelter, the restoration of livelihoods, particularly agriculture, economic development, urban and rural planning and security. Land problems can also affect issues relating to justice and the rule of law, women's and children's rights, cultural and customary law institutions and the reintegration of former combatants into society.

A growing body of work is emerging on what have become known as Housing, Land and Property (HLP) rights. Although HLP issues have been incorporated into a number of UN and other peacekeeping operations, for instance in Bosnia, Kosovo, Timor-Leste and Burundi, practical application has been limited, often because the complexity of the issues involved is not sufficiently acknowledged. Interventions have tended to focus solely or primarily on the restitution of property to returning IDPs and refugees, usually guided by a restrictive interpretation of the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons. These principles, named after the former Special Rapporteur on Housing and Property Restitution, Paulo Sergio Pinheiro, were approved by the United Nations Sub-Commission on the Promotion and Protection of Human Rights on 11 August 2005. They provide practical guidance to governments, donors, UN agencies and other international organizations on all aspects of property restitution for IDPs and refugees. Restitution rights are of course of critical importance to millions of uprooted people throughout the world, but restitution is only one of a myriad

of HLP issues that arise in conflict and post-conflict countries (Leckie, Chapter 5). As Alden Wily argues in Chapter 2 return is a much more complex business than it appears, and it is dangerous to limit engagement on land and property issues to a mechanical application of the Pinheiro Principles. Refugees and IDPs may never have had property in the first instance (as in Afghanistan), cannot access what property they have (as in Colombia, Guatemala, South Africa and Sudan), have settled on land they know belongs to others but have nowhere else to go (as in Colombia, Rwanda and Timor-Leste), or are in direct competition with others, including the state and its foreign or local business partners (as in Aceh, Angola, Colombia, Liberia and Sudan). In all these cases, the focus on land and property issues must be much broader and integrated within the overall humanitarian and recovery response.

The multi-disciplinary nature of land issues, which frequently cut across traditional sectoral and thematic divisions within agencies, is also often problematic. This is because interventions tend to be narrowly framed in the context of specific thematic perspectives, such as governance, economic growth, agriculture or the environment (USAID, 2005). Capacity issues and institutional divisions are key obstacles in developing and delivering more integrated approaches. It is also important to note that donors seem to show little interest in land tenure issues (Vlassenroot, 2008b).

This chapter elaborates on some of these shortfalls and suggests ways in which humanitarian actors can better integrate land issues into their responses, both in conflict and post-conflict contexts, building on an analysis of the relationship between land and conflict.

## **Land and conflict**

### ***Land issues as a cause and consequence of conflict***

Disputes over land are often an underlying cause of, and factor in, conflict, especially in protracted crises. In Chapter 1, de Waal outlines a number of different factors that make land access and control central to understanding how complex emergencies function. Territorial acquisition and defence play a central role in conflict. Belligerents – government, rebels and warlords – often seek to control land or the natural resources that lie beneath it by dispossessing the populations that live on or use that land. Land dispossession has often been the cause of rural resistance and insurrection. In other contexts, as I argue in Chapter 8, local tensions around access to and control over land have been manipulated politically to co-opt people into national conflicts, as is the case in the Nuba Mountains of Sudan. Land is also used by belligerents for personal enrichment or to reward their proxies or allies, as in the case of Darfur, where the government was able to lure landless pastoralists into allied militia with the promise of expanded access to land and water. Land is also used to extend patronage, particularly in urban contexts, as was the case with the garrison towns of Southern Sudan during the North–South civil war

(Pantuliano, Chapter 8). The most common form of land conflict is played out at the local level between communities (along borders, between pastoralists and farmers), often in the context of a state that has little interest in seeing a resolution, or where the state has collapsed or is powerless.

The diversity of ways in which land relates to conflict means that analyses that emphasize a single cause, such as the idea that land scarcity or inequality lead to conflict, often fail to understand how these issues relate to other factors, such as governance and identity. For example, while land scarcity is often cited as the cause of conflict in Rwanda, issues of power, the nature of the state and the politics of ethnicity were all also important (Bigagaza et al, 2002; Bruce, Chapter 6). In this regard, Alden Wily (Chapter 2) warns against a tendency to exaggerate land problems as the cause of conflict, and argues the need for a more precise analysis of the place of land-related issues, either as *cause* or *casualty* of war. She suggests that land and property concerns should be divided into four groups:

1. Grievances that triggered conflict (as in Angola, Mozambique, Namibia, South Africa and Zimbabwe);
2. Land and property issues that emerge during the war due to a breakdown in the rule of law, the policies of those in control during the conflict and, especially, by displacement caused by the violence;
3. Property issues that arise or are heightened because of a poorly managed peace;
4. Inequitable property relations afflicting especially agrarian societies, which, if unresolved, risk causing further violence.

Conflict and displacement are often accompanied by a breakdown in law and order, which can lead to tensions over land even when land was not a cause of war. Typical examples include land-grabbing by armed groups and individuals with influential political connections (Foley, Chapter 7; Elhawary, Chapter 9; Pantuliano, Chapter 8). Conflict also leads to secondary occupation of land, especially in protracted crises. People who have been forced from their homes often have no alternative but to occupy land that belongs to others, and find returning it difficult if it is claimed back by the original owners. Foley (Chapter 7) also points out that families change during the time they spend in displacement. They may grow larger, leading to disputes about how to divide the land when they return, or they may split due to death or separation, leaving widows or orphans with weak land tenure rights. Conflicts accelerate the drift into towns and cities, making land in urban and peri-urban areas a pressing social issue (de Waal, Chapter 1). People displaced to urban areas rarely return to rural life; many become permanent urban squatters, with insecure tenure that makes them vulnerable to further displacement. Forced evictions are common (see Foley, Chapter 7 and Pantuliano, Chapter 8). Finally, changes in land access and control have a direct impact on food production. Households with insecure tenure tend to opt for low-risk and seasonal crops (instead of perennial crops) and investment to increase productivity tends to shrink

(Vlassenroot, 2008a). Vulnerable groups that lose rights or access to land usually face long-term challenges to sustainable recovery (Fitzpatrick, 2008a).

### ***Land in post-conflict contexts***

Several authors in this volume stress the importance of land issues in the post-conflict period. Alden Wily (Chapter 2) emphasizes that property conflicts *increase* when a conflict ends, often as a result of a failure by national and international actors to understand or constructively manage post-conflict property relations. Land and property issues are always a major concern after conflict, even when they were not the cause of the crisis. Post-conflict transitions are often accompanied by continued violence, at times culminating in a resumption of war. Bruce (Chapter 6) observes that there is invariably no clear-cut distinction between conflict and the post-conflict period, as these states overlap. Countries may suddenly find peace, but competition over land continues and may regress into conflict. IDP and refugee return processes disturb settlement patterns, land use and the property market. As Alden Wily (Chapter 2) notes, in rural areas returnees may bring with them new technologies, new capital and new ideas, which alter land access, land use and landlord–tenant relations (as happened in Afghanistan and Sudan). Land also becomes vulnerable to elite capture and new disputes emerge, especially where communities fail to return or are unable to farm as before, in urban and peri-urban areas where land is valuable for the development of the real estate and in areas with investment potential for extraction and agriculture, as in Afghanistan, Angola and Sudan (see Pantuliano, Chapter 8 and Foley, Chapter 7).

The land disputes that arise from returning populations take a variety of forms: they occur over the occupation of property abandoned by others during the conflict or through competing claims over the same plot. Property disputes can also arise within families over the inheritance of land. In Afghanistan, it was estimated that, between 2002 and 2003, 60 per cent of returnees were landless, while 60 per cent of those going back to rural areas between March 2002 and May 2004 appeared to be relying on land as a means of production and survival (Elhawary, 2007). Returnees may find that the ethnic composition of their villages has changed, and therefore have to seek alternative livelihoods elsewhere. Land disputes often lead to violence between individuals, within families and between groups. In Afghanistan and Sudan, land disputes have emerged as the principal obstacle to the successful return and reintegration of IDPs and refugees (Alden Wily, 2005; Pantuliano, Chapter 8).

One key property issue in post-conflict agrarian states is the co-existence of different systems of authority related to land, based on statutory law, customary law or religious norms (for example Islamic law) (Unruh, Chapter 3). This ‘legal pluralism’ is matched by a plurality of institutions (local administration, local government bodies, courts, local chiefs, religious authorities) with variable power and legitimacy (Cotula, 2007). Conflict-induced displacement can play

a primary role in the development of legal pluralism with regard to land. The physical separation of people from their home areas and traditional land use and land tenure arrangements usually changes approaches to land rights, ending or putting on hold prevailing social rights and obligations regarding land and property, affecting the ways access, claims and disputes are handled and prompting resistance and animosity towards returnees by community members who chose to stay behind (Unruh, Chapter 3).

It is important that land claims and grievances be addressed promptly at the end of a conflict. If these issues are overlooked, property disputes will inevitably escalate and may risk threatening the usually fragile stability of a post-conflict transition. The increase in land and property disputes in the post-conflict period usually stems from the failure to understand or constructively manage post-conflict land and property relations. The effects of mismanaged peace on these relations usually include wrongful occupation of land and property and startling levels of urbanization as in the case of Angola and Sudan (Alden Wily, Chapter 2 and Pantuliano, Chapter 8). Political will is paramount to address land related tensions, as the case of Juba town (Southern Sudan) illustrates (Pantuliano, Chapter 8).

Tensions can also emerge between international standards regarding the rights of refugees and displaced people to return to their land ('restitution') and the compromises that need to be struck to obtain (and maintain) peace, as stressed by Bruce (Chapter 6) in his analysis of post-conflict land issues in Rwanda. Rwanda's experience shows that, in some situations, more than one returnee may have the right to restitution to the same parcel of land, based on competing awards from different governments.<sup>1</sup> The Rwanda case also highlights the fact that, while clear international principles seeking to protect returnees and IDPs have been developed, there are no similar international standards governing the rights of others holding land. Furthermore, these international principles are not inviolable. The political imperatives of peacemaking may result in agreements whose necessity for peace gives them a legitimacy that trumps general principles, as happened in Rwanda with the application of the '10-year rule' (see Bruce, Chapter 6), a pragmatic and political solution to achieve peaceful return. Current approaches to restitution are discussed in the next section.

The capacity of different stakeholders to adequately engage in land and property issues and sustain this engagement over the long term is another key issue. Donors including USAID and the OECD's Development Assistance Committee (DAC) are starting to appreciate the centrality of land issues in post-conflict contexts. OECD DAC guidelines have identified land tenure and administration as a critical area for action, and stress that disputes related to land holdings must be addressed as rapidly as possible once the violence has subsided (Huggins and Clover, 2005). Systematic policies are however lacking, and interventions have been ad hoc and unstrategic (Fitzpatrick, 2008a).

**Box 10.1** Land and conflict

- Control of land is sought by belligerents as part of a military strategy to control strategic corridors, populations and resources.
- Land is dispossessed to reward allies.
- Forced displacement and land appropriation can be part of a strategy for ethnic cleansing.
- Land conflicts are often played out at the community level.
- Forced displacement can accelerate urbanization, increasing land disputes and tenure insecurity in urban and peri-urban areas.
- Secondary occupation of land is common as IDPs seek alternative coping strategies.

*Source:* Adapted from de Waal, Chapter 1

**Box 10.2** Common post-conflict land and property rights challenges

- Overlapping rights and claims to land and natural resources.
- Lack of a relevant land policy in a context of rapid change.
- A dysfunctional land administration system.
- Destroyed or lost documentation.
- Land-grabbing.
- Weak or divided security agencies: difficulties in enforcing laws.
- Lack of shelter due to destruction of housing stock.
- Large numbers of female- and child-headed households, and other vulnerable households.
- A political focus on emergency actions (i.e. shelter for IDPs) rather than re-establishing systems.
- Vested interests in maintaining a certain degree of chaos amongst stakeholders engaged in illegal activities.
- Ambiguous, controversial or unenforceable laws.

*Source:* Adapted by Huggins from Augustinus and Barry (2004)

### Humanitarian engagement in land issues in conflict contexts

Whilst in recent years steps have been taken towards a greater engagement in land issues in post-conflict contexts, humanitarian responses largely continue to evade these issues during conflict. The pressing requirements on humanitarian organizations at the onset of a crisis mean that the great majority of efforts is concentrated on providing essential relief. In the most immediate phase of an emergency, land issues are given barely any attention. Whilst this may be understandable in the first few weeks of a crisis response, there is no good reason why an in-depth and ongoing analysis of land and property issues cannot be built into the medium- and long-term phases of the response, particularly given the protracted nature of many crises generated by conflict. There is also scope for taking these issues into greater consideration during the more immediate emergency phase through the support of specialized expertise. A stronger investment in analysis of these issues from the outset would help national and international actors to develop more appropriate



responses, especially to crises characterized by widespread displacement, where return and reintegration processes loom. Case studies commissioned for this volume have confirmed the importance of early analysis and planning in relation to land issues.

Many of the land issues that come to the fore during a humanitarian response touch on different sectors of intervention, including food security, protection and shelter and camp management. Food security interventions in crisis tend at first to focus on the short- and medium-term availability of food, establishing therapeutic feeding centres, providing food aid and distributing seeds and tools. The last of these activities in particular is often carried out with little understanding of people's access to farming land, and is usually not linked to interventions designed to maximize access to and use of land. Humanitarian organizations also tend to pay limited attention to how local production systems and land distribution change over the course of a crisis. Such shifts are usually the result of misappropriation by armed groups, who use land as a resource of war, including for redistribution to their own community (Vlassenroot, 2005). In two studies commissioned by FAO (Alinovi et al, 2008), Vlassenroot and I use examples from Sudan and DRC to illustrate how food security in protracted crises can be tackled through interventions that focus on issues of access.

In Sudan the Nuba Mountains Programme Advancing Conflict Transformation (NMPACT)<sup>2</sup> placed a special focus on land tenure issues, which were perceived to be one of the greatest constraints to food security in a region considered largely food secure in the past. Several studies were carried out between 2002 and 2003 (Harragin, 2003a; Manger et al, 2003a, 2003b), including an in-depth three months survey (Harragin, 2003b). The survey analysed and recorded traditional land ownership, existing land titles and illegal land alienation to non-Nuba owners. This work was undertaken to underpin advocacy action on land tenure in anticipation of IDP return. The research work on land tenure was carried out while the conflict was still active, albeit under conditions of ceasefire.

In DRC during the second conflict (1998–2003) most international interventions focused on the distribution of relief supplies (Vlassenroot, 2008a). Even though access to land had been recognized as one of the structural causes of food insecurity and local tension, very few humanitarian organizations integrated a land focus within their interventions. Conversely, local organizations developed a number of interesting initiatives to try to tackle land issues. These included the introduction of *chambres de pacification* or *chambres de paix* (peace-building councils or peace councils) composed of local elders in Walungu, aimed at strengthening the capacity of local farmers to claim land rights and help resolve land disputes. Local associations also raised farmers' awareness of their rights by distributing information on the legal frameworks regulating access to land or by supporting teams of peasant lawyers that mediated land disputes. Many organizations developed advocacy efforts at the national level to modify the existing land law (Vlassenroot, 2008a).

Local actors seem to have greater awareness of the importance of land issues in crisis, including in the context of protection interventions. A central concern of protection programming is guarding against discrimination in the application of the law or the enjoyment of entitlements. Protection encompasses the full range of property-related rights that apply in peaceful situations, as well as in times of conflict. While emphasizing rights enshrined in law, there is also a recognition of entitlements founded in informal, customary or religious laws and practices (O'Callaghan, personal communication). Land was recognized as a major protection issue in the Darfur crisis by the Inter-Darfur Protection Working Group in November 2005, particularly in relation to the secondary land occupation by nomadic groups in South and West Darfur (Pantuliano and O'Callaghan, 2006). Yet no clear steps were taken to address land issues, mainly because it was not clear which agency was responsible for leading on land and protection issues. In this case, national staff proved considerably more aware of the issues at stake. By contrast, expatriate personnel rarely referred to land problems unless prompted (Pantuliano and O'Callaghan, 2006).

The way humanitarian responses take shape can significantly alter people's land relations. Assistance delivery modalities – whether through the establishment of IDP camps, the organization of resettlement schemes, delivering aid to populations in rural areas or supporting the absorption of displaced people into the urban fabric – are an important determinant of whether the affected population loses, keeps or gains access to land, and whether people can establish sustainable livelihoods (de Waal, Chapter 1). Setting up camps has become a default response to displacement in many conflict situations, despite the fact that transitional settlement and camp planning guidelines clearly advise against this option (Corsellis and Vitale, 2005; MSF and Shelter Centre, 2007). Whilst conceived as temporary responses, camps invariably become semi-permanent, especially in protracted crises, and often have a profound impact on local land relations. In Darfur, for instance, enclavement has reshaped the ethnic geography of the region, as populations are redistributed along ethnic lines, with the indirect support of humanitarian agencies (Pantuliano and O'Callaghan, 2006). The creation of peri-urban camps inevitably contributes to irreversible processes of urbanization. In most cases, long-time residents opt to remain in these settlements, or move to an urban area instead of returning to their rural homes. The longer they are displaced, the less likely it is that they will 're-ruralize'. Urbanization like this presents huge challenges for land tenure and land use management: people become permanent urban squatters with fragile tenure security, and are exposed to the threat of forced evictions. Their rights to the land they own in their home areas also become threatened after a prolonged absence (de Waal, Chapter 1). Humanitarian agencies need to carefully weigh these consequences when selecting responses to displacement. Recognition that temporary settlements may remain for some time, especially in complex emergencies, should encourage greater consideration of, and support for, more sustainable and locally determined settlement approaches (Saunders, 2005).

### **Humanitarian engagement in post-conflict land issues**

Acting on land issues in a post-conflict environment is of crucial importance in order to support a peaceful transition from conflict. The management of land relations is intrinsically linked to a range of peace benefits, from investment in agriculture (Cramer and Weeks, 2002) to service expansion (see Pantuliano on the case of Juba, Chapter 8). Certainty of tenure and adjudication of disputes is essential for recovery, particularly for the reconstruction of housing for returnees. Security of property rights also helps to foster confidence among resident and returning communities, contributing to the process of peacemaking and reconciliation. However, establishing (or re-establishing) tenure security can be very complicated in countries emerging from years of conflict, especially where land records are not available or are badly organized, and where statutory and customary systems overlap (Fitzpatrick, 2008a). It is critical that disputes over land and property are tackled quickly in the immediate post-conflict phase; if left too long, they can become intractable. Furthermore, the potential for land grabbing by the powerful is greatest in the post-conflict phase, given the often chaotic nature of land management and administration in transitional periods and the shaky rule of law that prevails in these contexts. Events in Rwanda and Sudan at the end of the conflicts in these countries are cases in point (Bruce, Chapter 6; Huggins, Chapter 4; Pantuliano, Chapter 8).

Approaches to land policy and management and dispute resolution in post-conflict environments tend to be piecemeal and uncoordinated. In Bosnia, externally imposed mechanisms to support restitution clashed with flawed national legal frameworks. In Afghanistan, inappropriate advice from international actors led the transitional administration to focus on restoring order in land ownership by seeking to return land to its pre-1978 owners. This was a flawed approach in a society where the concept of 'ownership' is very difficult to define, and the problems that ensued in Afghanistan reinforced the perception amongst donors that land disputes were 'too complex, bewildering or sensitive to address' (Alden Wily, 2005: 1). In Southern Sudan, UN agencies and donors offered technical assistance in a variety of land-related issues without any overarching strategy, rendering the assistance provided inappropriate and confusing (Pantuliano, Chapter 8).

Land issues play a particularly important role in the return and reintegration of IDPs and refugees, and it is this area of humanitarian action that has witnessed the highest level of engagement by humanitarian organizations and donors in the last decade. Much of the debate has been construed in terms of rights, particularly the rights of IDPs and refugees to restitution and compensation. International standards such as the Pinheiro Principles have been developed, and most interventions at the local level have focused on providing legal support to returnees to regain access to previously owned land, or obtain compensation. Although important, this approach tends to overlook wider structural issues, such as competition over land, demographic

pressures, corrupt and dysfunctional land registration and inadequate land laws (Huggins, Chapter 4). While the foundations for land-related work in post-conflict contexts are taking shape, the principles underpinning these developments have been heavily influenced by experiences in the Balkans, and therefore by a model of tenure and restitution alien to societies where customary laws predominate and local-level customary authorities enjoy significant autonomy (Huggins, Chapter 4). Furthermore, as noted, while there are clear international principles relating to the right to property of returnees and displaced persons, there are no similar international standards governing the rights of those who did not flee during the conflict. The focus on IDPs and refugees in most humanitarian responses, both during and after conflict, tends to overshadow the needs and rights of the resident population. While protecting returnees in a post-conflict environment is entirely appropriate, it is important to look at land rights more broadly. In fact, the evidence suggests that land ownership issues, including barriers to access, are surprisingly similar for returning refugees and for host communities, as Huggins observes in the case of Burundi (Chapter 4).

The emphasis on the return and reintegration of IDPs and refugees in humanitarian action often fails to take into account pre-conflict land issues and the processes of change that occur during crises; attempts at return and reintegration will therefore fail in the long term if underlying competition for land and poor systems of land governance are not tackled (Fitzpatrick, 2008a). While allowing people to return to their homes should always be a priority, these efforts will prove futile if they are not accompanied by adequate attempts to address the concerns of *all* the contesting parties, including those responsible for interim and unlawful occupations of land, and by an effort to solve the fundamental land conflicts that are often the main cause of displacement and instability. It is also important to remember that the notion of return could be a false assumption as property disputes may have characterized land relations pre-war as well. Refugee and IDP return strategies therefore need to address both land access and the security of property rights more broadly, especially given the institutional vacuum that usually accompanies post-conflict transitions. Managing these issues effectively in a peace process is crucial to prevent continued instability and to sustain reintegration, including people's re-engagement in traditional land uses that sustain the agricultural production, food security and trade on which recovery can be built. No post-conflict operation implemented by the international community to date has tackled land and property issues in an integrated and comprehensive manner (Leckie, Chapter 5).

In many post-conflict contexts there is excessive keenness by the international community, often due to political priorities and a willingness to demonstrate quantifiable results, to accelerate the return process without taking land issues into consideration. In Afghanistan, for instance, the combination of continued insecurity, major drought, insufficient assistance and widespread landlessness often led to further displacement and meant that the process of

return was unsustainable, with many returnees finding themselves worse off than before. In Sudan the UN-supported return intervention actually brought people back to areas where tension around land was already extremely high (Pantuliano et al, 2007).

The absence of systematic and better-informed humanitarian responses stems in part from a lack of expertise and capacity around land issues in the humanitarian sector. Initiatives are often dependent on individuals, coordination is generally deficient and clear leadership is not provided. Recent reforms in the humanitarian system have not helped bridge the gap in expertise and coordination on land and property issues. The UN cluster approach, launched in 2006, has failed to provide an overall focal point or provider of last resort, and these issues are currently dealt with by three different clusters – early recovery, protection (with a dedicated sub-cluster on HLP issues) and shelter – with insufficient coordination and harmonization. Many humanitarian organizations regard land and property issues as beyond their remit, despite the fact that they are usually among the first actors to provide assistance in the post-conflict phase, including supporting return and reintegration. The immediate post-conflict period has been described as an ‘open moment’ when intense periods of social rearrangement occur, particularly around land disputes (Lund, 1996). This open moment provides a unique opportunity for external actors to influence the evolution of land relations (Unruh, 2004).

Humanitarian responses in post-conflict contexts must be informed by a greater understanding of land and property issues in general, and by a deeper analysis of the context in question. Land relations are complex and varied, and responses must be built on local solutions. Attempts in this direction are being made by humanitarian agencies undertaking legal aid interventions and supporting local dispute resolution mechanisms, but many of these responses are focused on customary systems and informal institutions and fail to create adequate links with the state, largely because traditional leaders tend to be the first authorities humanitarian agencies encounter on the ground. Working with these institutions in isolation from formal structures can undermine or prevent the state from getting involved or damage other processes of legal reform (Balke, 2008; Vlassenroot, 2008b). The humanitarian implications of this are extremely wide-ranging. A grassroots-focused process could require longer engagement in countries than many humanitarian agencies are prepared to contemplate. Appropriate leadership through the cluster system and coordination mechanisms in-country must therefore ensure that the appropriate links are built between humanitarian organizations and others with land expertise, who can take over in a timely fashion. Inputs from the international community on land and property best practices and lessons for post-conflict situations should begin – at least in countries where land has played a significant role in conflict – during the peacemaking process to inform the agreements reached, bearing in mind that political arrangements in peace negotiations, though contravening international standards, may be needed to find and maintain peace (Bruce, Chapter 6).

## **Improving the integration of land issues in humanitarian response**

### ***Addressing urgent gaps***

The humanitarian community's shortcomings in dealing with land and property issues stem from a variety of factors, including a lack of staff with expertise on these issues; the perception amongst most humanitarian actors that land and property issues are too large, complex and politically sensitive to be addressed, and anyway fall within the remit of development agencies, not relief actors; and the financial costs associated with systematically addressing these problems, exacerbated by lack of donor support (Leckie, Chapter 5). A shortage of appropriate and agreed leadership and coordination at global level compounds these problems.

The absence of appropriate expertise is the most apparent and far-reaching gap. Whilst there is a wealth of land tenure experts, only a handful of individuals have expertise in both humanitarian and land and property issues. Even where this expertise exists within a humanitarian agency, these individuals are usually not the first to deploy in a humanitarian emergency or in the immediate post-conflict phase. The first phase of post-conflict interventions is usually led by logisticians with very limited understanding of land relations (Trenchard, 2008). Meanwhile, land tenure specialists have been unable to translate concepts into practice for the humanitarian community, at least so far. The Cluster Working Group on Early Recovery has taken on this task, and is trying to develop guidelines on land and property issues in conflict and post-conflict contexts. This work, which complements the guidelines already prepared on natural disasters (Fitzpatrick, 2008b), is being jointly developed with the HLP sub-cluster in the Cluster Working Group on Protection. It also builds on two existing sets of guidelines prepared by FAO (2005) and USAID (2005). The clusters are also helping to develop a roster of land experts with humanitarian backgrounds, who can be deployed rapidly and effectively at an early stage.

Notwithstanding these efforts, there is a danger that land and property issues will continue to be ignored due to political, time-related or financial pressures, as well as the particular biases of those in charge of policy reform (Huggins and Clover, 2005). There is therefore a need to build on past experience<sup>3</sup> to ensure that land and property issues are systematized within UN peacekeeping operations and large-scale humanitarian responses. In particular, the mandates of UN agencies and other international organizations involved in conflict and post-conflict responses must include provisions relating to land issues in a way that reflects their importance in responding to displacement and engaging in return and reintegration processes. It is essential that capacity is created to allow holistic analyses of the context, including historic and political dimensions, and avoid pre-packaged plans (Huggins and Clover, 2005). The ICRC is already seeking to ensure that land issues are mainstreamed throughout its interventions by compiling a template that provides a thorough analysis of land and conflict in each context in which the agency is engaged, to ensure

that all delegates are informed of these issues and incorporate them into their programming.

At the system level, agreement must be sought within the UN on the most suitable institutional arrangement to provide leadership and coordination in this area, both globally and at country level. Such leadership should facilitate the development of an overall agreed framework on land and property matters within the aid community, to help find common ground and avoid the provision of divergent or inappropriate technical advice to national actors. Learning could be distilled from non-conflict situations.

Donors need to be sensitized to the importance of land and property issues in conflict and post-conflict humanitarian responses. Whilst humanitarian action and funding frameworks are often characterized by short-termism, land issues are part of a long-term process. Donors must support appropriate interventions by providing funding that is flexible and sustained over a longer period, and ensure that adequate sequencing with development interventions is also funded.

### ***Suggestions to improve practice***

Humanitarian action on land and property issues in conflict and post-conflict situations could be strengthened in a number of ways. A more engaged role for humanitarian organizations could include action in some of the following areas (Alden Wily, Chapter 2):

- information collection, research and monitoring (given close ties with both local NGOs and local populations), especially to understand the tenure status of natural resources and customary lands;
- supporting the transfer of authority to the most local community level through devolved, participatory and experiential approaches (for example pilot land registration systems);
- advocacy to support land and property rights with both the reconstruction sector and host post-conflict governments. Humanitarian organizations can also help maintain an emphasis on the rights of women and other vulnerable groups.

It is important that land and property issues are included in peace negotiations and reflected in peace agreements and Security Council resolutions. Peace agreements tend to ignore land issues or leave dangerous loopholes that can be exploited by recalcitrant parties. In most cases, they lack instruments to discourage abuse. Humanitarian organizations could include land and property issues in advocacy messages while peace processes are ongoing. Agreements should seek to protect customary and long-term occupancy until mechanisms to deal with disputes are fully operational; freeze new logging, mining or agribusiness concessions until procedures which ensure customary interests are properly in place; lay down procedures to bring people suspected of corruption to account; and prioritize investment in urban

planning (Alden Wily, Chapter 2). Donors and international humanitarian organizations could seek to make agreements more effective by raising awareness of international standards during peace negotiations, reminding negotiators of the needs of those who may not be at the bargaining table, such as female-headed households, mobile pastoralists and forest-dwellers, and informing participants of trends in land policy and land law reform, and providing them with opportunities to discuss these trends. It is important that the international community approach the issue of refugee and IDP return with a strong commitment to international standards, but also with a thorough understanding of the history of land claims and a realistic appreciation of what is politically possible (Bruce, Chapter 6).

Land and property issues should be incorporated into the structure of peace operations and the coordination of humanitarian responses. Central capacity for land analysis and coordination of response should be made available to OCHA by specialized agencies such as FAO, UN-Habitat, UNHCR and NGOs with land and property expertise, such as the NRC. Peacekeeping missions should have dedicated capacity so that these issues can be mainstreamed within the operation, and mandated coordination structures should be given the wherewithal to develop early plans for intervention through an in-depth analysis of land relations and a thorough assessment of the land issues that need to be addressed.

Urbanization is one of the most pressing priorities in a post-conflict situation. Protocols have been developed by UN-Habitat, the World Bank and others to help prepare for the consequences of such processes. A key lesson is that organizations need to start engaging immediately after the end of a conflict in order to prevent or mitigate abuse. Agencies could play a role in helping to develop interim titles (temporary, renewable or other forms of occupancy and housing permits or short-term land use agreements) and pre-emptive protocols (Alden Wily, Chapter 2), as well as monitoring the acquisition of sites. Humanitarian agencies are also well-placed to monitor land occupations during displacement and collect vital information in support of return and restitution processes. Monitoring and documentation of abuses can be linked to awareness-raising or legal aid programmes. Monitoring programmes can also help build the capacity of local and international organizations to analyse and address land and property issues. This could result in the creation of networks of experienced local, national and international specialists (Huggins, Chapter 4), allowing for more comprehensive interventions. Support could also be provided to social housing schemes and to initiatives to secure peri-urban rights (Alden Wily, Chapter 2). Support for larger-scale access to, or rental of, land as a relief activity could be actively pursued both in conflict and post-conflict contexts (Saunders, 2005).

In post-conflict contexts, NGOs in particular could offer more substantial legal support to vulnerable people, both residents and from the return community. This will require the recruitment of local lawyers with land and property expertise during the first phase of a post-conflict response, and the



training of CSOs as para-legals, especially in rural areas (Unruh, Chapter 3). Possible interventions include efforts to strengthen the legal position of rural populations and support community representatives (Vlassenroot, 2008b) to enable them to engage in reforms to change land policy and law. In Burundi, local CSOs demonstrated a capacity to document and analyse land problems during the conflict, prior to the return of IDPs and refugees. In order to support CSO capacity, funding cycles need to be realigned to accommodate the long-term nature of land tenure activities, as CSOs often find themselves losing support at crucial moments. Humanitarian actors can play important roles in the early stages of network development, and can ensure that networks directly or indirectly access areas affected by conflict (Huggins, Chapter 4).

Organizations with the appropriate level of expertise can also support the rehabilitation of land management and administration systems after conflict, bearing in mind that it is not feasible to apply conventional frameworks for cadastral systems in volatile post-conflict environments (Augustinus and Barry, 2006). National registration and titling systems could bring greater security of tenure, encouraging people to invest in their land and allowing them to use land as collateral for investment loans. However, drawing up a centrally imposed system of land registration is fraught with difficulty, and re-establishing systems of land tenure can be a controversial task (Foley, Chapter 7).

In order to make sure that interventions fall within an overarching agreed strategy, coordination between international actors and national institutions must be ensured, starting with governments. Donors, UN agencies and NGOs must harmonize their policies on land and enhance the complementarity of their efforts. This should include support to urban planning as well as the drafting of land legislation including land policies. Land working groups could be created to address key issues and help avoid the fragmentation of activities, to be replaced over time by mandated national bodies.

## Conclusions

As this volume demonstrates, the importance of land and property issues in humanitarian action in conflict and post-conflict contexts is unquestionable. Humanitarian organizations are among the first on the ground in war and post-war situations, and as such can play a substantial role in addressing land and property issues both for displaced and resident populations. The limited efforts undertaken so far in the humanitarian sector have suffered from an inherent bias towards the needs and rights of the displaced, especially through a focus on the restitution of land and property. However, as this book argues, land access and the security of property rights need to be tackled more broadly if lasting solutions are to be achieved and peace is to be sustained. Encouraging steps are being taken through the UN cluster system to enhance capacity to respond to these issues by developing analysis and practical advice. It is important that analysis and guidelines are swiftly embedded in action.

In order to enhance practice and policy-making on land and property issues in crisis, the humanitarian community needs to ensure that it builds on a number of key partnerships. Land tenure specialists should be enlisted to help analyse land relations in specific contexts and support the formulation of policies and the design of programme interventions. Collaboration with national actors, ranging from governments to local authorities and local NGOs and CSOs, must be strengthened to ensure that responses are entrenched in local action and do not come to an abrupt end when humanitarian organizations leave. The engagement of humanitarian organizations with national structures and institutions can at times be wanting, but it is essential that these partnerships are developed, especially in protracted crisis and post-conflict environments. Crucially, donors must be made aware of the important role humanitarian actors can play in addressing land and property issues in conflict and post-conflict situations, and the consequences of neglect or inaction. It is essential that donors revise existing humanitarian funding cycles to fund medium- to long-term land projects, both during conflict and in the post-conflict phase. Collaboration with donors should also be sought to ensure that support to policy-making processes on land and property issues at national level are pursued in a more integrated manner. Finally, emphasis on quantifiable results in IDP and refugee return processes by donors and humanitarian organizations must be replaced by greater attention to the key determinants of sustainable reintegration, of which land and property issues are a cornerstone.

Mainstreaming action on land and property issues in the humanitarian sector will undoubtedly pose challenges, but there is much to be gained by

**Box 10.3** Potential land-related interventions for humanitarian actors in conflict and post-conflict environments

- Documentation of changes in land access during final phase of conflict.
- Advocacy for inclusion of housing, land and property rights issues in peace agreements.
- Access to information/awareness-raising.
- Capacity-building (often linked to rule of law programmes).
- Training and development of a national cadre of land rights professionals.
- Emphasis and training on rights of women and other vulnerable groups.
- Development of formal adjudication systems for land disputes.
- Development of land registration systems.
- Support to civil society networks and common advocacy approaches.
- Support to customary and local dispute resolution mechanisms.
- Legal aid.
- Addressing secondary occupations – i.e. developing procedures for evictions.
- Assistance in obtaining ID documents.
- Trial monitoring and assessments of judicial capacity and fairness.
- Assistance in policy and legislative development.
- Assistance to state-run restitution and compensation programmes.
- Provision of non-agricultural livelihoods training/equipment/employment opportunities.

*Source:* Adapted from an unpublished original by Huggins

the contribution that better-informed humanitarian action could make to the management of land relations in conflict and post-conflict transitions.

### Notes

1. This was also the case in Sudan, as I have documented in Chapter 8.
2. NMPACT was a multi-agency, cross-line programme jointly coordinated by the UN and the humanitarian wings of GOS and the SPLM. The programme aimed to promote a Nuba-led response to the needs of the people of the Nuba Mountains. It was in place in Southern Kordofan between 2002 and 2007 and had strong national participation (24 national NGOs) as well as international (9 UN agencies and 16 international NGOs) (Pantuliano et al, 2008).
3. Despite the emphasis on land in the CPA, land issues were almost entirely ignored by the Joint Assessment Mission and were not included in the UNMIS mandate or in the UN joint strategy for Sudan.

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