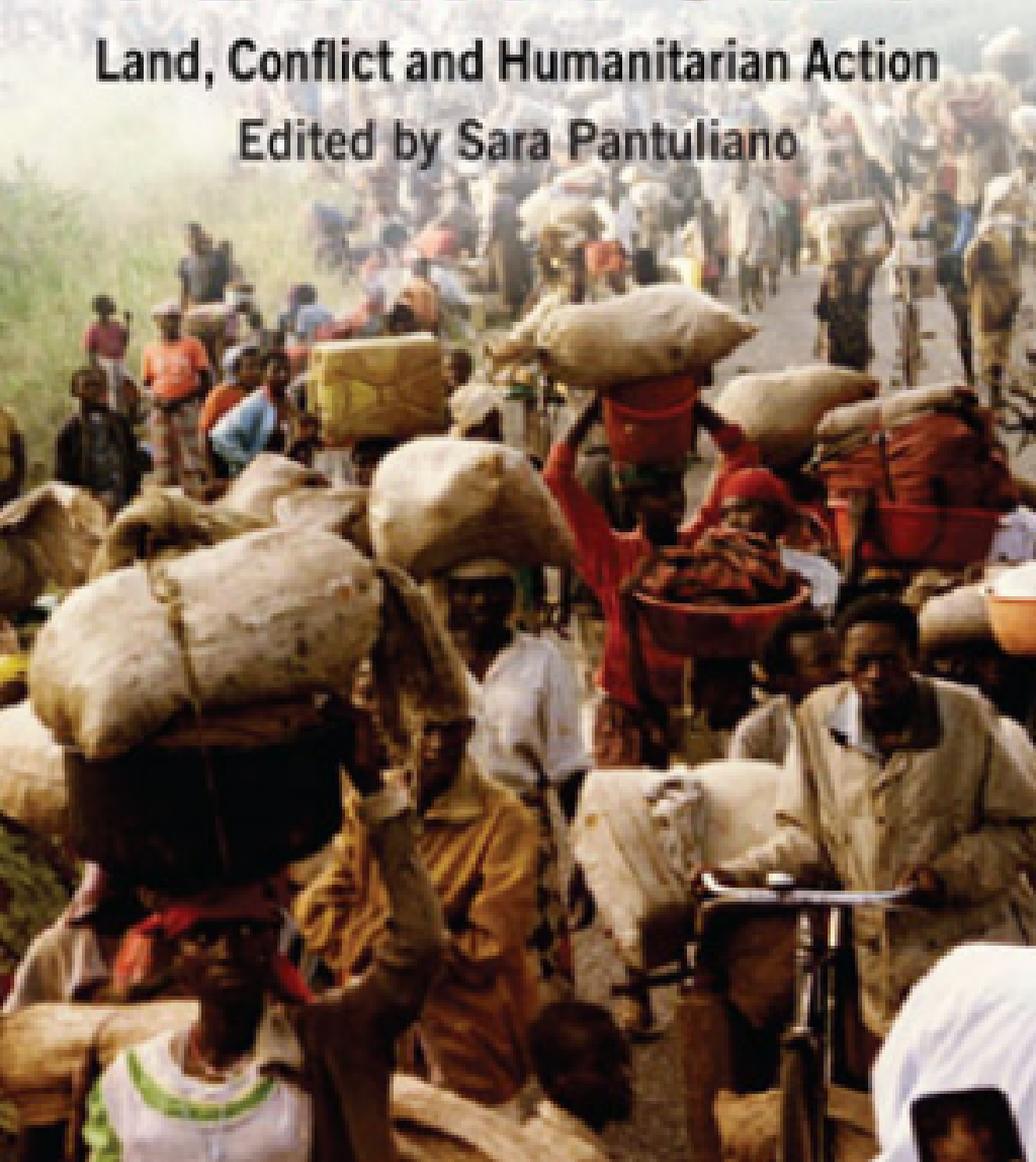# UNCHARTED TERRITORY

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

Uncharted Territory

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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

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

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.

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.