

PART IV
Conclusions

CHAPTER 10

Charting the way: Integrating land issues in humanitarian action

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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.¹ 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)² 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 experience³ 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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