

HOUSING, LAND, PROPERTY AND CONFLICT MANAGEMENT: IDENTIFYING POLICY OPTIONS FOR RULE OF LAW PROGRAMMING

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TABLE OF CONTENTS

| | |
|---|----|
| Executive Summary | i |
| I. Introduction | 1 |
| II. Broadening the Understanding of Housing, Land and Property and their Relation to Development and Conflict | 2 |
| <i>International Law Developments</i> | 2 |
| <i>The Economic Perspective</i> | 4 |
| <i>The Anthropological Perspective</i> | 5 |
| III. Stages of Intervention: Responding to Disputes over Housing, Land and Property | 5 |
| <i>Prospective Reform of HLP Rights as a Conflict Prevention Tool</i> | 6 |
| <i>Return and Restitution in Post-Conflict Environments</i> | 8 |
| <i>Housing, Land and Property in the Negotiation and Implementation of Peace Agreements</i> | 11 |
| <i>Overcoming Corruption and Mismanagement of Housing, Land and Property</i> | 12 |
| IV. Key Insights | 14 |
| V. Final Recommendations | 17 |

Executive Summary

- Housing, land and property (HLP) policies should, as far as possible be addressed in conjunction to ensure that residential and land rights are dealt with more comprehensively by domestic and international actors.
- There is increased recognition of the role that HLP disputes play in causing or contributing to intra-state conflict. Similarly, tensions over HLP inhibit local productivity and discourage private investment, thus hindering the development of vulnerable societies. Where the state is unable or unwilling to address HLP grievances through effective dispute resolution mechanisms and guarantees of equitable access, conflict can occur. In the wake of fighting, displacement and property confiscation add further layers of complication and grievance, frustrating efforts to negotiate and implement lasting peace settlements.
- Recent policy research and lessons learned from field practice have converged on the need to consistently address HLP disputes in order to achieve both security and development goals. Opportunities to develop sound HLP policies arise in a number of settings. In development scenarios, carefully tailored measures to recognize customary land rights and devolve land administration can greatly enhance security of tenure, particularly during stressful periods of economic change. Where land relations are characterized by discrimination or inequity, redistributive measures can not only defuse political and ethnic tensions but also lead to more efficient land use. In post-conflict settings, measures to redress conflict-related property grievances can facilitate refugee return and greatly enhance the prospects of a lasting settlement.
- While it is increasingly clear that HLP conflicts in many instances threaten development and security, investments in capacity to assess such problems and respond effectively still lag behind. Housing, land and property do not receive systematic attention in the planning and implementation of international development and peacebuilding programs, especially within the United Nations system. Addressing the issue would require greater institutional commitment, including the building of capacities to plan for HLP contingencies in development and post-conflict settings, and the allocation of appropriate resources.
- HLP issues should be clearly acknowledged as a core focus of rule of law programs and tackled systematically and effectively in order to break cycles of conflict and provide better conditions for social and economic development. While concerns persist that well-intentioned intervention in highly technical and context-sensitive HLP disputes can do as much harm as good, failure to invest in informed and effective approaches risks leaving the international community grappling with the symptoms rather than the causes of violent intra-state conflict.

I. Introduction

Internal violent conflicts constitute serious threats to collective security and development, as most recently emphasized in the December 2004 Report of the UN High-level Panel on Threats, Challenges and Change.¹ In many contemporary settings, persistent underdevelopment jeopardizes long-lasting peace by aggravating latent conflicts between competing segments of society. Where such tensions erupt into violence, the resulting lack of security constitutes a significant obstacle to future development. Recent academic and policy research has concluded that attempts to address the causes of intra-state conflict require a better understanding of the critical nexus between security and development.²

Issues surrounding housing, land and property (HLP) provide a prime example of this nexus at work. Widespread housing, land and property disputes not only hamper investment and socio-economic development; if not adequately addressed, they also have the potential to degenerate into violent conflict. Where states do not have the capacity to adjudicate and enforce HLP rights, corruption, opportunism and violent competition can ensue. Conversely, where states define and enforce property rights in a predatory or inequitable manner, property disputes can fuel broader political or ethnic tensions. In either case, the risk of intra-state conflict may be exacerbated, undermining both development goals and basic security needs. In the wake of conflict, displacement and property confiscation add further layers of confusion and grievances, frustrating efforts to negotiate and implement lasting peace settlements.

This report stems from and expands on an IPA Experts' Workshop on *Land, Property and Conflict Management*, held in December 2004 in New York and organized by the rule of law project within the Security-Development Nexus Program.³ As highlighted in the UN Secretary-General's Report on the rule of law and transitional justice in conflict and post-conflict societies, issues surrounding the transparent, equitable and efficient implementation of rights to housing, land and property have repeatedly come to the fore as key rule of law concerns.⁴ Against this backdrop, the Experts' Workshop brought together scholars, policy-makers and practitioners from diverse disciplinary backgrounds to:

- a. discuss the importance of housing, land and property disputes as they relate to violent conflict;
- b. contribute to a better understanding of the nature of housing, land and property disputes and of their impact on past and potential conflict; and
- c. identify a set of policy recommendations and operational tools that are available to ensure the peaceful settlement of housing, land and property disputes, and the establishment of legally secure property regimes.

This paper reviews discussions that took place at the experts' workshop and builds on them to reflect expert dialogue with key actors working in or around the area of HLP, with a view to contributing to the progressive integration of research findings and field practice into policy relevant recommendations. It also examines both multi-disciplinary approaches to HLP issues and their application in various contexts, highlighting insights of relevance to the development of conflict-sensitive housing, land and property policies.

¹ United Nations, *A more secure world: Our shared responsibility - Report of the High-level Panel on Threats, Challenges and Change*, December 2004.

² Agnès Hurwitz and Gordon Peake, *Strengthening the Security-Development Nexus: Assessing International Policy and Practice Since the 1990s*, IPA Conference Report, April 2004.

³ To access the concept paper, conference agenda and list of participants, go to <http://www.ipacademy.org/Programs/Programs.htm>.

⁴ UN Doc. S/2004/616, 3 August 2004.

II. Broadening the Understanding of Housing, Land and Property and Their Relation to Development and Conflict

Virtually every violent intra-state conflict in recent memory, from Cyprus to Darfur, has involved underlying disputes over housing, land or property. Indeed, such disputes aggravate numerous conflicts in the developing world, and impede sustainable development and economic growth.

Causes of HLP disputes range from increased demographic pressure, resource scarcity, agricultural transformation, and the exploitation of valuable natural resources, to tenure insecurity, inequalities in (re)distribution (in particular along ethnic, religious or other cleavages) or intergenerational tensions over ownership and use. HLP issues are also used as a proxy to advance other agendas, or by political entrepreneurs seeking economic advantages over other segments of society. Another common scenario occurs when disputes result from discriminatory policies associated with a former regime. If not addressed, such disputes carry the potential for further conflict, such as in South Africa, Zimbabwe or Namibia.

Housing, land and property disputes are also prevalent in post-conflict settings, characterized by large-scale displacement, abandoned land and property, illegal occupation, overlapping claims, reduced housing stock, lack of documentary evidence, and gender discrimination in access to land and property assets. Such attributes predictably create the potential for social conflict and renewed violence. In many situations, multiple layers of property or land contestation exist, making a resolution of the situation particularly complex.

In spite of the obvious significance of housing, land and property for conflict management, these issues

have not received systematic attention as part of planning and implementing security and development-related programs. A commonly cited reason is their highly context-specific and technically complicated nature. While HLP programs are indeed context-specific and require technical expertise, the issues themselves are deeply political, and experience shows that failure to address them or well-intentioned but inadequate international programs can exacerbate tensions and jeopardize the long-term viability of many efforts to foster security and development.

Recent policy research and legal developments have led to the identification of general principles and practical guidelines applicable to a variety of settings in which HLP disputes are likely to be salient. Moves toward the adoption of these principles by the United Nations, the World Bank and other development agencies indicate that these questions should be considered more carefully by international actors.⁵ The opening panel discussed these issues, focusing on three key disciplinary perspectives. While developments in the field of international law have focused on the rights to adequate housing and the right to restitution, development economists have highlighted the importance of land as a factor in both conflict prevention and economic development. Finally, anthropological scholarship has examined the multifunctional nature of property systems and their significance in non-Western societies.

International Law Developments

The emergence of violent internal conflicts as a matter of international concern has led to the elaboration of important principles in international human rights and humanitarian law. Three main sources of HLP-related rights exist in international law and have received increasing endorsement and recognition.

⁵ Nicolas Pons-Vignon & Henri-Bernard Solignac Lecomte, *Land, Violent Conflict and Development*, OECD Development Centre Working Paper No. 23, 2004; USAID Office of Conflict Management and Mitigation, *Land & Conflict: A Toolkit for Intervention*, 2004.

In terms of socio-economic rights, many important legal developments have built upon the well-established right to adequate housing, which provides significant legal recourse to residents including non-owners.⁶ The right to adequate housing is now understood to provide a broad array of housing-related protections, and importantly, a ban on arbitrary forced evictions. Because of the importance of recognizing such "residential" rights alongside traditional "ownership" rights to land and property, inclusive terminology referring to "housing, land and property" has been proposed by human rights advocates. The failure to explicitly address residential rights would indeed exclude up to two billion people worldwide who are neither owners nor formal tenants of their homes.⁷ A number of other rights in the civil and political realm are also commonly invoked to support housing and property restitution, including the right to privacy and inviolability of the home, the right to freedom of movement and the right to private property.⁸

International humanitarian and refugee law have similarly contributed to the emergence of HLP-relevant rights. Intra-state conflict is often characterized by the systematic violation of the HLP rights of civilian populations, including individual or mass forcible transfers and deportations, or forced

movement of civilians and other forms of forced displacement.⁹ Mass forced evictions are often followed by the destruction or reallocation of victims' homes with the goal of making their displacement permanent. These tactics have been condemned as violations of human rights and humanitarian law by the international community in numerous instances. The right to return has also reinforced legal arguments for restitution claims.¹⁰ Originally framed as a right to return to one's country, the right to return, which is reaffirmed in many international human rights and refugee law instruments, has recently been reformulated as an individual right to return to one's home.¹¹ The provisions of the Dayton Agreements (Annex 7) and the implementation of property restitution policies in the Balkans have provided strong support for this progressive interpretation.¹²

Finally, international human rights law has for long recognized the existence of a right to an effective remedy against human rights violations.¹³ Thus, while it might be too early to affirm the existence of a self-standing right to restitution, this principle, which arises from the standards listed above, is slowly emerging as a crucial principle in post-conflict settings.¹⁴ The UN Security Council has confirmed the importance of restitution rights in its resolutions on

⁶ The right to adequate housing is protected under Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁷ See presentation by Scott Leckie, *IPA Workshop on Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming*, 2-3 December 2004.

⁸ See art.12 and 17 of the International Covenant on Civil and Political Rights (ICCPR) and art. 17 of the Universal Declaration of Human Rights (UDHR); those rights are listed in the *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, Final Report of the Special Rapporteur, Paulo Sérgio Pinheiro, submitted in accordance with Sub-Commission Resolution 2004/2, UN Doc. E/CN.4/Sub.2/2005/17, 28 June 2005, paras. 6-7 and 9.

⁹ Art. 49 of the 1949 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War; art.17 of the 1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts.

¹⁰ Art. 12 ICCPR, art.13.2 UDHR. See for example UNHCR Executive Committee Conclusion No.101 (LV) of 2004 on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees para. h) and i).

¹¹ See *Commentary on the Draft Principles on Housing and Property Restitution for Refugees and Displaced Persons*, UN Doc. E/CN.4/Sub.2/2004/22/Add.1, p.7 para.27; UNGA Res. 35/124 on international intervention to avert new flows of refugees, 11 December 1980.

¹² Marcus Cox and Madeline Garlick, "Musical Chairs: Property Repossession and Return Strategies in Bosnia and Herzegovina," in Scott Leckie (ed.), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons* (Transnational Publ., 2003), p.65, 69.

¹³ Art. 8 UDHR, art.2.3 ICCPR.

¹⁴ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights*

Kosovo, Georgia, Croatia and Cyprus. Several repatriation agreements have also included this principle.¹⁵ Restitution of property has generally been favored over compensation, not least because it creates the preconditions for refugees and displaced people to exercise the right to return to their homes of origin.

Despite increasingly strict legal standards, the approaches of recent UN missions and transitional administrations on HLP-related questions has been ad hoc if not inconsistent. The success of the UN Mission in Kosovo in resolving property disputes, for instance, has been contrasted with decisions by the UN in East Timor and Cambodia to disregard calls for restitution. However, promising discussions have begun among UN agencies and non-governmental organizations (NGOs) with a view to promoting consistent and effective approaches in the field.¹⁶ In addition, principles on housing and property restitution for refugees and other displaced persons were very recently adopted by the Sub-Commission on the Promotion and Protection of Human Rights.¹⁷

The Economic Perspective

From an economic perspective, the most important factor in productive HLP relations is "security of tenure," or the definition of publicly guaranteed and enforceable relationships between specific individuals or groups and the particular properties they own or use. Tenure security encourages long-term investment in the productivity of land and may be a precondition for sustained development. Basic tenure

security can be provided through informal means. Some degree of formalization through "titling," or registration of land rights, is generally thought to be required in order to allow land to be used as collateral for credit, facilitating the development of financial markets. Tenure security also allows for freer transactions, fostering efficient use and enhanced access to land and property.

Economists recognize that these policies may not be sufficient to redress inequitable access to housing, land and property, nor to tackle HLP-related conflicts. The persistence of severe inequalities in housing, land and property distribution in many countries is an enduring concern. While such inequalities may have serious economic and political consequences, more recent patterns of conflict have threatened to derail development even in countries with equitable land access.¹⁸ These conflicts tend to accompany trends such as population growth and agricultural transformations that drive up the value of land. The ability to calibrate reforms so as to encourage efficient land markets while affordably maintaining tenure security will often determine whether a virtuous cycle of development or a vicious cycle will ensue.

Recent economic scholarship points to three key policy implications. First, efforts to provide tenure security should actively facilitate access to markets and expand equality of opportunity rather than passively record titles. In other words, where distribution is historically skewed, focusing solely on registration of existing rights may reinforce

Law and Serious Violations of International Humanitarian Law, UN Doc. E/CN.4/RES/2005/35, 20 April 2005. The specific right to property restitution was then stipulated in CERD's General Recommendation No.22: Article 5 and *Refugees and Displaced Persons*, UN Doc. 24/08/96.

¹⁵ Scott Leckie, "New Directions in Housing and Property Restitution," in *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, p.3, 12.

¹⁶ UN Habitat and UN High Commissioner for Refugees, *Summary Conclusions, Housing, Land and Property Rights in Post-Conflict Societies: Proposals for Their Integration into UN Policy and Operational Frameworks, Expert Meeting*, November 2004.

¹⁷ *Housing and property restitution in the context of the return of refugees and internally displaced persons: Final report of the Special Rapporteur, Paulo Sérgio Pinheiro*, U.N. Doc. E/CN.4/Sub.2/2005/17, 28 June 2005; see also *Commission Decision on Housing and property restitution in the context of refugees and other displaced persons*, UN Doc. E/CN.4/DEC/2003/109, 25 April 2003.

¹⁸ Klaus Deininger and Raffaella Castagnini, *Incidence and impact of land conflict in Uganda*, World Bank Policy Research Working Paper No. 3248, March 2004.

inequities. In such cases, supplementing registration with redistributive measures can foster greater economic growth as well as political reconciliation. Second, HLP issues should be incorporated into national development strategies. Building HLP issues into broader institutional reforms, such as decentralization, can both produce better substantive outcomes and facilitate awareness and mutual understanding among diverse stakeholders. Third, the high level of corruption and inefficiency in the HLP sector in many development settings highlights the urgency of using HLP reform as a catalyst for institutional change. Greater inclusion of the private sector and civil society can ensure that inefficiency is reduced and the provision of HLP-related services is improved.

Finally, the field of development economics has also recognized the crucial role of HLP-related rights and policy in conflict management. This recognition is perhaps best represented by the World Bank's recent publication of its first comprehensive overview of land policies and development since 1975.¹⁹ This document reflects a significant degree of consensus in the economic field and the broader development community regarding the linkages between land, development and conflict.

The Anthropological Perspective

A third disciplinary perspective, anthropology, offers a number of important caveats in reviewing HLP policy. For instance, anthropologists differentiate between "categorical rights," referring to the general relationship between property and rights-holders, and "concretized rights," referring to the distribution of wealth and rights within a specific group.²⁰ This allows researchers to look behind the apparent external unity of categories such as "communal

property" and to discern concrete internal features of specific communities with different types of property rights held by classes or group members.

A number of other important policy-relevant findings have emerged from anthropological research on property relationships. First, a good deal of caution is necessary in translating customary property rights into formal state law categories. Great progress has been made since colonial policies assimilated customarily-held land to state ownership. However, customary laws adapt over time to political and economic changes, with attempts to recognize such norms in terms of state legal constructs almost inevitably distorting them, and raising risks of opportunism and corruption. Second, the object of conflicts over property rights often goes beyond land itself to encompass subsoil, minerals, vegetation, grazing rights and built structures. Finally, property systems are multifunctional, carrying important political, religious and social functions in addition to economic significance. As a result, land conflicts may be interwoven with broader competition for political dominance.

III. Stages of Intervention: Responding to Disputes over Housing, Land and Property

HLP are often closely connected to civil conflicts, and can severely impact pre-conflict and post-conflict contexts. They may be one of the direct causes of the eruption of violence and may occur where competition over housing, land and property arise between groups. Such conflicts may be exacerbated by population growth, income disparity and social change. HLP policies can also, in post-conflict settings, have an important conflict prevention function, as failure to address past grievances related to such issues can become a catalyst for renewed hostilities. Restitution

¹⁹ Klaus Deininger, *Land Policies for Growth and Poverty Reduction*, World Bank Policy Research Report, 2003.

²⁰ Presentation by Franz von Benda-Beckmann, *IPA Workshop on Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming*, 2-3 December 2004.

is an increasingly significant issue in peace agreements and peacebuilding programs. As displaced persons and refugees attempt to return to their homes and former combatants strive to (re)integrate into society, issues of control and compensation in longer-term peacebuilding and within the context of protracted conflicts gain special importance.

The workshop focused on instances where HLP policy can have a particularly decisive role in mitigating—or exacerbating—conflict. The ensuing discussions identified both general insights regarding the relationship between HLP, conflict and development as well as specific principles for improving practice. The first panel explored the ways in which prospective reforms of HLP could be better utilized for conflict prevention. The next two panels addressed post-conflict settings, focusing on the implementation of emerging rights related to restitution and the role of HLP issues in the negotiation and implementation of peace agreements. The last panel focused on long-term development and governance issues, and specifically addressed the relation between customary property systems and state law concepts.

Prospective Reform of HLP Rights as a Conflict Prevention Tool

Given that land is a limited resource, reform often involves, at least to some degree, a redistribution of rights. The process of redistribution focuses on making land available through voluntary and market-compatible means, and can take the form of shifts from collective to more individualized forms of tenure or affirmative action in favor of traditionally marginalized groups and in response to discriminatory practices. These may entail shifting the balance of power between the state and the local community, large landowners and individual workers, and privately acquired and controlled land.

Africa has been witness both to intractable cycles of land conflict and ambitious reform programs prompted by the legacy of dysfunctional colonial institutions and discriminatory regimes. As such, various African case studies evoke the enormous difficulties of equitable reform and the greater price paid for failing to respond to land disputes. They also underscore the observations that land conflicts often serve as a proxy for broader political struggles and that land policies should therefore be embedded in broader institutional reforms.

Côte d'Ivoire provides a recent example of how land disputes may trigger and exacerbate broader political tensions. Despite its important agricultural sector and its standing as the world's largest cocoa producer, a colonial legacy of conflicting laws, customs and policies governing land rights has perpetuated tenure insecurity. This resulted from a longstanding policy of the Houphouët-Boigny regime that "the land belongs to the one who farms it," which encouraged the migration of farmers from the northern regions and from neighboring countries who often bought farmsteads despite a customary prohibition on alienation of land. When reform came in the form of a national land law in 1998, less than two percent of Côte d'Ivoire's land was formally registered and no clear legal mechanism for resolving land disputes existed. The 1998 Ivorian land law set out to redress this deficiency by providing tenure security through the transformation of customary-use rights into registered ownership rights. However, the law also provided that titles acquired before 1998 could not be passed to non-Ivorian heirs. Taken together with a broader political dispute over the definition of "autochthonous Ivorian" and citizenship rights, this provision effectively excluded rural migrants from the land law's benefits. This ultimately exacerbated a political struggle that erupted into armed conflict in 2002 and remains highly volatile today.²¹

²¹ See International Crisis Group, *Côte d'Ivoire: No Peace in Sight*, Africa Report No.82, July 2004.

If Côte d'Ivoire illustrates how land reform may be exploited for political advantages, the fate of the Kivu region—the North and South Kivu provinces in eastern Democratic Republic of Congo (DRC)—shows that there is a cost for failing to address land issues underlying conflict. The Kivu was shaped by a colonial policy of arbitrarily decreed ethnic homelands entirely incongruous with the history of fluid and heterogeneous ethnic identities in the region. As a result, power and political participation tended to be reserved to local "autochthonous" groups, to the exclusion of significant and even majority "non-autochthonous" populations. Beginning in the 1970s, the intensification of cattle production in the region encouraged ethnic paramount chiefs to acquire large ranches largely through theft and corruption. Resentment fueled ethnic warfare in the 1990s, during which time ranch land was reclaimed in "unregulated, problematic restitution" by previous customary owners of the land. Current national peace negotiations present an opportunity to directly address both land grievances and ethnic autocracy, for instance by systematically distributing confiscated ranchlands to long-term residents who have been traditionally excluded. Yet, the failure of the parties to address these issues is seen by many observers as a virtual guarantee of further cyclical conflict in the region.²²

Southern Africa presents a different situation, where land rights often are well defined but unequally distributed. Past dispossession of land has led to what has been described as "agrarian dualism," whereby large-scale white-owned commercial farms sit alongside intensely overcrowded black settlements surviving on

subsistence agriculture. In contemplating reform, these countries still face a dilemma. On the one hand, global economic pressures argue for maintaining the productive large-scale commercial farming sector. On the other hand, revitalized political movements representing the rural poor have demanded redistributive land reform, threatening to occupy white-owned commercial farms.²³ Policy responses to this dilemma represent a wide spectrum of conventional land reform measures. For instance, post-apartheid South Africa is engaged in three major reform efforts: tenure reform, or extension of legal tenure security to de facto property interests; redistribution measures to assist disadvantaged groups in equitably accessing land; and restitution measures to provide claimants dispossessed of their property under racially discriminatory laws with the opportunity to claim their property back or receive compensation.²⁴ Post-independence land reforms in neighboring Zimbabwe and Namibia have primarily focused on general redistribution of land from white to black farmers.

In all three cases, the primary goal of land reform has been to rectify former discriminatory policies that affected the distribution of land. However, in order to maintain political consensus, all three countries initially based land reforms on the principle of "willing buyer-willing seller." This principle implied that transfers of land to redistribution beneficiaries and restitution claimants would, in principle, be based on voluntary state purchase rather than on expropriation. Yet, because white farmers have been reluctant to sell and have demanded market compensation, redistribution programs have proven to be both slow and expensive.

²² Presentation by Stephen Jackson, "Land Et Conflict in the Kivus, DR Congo," *IPA Workshop on Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming*, 2-3 December 2004.

²³ International Crisis Group, *Blood and Soil: Land, Politics and Conflict Prevention in Zimbabwe and South Africa*, Africa Report No. 85, 17 September 2004. Presentation by Ruth Hall, "Redistributive Land Reforms in Southern Africa," *IPA Workshop on Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming*, 2-3 December 2004.

²⁴ Ruth Hall, Peter Jacobs and Edward Lahiff, *Evaluating land and agrarian reform in South Africa*, Final Report, Program for Land and Agrarian Studies Occasional Paper, September 2003; Ruth Hall, *Democracy and Land Reform in Zimbabwe*, IPA Workshop Report, February 2002.

In Namibia, minimal budgetary funds made available for buying land at market rates has meant that only 125 farms have been acquired over fifteen years. In the face of popular land hunger, the government has turned to forcible resettlement as its only recourse. Although compensation has been promised for expropriated farms, it is not clear if funds are actually available. As is widely commented in the media, the land question has been most acute in Zimbabwe and has degenerated into full-blown conflict. An initially successful redistribution program became debilitated in a wave of politically opportunistic land grabs orchestrated by the government in the 1990s. These grabs served neither equity goals nor economic efficiency. Unregulated redistribution left those who settled occupied land with neither title nor tenure security. As a result, there has been little incentive for efficient farming to take place, which has contributed to the dramatic economic decline and famine in a country that was once a net agricultural exporter. Governmental HLP policies recently reached a new level of violence, with the implementation of "Operation Restore Order," which led to the forced eviction of over 700,000 "illegal" urban dwellers.²⁵

In South Africa, redistribution measures to facilitate purchases by traditionally disadvantaged groups have affected only about three percent of all land. However, attention has focused on the restitution of property, which entails direct clashes of rights. Where restitution claimants seek return of their property, the state is faced with the choice of forcible expropriation or paying whatever price the current owner demands, an option widely seen as a "double subsidy" in light of the manner in which land was acquired under apartheid. In response, the authorities have offered compensation settlements to claimants, a strategy that has allowed the resolution of most urban property claims without necessitating wholesale

expropriations. However, with a large body of claims for rural land yet to be resolved, continued reliance on buyout of claimants—rather than current owners—would risk undermining the fundamental goal of restoring racial equity in land ownership. The dilemmas facing South Africa are stark but not impossible to resolve, given its inclusion of land reform as a major policy goal and its politically inclusive strategy. Although South African land reform might never be an absolute success in terms of restoring racial equity in land ownership, it may still avert the debilitating effects of outright conflict.

All of the above cases provide ample demonstration of the importance of conflict assessment tools in the design of housing, land and property policies. The recently published US Agency for International Development (USAID) toolkit on Land & Conflict provides a useful checklist of issues to be considered in this process.²⁶ These include indicators of conflict such as increases in illegal occupation or squatting; increases in the number of land and property disputes; increased environmental degradation; small-scale violence and property destruction. Timing and sequencing is equally relevant and consists of determining, for instance, the necessity of immediate intervention and the conflict impact of international programs and of their termination. Another important task in this process will be mapping existing actors and stakeholders so as to identify potential reform constituencies and potential spoilers.

Return and Restitution in Post-Conflict Environments

The emergence of the rights of those displaced in conflicts to repossess and return to their homes is, as mentioned above, one of the most important developments on HLP issues in recent peacebuilding efforts.

²⁵ See Press Conference by the UN Special Envoy on Human Settlement Issues in Zimbabwe, 22 July 2005 <http://www.un.org/News/briefings/docs/2005/tibaijukapc050722.doc.htm>.

²⁶ USAID, *Land & Conflict, A Toolkit for Intervention*, 2004, p.13.

However, the proclamation of these rights in legal instruments does not guarantee their implementation in practice. In spite of the increasingly common reference to refugee and IDP (internally displaced persons) return in contemporary peace agreements, restitution processes have often been incomplete, generating additional frustration and grievance for the victims of involuntary displacement.

This explains the specificity of Bosnia and Herzegovina (BiH), an example of a uniquely complete implementation of restitution principles. Images of ethnic cleansing associated with the 1992–1995 Bosnian conflict horrified the world, resulting in the inclusion of the right of return as a central obligation under the Dayton Peace Agreement. Before the conflict, property rights were clearly defined in BiH. As a result, wartime ethnic cleansing often took on an administrative character, with laws and courts pressed to formally reallocate the homes of those forced to flee. Many of the two million Bosnians uprooted by the conflict could not return afterwards because others had received permission to use their property. Although the peace agreement foresaw an international body to adjudicate property claims, it quickly became apparent that only the Bosnian authorities themselves had both the legal skills and local knowledge necessary to carry out restitution. The international community's role was nevertheless crucial, with sustained pressure resulting in the passage and eventual implementation of domestic restitution laws. The results have been unprecedented—a restitution process initially thought likely to take up to four decades was completed in just six years, with over 200,000 properties returned to their pre-war residents.²⁷ Property restitution created conditions for return, a right that was ultimately

exercised by as many as one million displaced Bosnians.

While the BiH case represents a dramatic affirmation of the rights of the displaced, the applicability of this model to other post-conflict settings is debatable. First, the conditions were such that clear, longstanding and largely uncontested property rights existed prior to the conflict. As a result, the parameters of the restitution program—which types of claimants could re-claim what properties, based on loss after what date—were relatively straightforward. Second, the international presence was endowed with strong powers to intervene in domestic political processes and received sustained political and financial support.

Recent peacebuilding efforts in Afghanistan demonstrate the challenges faced by international actors in implementing restitution programs in other settings. After the fall of the Taliban in 2001, Afghan authorities faced the challenge of facilitating the return of approximately four million refugees and displaced persons.²⁸ A fundamental problem was the determination of the law applicable in a country that has experienced over twenty years of conflict and where land and property relations have been contested since the creation of the modern Afghan state in the nineteenth century.²⁹ As a result, no undisputed "starting date" for restitution exists, although waves of conflict-related displacement increased after the 1979 Soviet invasion. Moreover, restitution would do nothing for the thousands of refugees and displaced persons who have always been homeless and landless. Even in urban areas where restitution is an issue, few domestic institutions are able to effectively adjudicate claims, while the

²⁷ Charles Philpott, "Though the Dog is Dead, the Pig Must be Killed: Finishing with Property Restitution to Bosnia-Herzegovina's IDPs and Refugees," *Journal of Refugee Studies*, Vol.18 No.1 (2005), p.1.

²⁸ In 2004, UNHCR evaluated the refugee population from Afghanistan to be just over 2 million, <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=426283744>.

²⁹ Liz Alden Wiley, *Land Rights in Crisis: Restoring Tenure Security in Afghanistan*, AREU Issues Paper Series, March 2003, p. 38-39 and 23-26.

international community has neither a clear mandate nor the resources to champion the issue.³⁰

Experience in Afghanistan indicates that the development of land policy and dispute resolution mechanisms may be more important to stabilization there than restitution *per se*. Gross inequities in rural landholding, mass landlessness, homelessness and disputes over grazing land and pastureland have become serious threats to the livelihoods of the predominantly rural citizenry.³¹ As a result, preventing renewed conflict over land in a context like Afghanistan hinges on broader governance efforts, such as local community empowerment and devolution processes, rather than on narrow legal solutions. In a setting characterized by complex if not competing legal frameworks, disputed records and weak enforcement mechanisms, the surest way to promote peaceful HLP relations may be to empower local communities and develop accessible dispute settlement mechanisms.

Burundi provides another example of the importance of conflict analysis as a required component in the design and planning of HLP policies. Burundi presents a toxic cocktail of land scarcity and mass displacement. Ninety percent of its people depend on agriculture and the country has one of the highest population densities in the world. As a result of ongoing conflict, one quarter of the population are refugees or displaced persons, giving rise to restitution claims that go back as far as 1972.³² The 2000 Arusha peace accords include wide-ranging provisions on land, based on principles of restitution, access and the establishment of measures to prevent further land disputes, such as land registration.³³ The provisions of Protocol IV established a National Commission for the

Rehabilitation of *Sinistrés*, which comprises a sub-committee that has a specific mandate to deal with issues related to land. However, some consider that the focus on mechanisms for resolving individual cases obscures a broader opportunity to promote collectively negotiated local solutions. Political access and land relations in Burundi correlate to class as well as ethnicity, creating the opportunity to resolve local restitution problems through an inclusive policy dialogue process comprising civil society, displaced claimants, current owners and the government. There is, in other words, considerable work still to be done to ensure that the land issue, which constituted an important factor in the outbreak of the conflict, does not yet again trigger instability and violence in the wake of mass repatriation currently underway.

In sum, while the Bosnian case has provided an important precedent in affirming the rights of persons displaced and dispossessed in the course of ethnic conflict, the relevance of the Bosnian model in other contexts is limited, inasmuch as it resulted from highly specific local conditions and the availability of considerable international resources. This does not mean that the question should be neglected, as occurred in Afghanistan. Restitution should be an important component of peace settlements, but it must be tailored to wider post-conflict considerations and may therefore have to be sequenced and implemented differently. In other words, restitution is not a "stand-alone" concept and should be linked with broader HLP policies, such as redistribution, titling or devolution of HLP management. Early identification of destabilizing HLP issues and incorporation of appropriate remedies in peace agreements should, in any case, become a standard component of international post-conflict practice.

³⁰ Liz Alden Wiley, "Land and the Constitution," AREU Policy Brief, September 2003, p. 1-2.

³¹ Liz Alden Wiley, *Rural Land Relations in Conflict: A Way Forward*, AREU Briefing Paper, August 2004.

³² For a brief historical overview of the conflict, see Mariam Bibi Jaoma, *'We can't eat the Constitution': Transformation and the socio-economic reconstruction of Burundi*, Institute for Security Studies Paper No. 106, May 2005, p.2.

³³ African Centre for Technology Studies, *Land, Conflict and Livelihoods in the Great Lakes Region: Testing Policies to the Limit*, Ecopolity Series No. 14, December 2004.

Housing, Land and Property in the Negotiation and Implementation of Peace Agreements

A particular challenge is posed by protracted post-conflict settings where decades have elapsed without the arrival of an accepted peace agreement. In keeping with the observation that HLP issues often reflect broader political struggles, delayed peace negotiations may hinge on questions of restitution and refugee return. This pattern may be exacerbated by several inherent characteristics of land and property.

Territorial control is central to the outcome of armed conflicts. Confiscation and reallocation of HLP constitute strategic tools at the belligerents' disposal to secure economic or political holdings. As a result, negotiations involving the allocation and division of territory and properties are often framed in zero-sum terms. Even where the right of return is recognized, it is often assumed that individuals will not risk going back to areas left under "enemy control" in the terms of a peace agreement. Second, the principle that "possession is 99% of the law" complicates longstanding HLP disputes. With time, subsequent users develop bona fide legal rights to HLP abandoned during a conflict that must be reconciled with the claims of pre-conflict inhabitants. Finally, the continuing evolution of legal standards related to HLP rights leaves room for debate about whether more recent rules apply to older, frozen conflicts. Such legal uncertainties may hold the hidden benefit of providing greater flexibility in negotiating creative solutions to latent conflicts.

Nevertheless, whatever theoretical flexibility exists is often constrained by maximalist outset positions taken by negotiating parties. The problem lies in the fact that post-conflict settings are typically charac-

terized by "more tort than can be repaired," implying that the goal of negotiations cannot be to redress all grievances but merely to ensure even-handed distribution of sacrifices on all sides. Both the Israeli-Palestinian conflict and the continued division of Cyprus demonstrate the risk inherent in failure to prepare affected populations for painful but necessary compromises.

During the outbreak of the current Israeli-Palestinian conflict in 1948, about 750,000 Palestinians were displaced from their land.³⁴ Although the Palestinian refugee population has now risen to five million people, most have adapted to urban lifestyles and would be unlikely to opt for return to property abandoned almost sixty years ago. Thus, the passage of time has drastically increased the number of potential claims for restitution and return, but has also decreased the likelihood that they would be exercised if an acceptable alternative form of redress were to be offered.

As a result, although the UN General Assembly was quick to establish that Palestinian refugees enjoyed the rights of return, restitution and compensation,³⁵ these rights haven taken an increasing emotional and symbolic importance. Although most contemporary Palestinian refugees would probably not opt for actual return, they are likely to reject a peace settlement that does not uphold, at least in principle, their right of individual choice in the matter. The current state of negotiations ties Palestinian statehood to the resolution of all pending issues, creating pressure for an *a priori* renunciation of an absolute right of return in exchange for a blanket political settlement. Having publicly upheld the right of return for decades, the Palestinian leadership will be hard-pressed to win public support for an agreement on such terms.

³⁴ United Nations Department of Public Information, *The Question of Palestine and the United Nations*, UN Doc. Brochure DPI/2157/Rev.1 (March 2003), Chapter 10.

³⁵ *Progress Report of the United Nations Mediator and the Right of Refugees to Return to their Homes and Receive Compensation*, A/RES/194 (III), 11 December 1948.

The difficulties faced by the Palestinian leadership are underscored by the rejection of the "Annan plan" for the unification of Cyprus. Although this plan sought to maximize the return of refugees and property restitution, its rejection in April 2004 came about largely because the Greek Cypriot leadership failed to prepare the population it represented for the results of painfully negotiated compromises.³⁶

Cyprus has been divided between Greek and Turkish Cypriots since a 1974 Turkish military invasion led to displacement and dispossession on both sides and to the creation of the Republic of Northern Cyprus, whose sovereignty was never recognized by the international community. In early negotiations, the parties had committed to a "bi-zonal" solution, implying that the Turkish Cypriots, who had been a minority population throughout Cyprus prior to the conflict, would retain administrative control and a population majority in at least some parts of the country. However, recent negotiations culminating in the Annan plan struggled to reconcile "bi-zonality" with human rights standards in favor of return and property restitution. The jurisprudence of the European Court of Human Rights, which binds both parties to the conflict, was particularly relevant in ruling out a "global exchange" of properties abandoned by displaced persons on both sides, and requiring the parties to base any exceptions to the principle of return on non-discriminatory, public interest grounds.³⁷

The formula ultimately adopted in the Annan plan was based on a two-pronged approach, which included "territorial adjustment" whereby the line between the Greek and Turkish Cypriot states would be shifted to the benefit of the Greek Cypriots. In exchange, limitations on the rights of return and

restitution to non-adjusted areas would ensure retention of a Turkish Cypriot majority within its state. Although these limitations were crafted to prioritize those with strong personal interests in return and property, they were nevertheless blamed for the failure of the plan. Key Greek Cypriot leaders denounced any solution short of full restitution and the Greek Cypriot public rejected the Annan plan. While the Cyprus case reflects the continued emotional resonance of displacement and dispossession even after three decades, its real lesson may be the role of public information and "pedagogy." As was pointed out, Turkish Cypriot leaders apparently worked hard to explain the plan to their populace. As a result, the Annan plan was backed by Turkish Cypriots, despite serious reservations, and remains the leading blueprint for unification of the island.

Overcoming Corruption and Mismanagement of Housing, Land and Property

Management of HLP involves long-term efforts that go to the heart of the rule of law and good governance in any society. In the developing world, severe economic pressures on HLP are brought to bear on traditional agrarian groups ill-prepared to cope with the effects of exogenous change. In this context, crucial issues arise at the intersection between "state law," based on Western notions of individualized property rights, and "customary" rules governing land and resources held jointly by members of traditional communities.

In settings characterized by high land values and active property markets, individualized property rights under state law can deliver efficient, clear and equitable property relations. However, for rural agrarian communities that hold land in common and

³⁶ Presentation by Didier Pfirter, "Property, Land and Return in the Comprehensive Settlement Plan of the UN Secretary General for Cyprus (Annan Plan)," *IPA Workshop on Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming*, 2-3 December 2004.

³⁷ European Court of Human Rights, *Loizidou v. Turkey* (App 15318/89), Judgment of 18 December 1996; *Cyprus v. Turkey*, (App 25781/94), Judgment of 10 May 2001.

rarely sell it, such complex and intensive rules are unnecessary and tenure security can be provided by customary law alone. In fact, only about one percent of land in Africa is registered, leaving the vast bulk in customary tenure.³⁸ Yet, the crucial role of customary land management is really only beginning to be understood by international actors.

For all their strengths, informal systems may be more vulnerable to exploitation by potent, outside economic players. As a result, where resource values rise, impulses toward individualization of rights may be left unregulated. Where such individualization takes opportunistic forms, such as prohibited sales outside the community or monopolization of commonly-held land, social tensions increase. The resulting gap in legal clarity and tenure security can be addressed through state law "recognition" of informal tenure. Forms of recognition such as registration of customary landholdings and legal acknowledgment of traditional leaders' authority over resources (with or without insistence on new accountability mechanisms) can help maintain tenure security. However, unintended consequences and lack of implementation can also exacerbate disputes and inequities. Successful intervention often involves recognition of the limitations of state law as an instrument of social policy.³⁹

As a rule, legal recognition of informal rights should be tailored to (1) the demonstrated needs of local communities under specific circumstances; and (2) structural and resource constraints on states' abilities to implement such regimes. One key to avoiding unnecessary or unimplementable state law interventions is to seek to complement, rather than supplant, customary norms and practices. In fact, national administration of land and resource issues may be best served by a bottom-up approach, with assisted

mediation of local HLP issues providing not only sustainable local regimes but also principles to guide sound national level policy.

Local management should demonstrate some degree of transparency and accountability as a condition for state law recognition. First, communities should agree on decision-making procedures, criteria for membership and lines of authority. Local dispute resolution mechanisms are especially critical, with clear rules necessary in order to provide legal confidence to outside purchasers and prevent internal disputes from revolving endlessly between parallel adjudicators. Second, communities should actively define the resource rights within their jurisdiction, distinguishing any land held in mixtures of individual and group ownership from that held as genuine common property by the entire community. Agreed demarcation of common property should generally be a precondition for either selling or granting individual title to it.

Even under the best of circumstances, there are several risks commonly associated with local land administration. One of the most serious is that traditional prejudices can be perpetuated in the form of rules or practices effectively disenfranchising vulnerable groups such as women, ethnic minorities or recent settlers with *bona fide* property rights. The formal granting of individual title to customary land can also jeopardize subsidiary or seasonal use rights, such as that of pastoralists to use cropland for grazing after harvest. However, the most serious threat to stability usually relates to the capture of land and resources by corrupted elites. For instance, recent conflict that killed thousands in Papua New Guinea was sparked when village elders misappropriated money paid for mining rights. In fact, endemic resource-related corruption has reduced entire South

³⁸ Liz Alden Wiley, "Formalizing the informal: Is there a way to safely secure majority rural land rights?" Paper presented to EGDI-WIDER Conference on Unlocking Human Potential: Linking the Informal and Formal Sectors, Helsinki, Finland, 17-18 September 2004, p.2.

³⁹ Daniel Fitzpatrick, "In Search of 'Best Practice' Options for the Legal Recognition of Customary Tenure," *Development and Change*, Volume 36, Number 3 (May 2005), pp. 449-475(27).

Pacific countries such as Papua New Guinea and the Solomon Islands to virtual failed states.⁴⁰

A final, fundamental precondition for effective local resource management is a "relatively benign" state. Countries suffering from severe corruption or ethnic tensions often witness government interventions to the detriment of vulnerable local resource-holders. For instance, government negotiations to set up environmentally protected areas on indigenous land in Ecuador led to the exclusion of local tribes and the initiation of unwanted oil drilling.⁴¹ The availability of legal remedies at the domestic level has not effectively protected indigenous groups, and the matter has now been submitted to the Inter-American Commission on Human Rights.⁴² Loss of faith in government as an impartial interlocutor can perpetuate conflict, as in Aceh, Indonesia, where a peace deal offering ninety percent of local resource revenues was at first rejected by separatists due to lack of trust in the Indonesian army, which was widely believed to have a financial stake in continuing the conflict.⁴³

Additionally, local resource management will need to promote the responsible management of natural resources such as oil and gas. Certain initiatives are already underway, which have been created to counter the negative impacts of natural resource exploitation and resulting revenue distribution. These include the Chad-Cameroon pipeline project, which calls for externally-monitored fiscal management and a shared social revenue plan, and the United

Kingdom-sponsored Extractive Industries Transparency Initiative, which aims to advance fiscal transparency of multinational corporations and other host governments who are partners in devising oil and gas concessions.⁴⁴

In sum, state recognition of customary rights should be tempered by the need to support rather than supplant local institutions, as well as realistic expectations about how much can be achieved in light of resource restraints. Devolution of HLP administration to local communities can improve tenure security, but constitutional safeguards against disenfranchisement of vulnerable groups and accountability measures against corruption should be considered. Benign state assistance with local management can be of great help, but the balance of intervention and devolution should be struck very much on a case-by-case basis.

IV. Key Insights

A great deal is already known about HLP disputes, and significant practical precedents have been set in both post-conflict and development settings. Recent moves toward "mainstreaming" HLP issues in organizations ranging from the UN High Commissioner for Refugees (UNHCR) and UN-Habitat to the World Bank, USAID and the Organization for Economic Cooperation and Development (OECD) give rise to some optimism that the current pattern of individual cases of effective practice may coalesce into consistently applied international policies on HLP rights. However, such

⁴⁰ Anthony J. Regan, "The Bougainville Conflict: Political and Economic Agendas," in Karen Ballentine & Jake Sherman (eds), *The Political Economy of Armed Conflict: Beyond Greed and Grievance*, (Boulder: Lynne Rienner, 2003), p.133, 136 and 150; on the Solomon Islands see Clive Moore, "Beyond RAMSI, The Future of the Solomon Islands," in Anne Brown (ed), *Development and Security in the Pacific Island Region*, International Peace Academy and Australian Center for Peace and Conflict Studies, University of Queensland, forthcoming.

⁴¹ http://www.iisd.org/pdf/2003/investment_investsd_may23_2003.pdf

⁴² Report No.64/04, Petition 176/03 (admissibility) *The Kichwa People of the Sarayako Community and its members vs. Ecuador*, 13 October 2004, <http://www.cidh.oas.org/annualrep/2004eng/Ecuador.167.03eng.htm>

⁴³ Note that a Peace Agreement was signed on 15 August 2005. See International Crisis Group, *Aceh: A New Chance for Peace*, Asia Briefing No.40, 15 August 2005.

⁴⁴ See Leiv Lunde and Mark Taylor, "Regulating Business in Conflict Zones: Challenges and Options," in Karen Ballentine and Heiko Nitschke (eds), *Profiting from Peace: Managing the Resource Dimensions of Civil War* (Boulder: Lynne Rienner, 2005), p.317, 323-4.

developments are not a given, and continued efforts will be necessary in order to build consensus around the following key insights:

Disputes over HLP rights are a threat to development and security.

Land and property are unique, immovable productive assets of inherently high financial value. For the agrarian poor, survival often hinges on access to land. Beyond their economic import, land and property are also frequently invested with enormous political, cultural and religious significance. Control of land is equated with both wealth and power in societies around the world. It is therefore little wonder that land and property are central to many intra-state conflicts. Disputes over control and access to land often both reflect and contribute to broader political and ethnic struggles.

Tensions over land and property inhibit local productivity and discourage foreign investment, hindering economic growth. Moreover, where the state is unable or unwilling to address such grievances through effective dispute resolution and guarantees of equitable access, intra-state conflict can and often does ensue. In the wake of fighting, displacement and confiscation add further layers of complication and grievance, frustrating efforts to negotiate and implement lasting peace settlements. In the worst of cases, such legacies of conflict can spur further violence, contributing to intractable cycles of warfare.

Tackling HLP issues requires consistent attention and systematic planning in conflict management policy.

Concerns persist that well-intentioned intervention in highly technical and context-sensitive HLP disputes can do as much harm as good. However, failure to invest in informed and effective approaches to HLP disputes risks leaving the international community

grappling with the symptoms rather than addressing the causes of conflict. HLP disputes will not be a dominant feature in every development and post-conflict situation and should be sequenced vis-à-vis other priorities according to case-by-case assessment. However, failure to systematically assess and adequately respond to HLP issues is likely to jeopardize other domestic and international investments in both development and post-conflict settings. The current ad hoc approaches to HLP issues adopted by the UN and its agencies risk sacrificing helpful and hard-won principles for expediency.

Recent policy research and lessons learned from field practice have converged around the need to comprehensively address persistent HLP disputes in order to achieve both security and development goals. The international law principles applicable to HLP are increasingly clear. Research and practice will undoubtedly continue to inform policymakers' understanding of the relationship between HLP and conflict. However, enough is currently known that a significant number of international agencies—the World Bank, OECD, USAID, UNHCR and UN Habitat—have recently adopted or proposed comprehensive guidelines on HLP and conflict.

While these are promising developments, there is a great deal that could still be done. All development agencies should be aware of early signs of destabilizing disputes and be given advice on how to respond. Governments contemplating HLP reforms should receive consistent support and technical advice. Severe violations of HLP rights in the course of conflicts should uniformly be condemned and obligations to remedy them should be a standard component of peace negotiations. Perhaps most important, UN peace missions should consistently be provided with adequate advance briefing on post-conflict HLP issues in order to be able to assess and sequence them with other priorities in an informed and effective manner.

Addressing HLP rights should be a core component of rule of law strategies

The fundamental objective of reform processes should be to anchor HLP relations within a legal system based on the rule of law, with general adherence to known rules and disputes resolved in a transparent and predictable manner. The failure to include land and property reform as a central rule of law objective in post-conflict and development settings results from the tendency of rule of law programs to focus on law and order, rather than on socio-economic issues. However, HLP rights are one of a number of quotidian administrative and private law issues that have an equally significant impact on the daily lives of ordinary people. Future attention to HLP as a core rule of law concern would redress this imbalance and increase the effectiveness of post-conflict and development programming.

Emerging legal standards should frame negotiations on HLP issues

Disputes over HLP are notoriously difficult to negotiate, particularly where they have already resulted in armed conflict. Given the unique and limited qualities of land and property, there is often very little scope to arrive at solutions that will satisfy all claimants. As a result, peacemakers may have legitimate concerns that legal norms protecting HLP rights may have gotten ahead of negotiating pressures and dynamics, which could limit the scope of acceptable outcomes to the point where compromise could be impossible to reach. In a dilemma reminiscent of the peace versus justice debate regarding amnesties, there is room to question whether the most difficult HLP disputes should be addressed at all in initial peace negotiations.

A key insight in resolving this dilemma is the realization that HLP conflicts generate "more tort than can

be repaired," and that the goal of negotiations cannot be to redress all grievances but merely to distribute sacrifice—and recognition—relatively equitably on all sides. Failure to address underlying HLP disputes at all in peace negotiations is almost sure to perpetuate more grievances than a resort to compromise. For instance, addressing inequities of power manifested through land relations would be a vital but incendiary component of any truly sustainable future settlement of conflict in the Great Lakes region of Africa. The same considerations apply to pre-empting conflict, as well as ending it, as witnessed by the difficult compromises made over restitution in post-apartheid South Africa.

Finally, as demonstrated by the Annan plan for Cyprus, the exigencies of negotiated peace settlements provide a real justification for limiting the strict applicability of human rights norms through exceptions based on public interest. In other words, human rights norms pertinent to HLP conflicts inherently contain sufficient flexibility to facilitate creative and sustainable compromises. In addition, contemporaneous international condemnation of HLP rights violations can serve to place the parties to conflict on notice that they will be expected to address these issues in peace negotiations.

Approaches to HLP disputes should build on existing institutions and practices

In both development and post-conflict settings, the best approach to HLP conflicts is to build on local institutions and practices rather than supplant them. Where rule of law is weak and the international community's role constrained, this approach is likely to be the only one that will yield sustainable results. Even in a setting such as Bosnia and Herzegovina where the international community devoted extraordinary energy and resources to property restitution, greater engagement with local institutions may very well have produced better results. The fact that Bosnian restitu-

tion was based on domestic law and implemented by local officials lent it a legitimacy that arguably contributed to relatively high levels of refugee return.

Yet, inherent risks in reliance on local institutions must be countered. One major challenge is that discrimination can be perpetuated in the form of rules or practices effectively disenfranchising vulnerable groups such as women and ethnic minorities. Failure to ensure some degree of transparency and accountability can lead to the capture of such processes by corrupted traditional elites. Thus, while interventions in HLP issues should be calculated to support existing institutions, constitutional safeguards against disenfranchisement of vulnerable groups and accountability measures against corruption should be considered. It should also be borne in mind that in some cases, such as the Great Lakes region of Africa, traditional structures may be the main barrier to progress in and of themselves.

V. Final Recommendations

Although HLP is still an evolving policy area cutting across various institutional mandates, there are a number of important policy recommendations that deserve closer attention. These recommendations derive from the workshop's discussion and a subsequent strategy meeting with the panelists, as well as additional research conducted by IPA. The points of agreement are reproduced here in the hope that they will be of assistance in policy-making, field implementation and future research. These recommendations focus on land, property and housing as they relate to development settings as well as post-conflict property issues.

1. General Principles

- Housing, land and property (HLP) policies should as far as possible be addressed in

conjunction to ensure that residential and land rights are dealt with more comprehensively by domestic and international actors.

- HLP disputes have the potential, if not adequately handled, to aggravate or contribute to violent conflict. Unequal and discriminatory HLP policies, lack of economic opportunities and a high reliance on the agricultural sector and subsistence living may all exacerbate existing cleavages in conflict-prone or conflict-ridden countries. The linkage between HLP and conflict justifies the adoption of conflict-sensitive approaches to such policies. Furthermore, widespread HLP disputes in pre- and post-conflict settings must be granted greater attention by international development agencies, bilateral agencies and UN peace missions.
- National and international actors should recognize the tensions and complexities inherent in enacting HLP programs; policies with divergent aims—such as economic growth, privatization, tenure reform, human rights protection, institutional capacity-building and pro-poor or subsistence-oriented measures—have the potential to act at cross purposes. At the very minimum, specific HLP activities should be incorporated into wider development and peacebuilding strategies.
- Three fundamental objectives should underpin HLP policies: tenure security, access to HLP and restitution of HLP in cases of forced displacement. Achieving these objectives will help ensure that HLP policies contribute to social and economic development and peace and security, based on international human rights standards and the rule of law. Rule of law institutions and processes can play a crucial role in helping achieve these objectives and can support more equitable and peaceful HLP relations.

2. Housing, Land and Property: Conflict-Sensitive Approaches

- The relevance of HLP disputes as a driver of violent conflicts should lead to the adoption of conflict-sensitive policies by UN development actors. The World Bank, USAID and the OECD are currently incorporating conflict-sensitivity into their HLP approaches. At the United Nations, the Food and Agriculture Organization (FAO) and UN-Habitat have for long developed expertise on land and housing issues, respectively. Additionally, the key UN development agency, the UN Development Programme (UNDP), should incorporate HLP issues into its conflict analysis at the Bureau for Conflict Prevention and Recovery and engage with other relevant actors on the way HLP plays into conflict prevention and development practice.
- In much of the developing world, customary law regulates the ownership and use of HLP. The application of customary law in fragile states should be better understood and utilized by international actors working on HLP policies. International approaches must be tailored to the strengths and weaknesses of the informal systems they are supplementing or supporting.
- However, while customary tenure can demonstrably support secure and equitable property relations, it will not always adequately protect local communities from outsider interventions; it will often discriminate against specific groups, including women; local elites may manipulate customary practices for personal gain; and the presence of plural legal institutions with the authority to adjudicate upon HLP disputes may encourage "forum shopping" and lead to protracted HLP disputes.

HLP-Specific Policies

- Where severe inequities in HLP distribution act as a barrier to economic growth and social development or are a potential driver of conflict, redistributive policies should be considered.
- Registration and the provision of formal titles are one of the better known HLP policy tools. Yet, the impact of registration on economic and social development should be qualified. In particular, multiple titling can contribute to cyclical conflict and protracted disputes. The grant of "qualified titles" under which current occupants' rights are vested if no challenge is filed within a set time-period, can help diminish tenure insecurity. Additionally, registration systems should seek to provide legal recognition to customary or informal rights without necessarily converting these rights to imported tenure norms.
- In many agrarian societies, properties that are most vulnerable to dispute are common properties, those lands like forests and pastures, which are owned jointly by members of groups or communities. These are often incorrectly treated as un-owned lands. Innovative legal constructs are needed in order to allow registration of group ownership. It is also necessary to clarify distinctions between ownership and access rights; often pastoralists have customary access rights to locally owned lands. Additionally, in order to exclude elite capture or subdivision of important common properties, communities should not be encouraged to register properties owned by individuals and families until common properties have been defined and registered in a mutually agreed fashion.
- In many situations, the creation of a register is necessary. In order for the register to be fully

accessible, accountable and useful to owners, it is important to locate registers at the lowest administrative level. Systems need to be established which enable the public to inspect the register freely and at no cost and to record ownership changes for a minimal fee. Mechanisms should also be put in place to enable and assist the resolution of HLP disputes by local actors, before submitting the matter to more remote and formal adjudication.

- Placing accountability for maintaining HLP records on holders themselves rather than on the state may lower overall costs and may create incentives for consistent recording of subsequent transactions and general maintenance. Yet, where local elites are able to restrict access to records, they can become a means of consolidating political power. As such, there is a need for the creation of mechanisms at the local level for informal negotiation and mediation.

"Mainstream" Governance and Rule of Law Policies

- Devolution may be particularly crucial in agrarian settings where people depend upon land for survival. Inclusive processes for policy development and dispute resolution vested at the local level can lead to the identification of principles and practices useful for building up national level policy. Local administration of HLP issues must be accountable, that is, follow clear procedures and regulations on the representation and membership of the community, as well as on decision-making and dispute resolution.
- Decisions to devolve HLP policy processes should be based on participatory decision-making that goes beyond consultations in order to diminish the risk of manipulation and capture of such processes by opportunistic

local elites and ensure the inclusion of local stakeholders who are traditionally disenfranchised based on ethnic, class, age or gender bias. However, a top-down approach to registration and broader HLP policy may be justified under some circumstances where local consensus is incompatible with international standards.

- Informal community-based dispute settlement mechanisms are a particularly important tool to ensure effective and legitimate adjudication of HLP disputes and to promote greater equity in property relations at the community level. However, their relationship to the national judicial system should be clearly defined, in particular with regard to the existence of effective remedies.

3. Housing, Land and Property Policies in Post-Conflict Settings

- HLP disputes are prevalent in post-conflict settings characterized by large-scale displacement, abandoned land and housing, illegal HLP occupation, overlapping claims, reduced housing stock and lack of HLP records. If not addressed, HLP disputes have a real capability of jeopardizing post-conflict peacebuilding goals of national reconciliation and sustainable economic and social development.
- Where specific HLP issues were themselves among the main causes of the conflict or directly threaten the viability of the peace settlement, a peace agreement should seek to resolve these issues without delay. While it may not always be politically sound to adopt radical HLP reforms in the immediate aftermath of conflict, peace agreements should at least mention the role of HLP in the reconstruction of the country and international agencies should engage in a rigorous planning process and set clear timelines for the

adoption and implementation of HLP policies. In particular, measures regulating the temporary allocation of HLP, including deeds registration systems (i.e., the basic recording of HLP transactions), should be immediately enacted in order to avoid increased tenure insecurity and social unrest in the short term.

- In accordance with international human rights and humanitarian law, restitution mechanisms are now commonly applied to redress widespread, systematic or discriminatory forced evictions and dispossessions of HLP, particularly where such acts were formally condemned by the international community. These restitution processes should, as far as possible, be integrated within a broader strategy that addresses the HLP rights of the general population with a view to improve tenure security and access to HLP.
- To this end, the UN should consider the adoption of rights-based HLP strategies as part of its post-conflict peacebuilding activities, and in particular have these included in the mandate of the proposed UN Peacebuilding Support Office. At the very least, HLP should be better integrated into the planning, implementation and sequencing of peacebuilding activities undertaken by UN agencies, including UNDP, UNHCR, UN-Habitat or FAO.
- The situation of secondary occupants of claimed HLP should be assessed at the outset of restitution programs. Acquired rights should be taken into account, at least with the provision of some form of compensation or the provision of alternative accommodation to occupants of claimed property. These should be geared to the provisional needs of the restitution program and should be better coordinated with development of long-term social assistance programs.
- While restitution of HLP is the most desirable solution and should be actively supported by international actors, in some cases it may not be possible. Where property and housing has been destroyed on a large scale, where land to be restituted cannot be used, and where HLP tenure was not clearly regulated and subject to dispute before the conflict, alternative forms of redress—including compensation—may be more viable. The establishment of insurance funds to cover the loss of property interests that cannot be restituted should also be considered. In settings where land and property relations were inequitable or contentious prior to the outbreak of conflict, broader HLP reform should, at a minimum, take place in a phased manner alongside restitution or compensation.

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