

LAND AND CONFLICT

A Handbook for Humanitarians

Draft September 2009

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

Land and Conflict: A Handbook for Humanitarians
Draft September 2009

About this Handbook	3
Introduction	5
Key Issues	8
1. LAND DISPUTES	9
2. LAND RECORDS	13
3. LIVELIHOODS	17
4. HLP IN DISPLACEMENT AND RETURN	19
5. VULNERABLE GROUPS	22
6. RURAL LAND USE	24
7. URBAN SETTLEMENTS	26
8. CAMPS	29
9. DONORS AND COORDINATION	31
10. ADVOCACY	33
11. HIGH VALUE NATURAL RESOURCES	35
12. ASSESSEMENTS AND RAPID APPRAISAL GUIDES	39
13. MAPPING	41
GLOSSARY	43

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

About this Handbook

Why a Handbook on Post-Conflict Land?

The 2005 Humanitarian Response Review identified land as a critical gap in international response capacity. This Handbook has been prepared by UN-HABITAT at the request of the Early Recovery Cluster to provide simple and clear guidance for addressing land issues in a post-conflict environment. Part of the challenge is the considerable gap that exists between humanitarian and development actors when it comes to land issues. UN-HABITAT's strategy for addressing this gap is to involve both humanitarians and land professionals in the development of a series of policy and operational tools, including:

- (i) Handbook, which targets humanitarians with specific guidance on critical emergency response areas, including simple "Do's and Don'ts";
- (ii) Guidelines, offering more in-depth programming and operational guidance targeting land professionals;
- (iii) Training Materials and outreach for different target audiences based on needs assessments and information contained in the Handbook and Guidelines;
- (iv) Technical Advice, through a network of professionals and networks, to countries requesting assistance.
- (v) Monitoring and Evaluation of land-related interventions to support advocacy objectives and improved programme design and implementation;
- (vi) Advocacy, to continue to raise awareness of the need to address land issues early and effectively and the contribution of land interventions to wider humanitarian, livelihoods, and state- and peace-building objectives.

Who is the Target Audience?

The Handbook's target audience is humanitarian workers with a limited background in land, but whose work may be impacted by issues related to land. The Handbook targets both emergency and early recovery humanitarian actors. The Handbook may also be useful for Government, bilateral aid agency staff, national and international land professionals and civil society.

By involving humanitarians and land experts together in the development of the Handbook (as well as the other products), the intention is to ensure that the final versions:

- Build on the existing experience and capacity available in many organizations;
- Respond effectively to the specific needs of different target audiences;
- Promotes consistent messages and normative approaches across all products;
- Contribute to a more coherent and holistic response from the international community, addressing (i) both rural and urban contexts and (ii) countries with unified land laws and institutions as well as contexts characterized by legal and institutional pluralism; and
- Enjoy broad ownership and use by all those who have contributed to the process.

How was the Handbook developed?

UN-HABITAT has produced separate questionnaires targeting humanitarian actors and land professionals. Over 40 professionals from more than 25 organizations in 20 different countries responded to the questionnaires. The inputs from the questionnaires have been consolidated in a first draft reviewed by representatives of the Humanitarian community in Geneva in June 2009. The recommendations from the meeting were later incorporated in this draft. UN-HABITAT would like to express particular thanks to the following individuals who have contributed their experience and inputs to the process thus far:

Special recognition goes to Conor Foley who provided valuable inputs at an early stage and Rhodri Williams who contributed to the September 2009 draft. In addition, many valuable insights and inputs were provided by: Abdul Baqui Popal, Holly Bermans, Theap Bunthourn, Allan Cain, Silvia Carbonetti, Cyprian Celebalo, , Marta Bruno, Rita Chadid, Gerard Ciparisse, Justin Cornehn, Lorenzo Cotula, Meabh Cryan, Fernando de Medina Rosales, Bruno Dercon, Paul De Witt, Serena Di Matteo, Samir El-hawari, Chris Huggins, David Ito, Bodil Jacobson, Dara Katz, Sarah King, Antony Lamba, Patrick Mac Auslan, Reuben Mc Carthy, Syprose Ogola, Kate Norton, Sara

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

Pantulliano, Oum Sang Onn, Florian Bruyas, David Stanfield, Ombretta Tempra, Jan Tukstra, Babette Wehrmann, and Rhodri Williams.

They have invested the time to collaborate to this project and contributed with lessons learned and case studies from: Afghanistan, Angola, Burundi, Cambodia, Colombia, DRC, Former Yugoslavia, Georgia, Kenya, Kosovo, Indonesia, Lebanon, Liberia, Mozambique, Somalia, Sri Lanka, Sudan, Timor L'Este and Uganda.

Among others, UN-HABITAT thanks the following organizations who supported the agency's outreach capacity by disseminating the questionnaires through their networks: MCC, UN-HABITAT, FAO, ODI, IIED, IOM, Terra Institute, UNICEF, NRC, ICRC, Development Workshop, UNHCR, MAJAL/ALBA, Catholic Relief Service, UNRWA, Timor L'Este Land Network, UNDP, Danish Refugee Council, Austcare, Christian Aid and CMAC.

How is the Handbook structured?

The Handbook can be read through as a single document but has also been organized thematically by "Key Issues" and readers can go directly to specific "Key Issues" for a discussion of particular topics.

1. **Introduction** the Handbook has a short introduction that provides a brief overview of the relationship between land and conflict. It then outlines some basic land concepts that are referred to throughout the document. Readers are encouraged to familiarize themselves with the concepts, and to refer back to them as necessary. The section concludes with a simple "Do No Harm" and conflict-sensitive approach to land.
2. **Key Issues** analyzes the land issues that may affect humanitarian interventions in a post-conflict context (such as shelter, camps, livelihoods, etc.). The aim is to identify the issues that are most relevant from a humanitarian perspective and provide simple, clear guidance from a conflict sensitive and "Do No Harm" perspective. Each Key Issue is structured as follows:
 - o Introduction
 - o What are the issues?
 - o Options for action
 - o Don'ts
 - o Country Examples
 - o Tools and References
3. **Rapid Appraisal Guides** includes specific indications for land related assessments in post-conflict
4. **Glossary** includes some common land terminology that builds on what has been presented in the Introduction.

Final Caveat regarding this Handbook

The title of the document should not mislead anyone that there are "simple," "quick" or "standard" solutions to complicated land questions. The intention, rather, is to provide a practical tool that brings together current experience and thinking on how to integrate land issues into emergency and early recovery programming.

This document should be read as an 'evolving draft'. Many inputs have been received from different sources and have been compiled into the current draft. While a standard structure exists, this draft is very much experimental – in the selection of Key Issues, in the selection and format of case studies, in the use of tools and references. Comments are welcome, much appreciated and will be taken on board in the final version later in 2009.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

Introduction

Land issues are often root causes of armed conflict, yet often go unaddressed. The technical complexities and political sensitivities surrounding land issues have discouraged humanitarian actors, donors and even governments from engaging with them, often based on an assumption that meddling with the post-conflict status quo may be more destabilizing than simply letting it be. Experience has shown, however, that an entirely passive approach to land grievances may ultimately be far more destabilizing than an informed and conflict-sensitive approach. Handled carefully, land issues can become an important entry point for peace-building.

This introduction provides a general overview of the relationship between humanitarian action and land issues, highlighting key linkages and introducing some of the issues treated in detail in the subsequent “Key Issues” sections. It should be emphasized at the outset that while the target audience for this Handbook is humanitarian actors, the goal is neither to imply that they should become land tenure experts themselves nor that they should radically alter the life-saving humanitarian activities they are carrying out in the field. The goal instead is to further sensitize humanitarian actors to the land-related implications of their work, advise them of achievable steps that can be taken within the context of existing programming to address land issues (or avoid exacerbating them), and encourage them to contribute with their valuable insights in the discussion, among a range of international and national actors, of broader proposals to reform land relations and redress grievances.

Land Issues and Humanitarian Action

Land issues affect humanitarian action, both directly and indirectly. The direct connections are most obvious and tend to involve situations in which land is required in order to provide humanitarian assistance. The most typical scenarios are those in which land is required to provide shelter, camps or infrastructure. Similar issues arise when land is needed to facilitate livelihood activities that cannot be practiced within the confines of a camp. In such circumstances, tensions with surrounding communities are likely to be heightened if the use of local land has not been negotiated in advance both with the formal authorities and with local communities that may have informal or customary rights of ownership, use or access to such lands. Landmine pollution is another example whereby the work of humanitarians may be directly affected.

Land issues that may have a more indirect effect on humanitarian action often result from grievances, disputes and legal uncertainty that either predate or result from the conflict. Humanitarian actors may often find themselves operating in areas where longstanding land grievances remain very much alive. Awareness of the nature of such disputes is crucial for ensuring that humanitarian actors continue to be perceived as impartial and neutral and do nothing that would aggravate them, jeopardizing their own security as well as that of affected vulnerable groups. Similar issues can arise in relation to the extraction of resources without the agreement of all affected groups.

Such considerations are particularly important in situations where controversial or unfinished transformations of land relations, such as efforts to redistribute land, nationalize or privatize it have led to tensions between public authorities and local communities. In many situations, land issues may be formally regulated by statutory law and official institutions but locally subject to customary or religious law applied by traditional authorities. Such situations of “legal pluralism” can exacerbate conflict, both in situations where formal systems do not recognize the existence of customary rules and situations where informal systems are recognized but have no clear relationship has been established between them and formal systems. The failure to resolve disputes and implement policies in a participatory manner can further aggravate the marginalization and impoverishment of vulnerable groups such as female-headed households or ethnic minorities.

Another set of land issues with an indirect but powerful effect on humanitarian action arise as a result of the eviction of individuals and communities from their land and its confiscation and occupation in their absence. Displacement from homes and lands is a direct cause of vulnerability and humanitarian need, denying victims their most basic source of security, privacy, shelter and livelihoods. In the case of traditional communities and

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

indigenous groups, abandoned land may be central to community identity and religious practices as well as basic sustenance. Under such circumstances, it may be difficult to conceive of a sustainable strategy to encourage the self-reliance of affected communities and reduce their need for humanitarian assistance without concrete steps to secure and restore rights to abandoned land wherever possible always taking into account the rights of secondary occupants as well, or to compensate for its loss.

Finally, it must be recognized that land and natural resources play a complicated role in the political economy of armed conflict. Humanitarian actors may find themselves at the centre of complicated dynamics between groups vying for control over land. Land is also used as a commodity to reward loyalty and land-grabbing is a common conflict phenomena.

Box 1: What signs indicate that land disputes will be an issue?

Land disputes are more likely in contexts characterized by:

- **A History of Conflict and Grievance**, including colonisation, foreign occupation, armed conflict or the use of land to consolidate the political control of some societal groups at the cost of others.
- **Legal and Institutional Pluralism**, or situations in which statutory law institutions co-exist with customary, informal or religious institutions without established hierarchies or defined relationships to each other.
- **Weak Rule of Law**, characterized by limited state capacity to enforce decisions and ensure accountability, as well as lack of political will to tackle land issues and non-transparent decision-making processes.
- **Weak Land Administration**, in which land records are either incomplete, leaving most land rights unrecorded, have not been updated consistently, or have been subject to fraud and tampering.
- **Dysfunctional land markets**, whereby there is insufficient supply of affordable and legally recognized land, forcing people to occupy land without secure land rights.
- **Conflict over land and natural resources**, in which the revenues derived from such resources become the object of conflict or post-conflict power struggles and political consolidation.
- **Environmental degradation** due to climate change, natural hazards, landmine pollution or industrial activities that jeopardize existing uses of land and reduce the land available for new development.

Options for Action and Phases of Response

The Handbook generally distinguishes between steps that can be taken to address land issues in the emergency response phase and those that are more appropriate in an early recovery context. This is not meant to imply that complex humanitarian emergencies follow a predictable trajectory; for instance, steps recommended for emergency response should be repeated as new incidents of conflict and displacement arise.

As set out in more detail in the Key Issues sections below, steps to secure land rights and address disputes during the emergency phase are generally subordinate to the imperative of reception of conflict-affected groups, their movement to places of safety and attendance to their fundamental needs. However, some basic steps undertaken in the context of existing programming during this phase can both help to secure the land rights and livelihoods of conflict-affected persons and prevent new disputes from arising as a result of humanitarian actions. Examples include the following:

- Encouraging the competent authorities or mandated international actors to secure land records at risk of destruction, removal or tampering;
- Systematically seeking information on land rights and abandoned properties from displaced persons and assisting them to secure available evidence in support of claims;
- Rapid assessment of nature and scope of ongoing land disputes and analysis to ensure that they are not inadvertently aggravated through humanitarian programming; and
- Seeking the agreement of both formal and customary authorities regarding the use of specific plots of land for humanitarian assistance purposes such as emergency shelter.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

In the context of early recovery, more possibilities arise for adjustments to existing programming that can have positive short and long-term effects in securing the land rights of conflict-affected communities and addressing land disputes. Options include:

- More systematic monitoring of local land disputes, recording of incidents and analysis of the capacity of formal and informal procedures for resolving them;
- Identification and support of traditional land adjudication authorities and advocacy for legal recognition of customary rules and institutions where necessary to secure the land tenure of local communities;
- Identification of practices that threaten rights to access and use land for marginalized groups and mobilization to promote greater equality;
- Promotion of livelihood activities and training during displacement that ensures the transfer of land-related skills during displacement, particularly where communities continue to prefer return-based durable solutions;

In both emergency and early recovery settings, humanitarian actors are generally advised to seek the advice of land tenure experts wherever necessary. Humanitarian actors should avoid being forced into the role of adjudicating land disputes on an ad hoc basis or taking other similar steps that could potentially undermine the rights and obligations of individuals and communities. Such actions raise significant “do no harm” risks, not least by threatening to undermine both the perceived impartiality of humanitarian workers themselves and the authority of any existing formal or traditional land dispute adjudication bodies. On the other hand, humanitarian actors in the field often develop unparalleled insights into the nature of land disputes and claims and the capacity of various existing institutions and bodies of rules to address them. It is crucial that humanitarians be engaged in broader early recovery efforts and contribute such insights to policy discussions regarding long-term land reform and conflict resolution measures.

Key Issues

Land issues cut across many humanitarian sectors and clusters. The purpose of this section is to (i) illustrate the land dimension in common humanitarian response areas; (ii) provide simple, clear guidance on response from a conflict-sensitive land perspective.

The 14 Key Issues identified include:

1. Land Disputes
2. Land records
3. Livelihoods
4. HLP in displacement and return
5. Vulnerable groups
6. Rural land use
7. Urban settlements
8. Camps
9. Donors and coordination
10. Advocacy
11. High value natural resources
12. Assessments
13. Mapping

Each Key Issue is structured as follows:

Introduction presents the issue and how it will impact the work of humanitarian and early recovery actors.

What are the issues? Outlines the dimensions of the challenge.

Options for Action Outlines a broad strategy for action or a range of specific programming options

DON'TS Simple DO NO HARM guidance from a conflict-sensitive perspective

Country Examples How the issue has taken shape and/or is being addressed in different contexts

Tools and References Additional references to practical tools or further reading

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

1. LAND DISPUTES

Land disputes are common in virtually all societies. In an ideal setting, strong institutions and transparent procedures can resolve such disputes or at least channel them into a process that minimizes their potential to foster violent conflict. However, in settings characterized by insecurity, inequality and weak or unrepresentative institutions, such grievances may be aggravated through sheer neglect or predatory or discriminatory policies. Such risks are often most acute in humanitarian settings in which armed conflict is either ongoing or recently ended. Whether fighting has resulted in mass displacement and hostile occupation of land or merely destroyed trust between groups sharing boundaries or access to land resources, the seeds of current instability and future conflict have been sown. As a result, steps that can be taken by humanitarian actors to be conscious of land grievances, avoid aggravating them and set the stage for their eventual resolution are of crucial importance. Conversely, failure to take such steps can result in consequences such as:

- Delay to life-saving activities and loss of safe access to disputed areas;
- Security risks to field staff because agencies inadvertently come to be perceived as partial;
- Diversion of aid by parties to land conflicts;
- Aggravation of insecurity in operational areas, possibly even culminating in a return to conflict;
- Loss of land rights and livelihoods for female-heads of household and other vulnerable groups; and
- Undermining of institutions central to community identity and coherence;

What are the issues?

Land disputes come in many forms, but can broadly be organised by factors such as: (i) the type of land involved, e.g. privately or publicly owned, common property of a community or natural resources; (ii) the parties involved and their interests, e.g. individuals, families, communities, private sector and official actors; (iii) the scale of the dispute, from small-scale, localized disagreements, to large-scale conflicts between ethnic groups or even countries; and (iv) the nature of the dispute, which may be one of the following types:

- **Boundary disputes:** Disagreement on where the property of one individual, community or administrative unit ends and another's begins, especially where physical boundary markers may have been altered, destroyed or overgrown in the course of conflict.
- **Land and Property Disputes:** Competing claims over land between the state and indigenous communities over land seen as their traditional domain or land grabbing by elites or land invasion by the poor. Disputes may also arise from policies such as land reform or registration ("tilling"), nationalization, collectivization or privatization, particularly where poorly conceived, politically contentious or implemented in a faulty, corrupt or incomplete manner. Existing disputes may also be aggravated or new ones sparked by conflict.
- **Access and Use Disputes:** Disagreements between parties regarding overlapping uses of land resources may relate to access to water, minerals, timber, grazing land or transit rights.
- **Inheritance Disputes:** Disagreements over the allocation of rights to land after the death of its recognized owner may be exacerbated in settings where polygamy is common or rules regarding inheritance derive from overlapping customary, religious and/or statutory law.

SEE ALSO: Key Issue 4, HLP IN DISPLACEMENT AND RETURN; Key Issue 14, MAPPING; Key Issue 2, LAND RECORDS; Key Issue 7, URBAN SETTLEMENTS;

Options for Action

Conflict sensitive and "Do No Harm" approaches are critical to defining strategies for identifying and addressing land disputes in a post-conflict context. This means:

- understanding the context: identification of basic rules on using land, institutions that administer land, patterns of tenure, land use, livelihoods, food security, and disputes;
- understanding the likely outcomes of humanitarian and peace-building activities in light of such contextual factors; and

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

- ensuring that humanitarian activities proceed on the basis of this understanding, and avoid aggravating tensions or undermining the land rights or food security of any vulnerable groups.

Conflict sensitive approaches to land disputes may vary based on factors such as the effectiveness of local and national land administration systems, the quality of land records, and the capacity of local administrators and adjudicators. Countries characterised by weak land administration systems present particular challenges for humanitarian actors. In such situations, formal statutory rules on land administration may be in legal force throughout the country but supplanted by customary and informal rules and institutions in many of the more remote regions. In areas where the state is largely absent, reference to formal law may be viewed with suspicion and even hostility, exacerbating rather than resolving land disputes. Approaches that may be helpful in such settings include:

- **Initial Assessments** of humanitarian need, including any surveys or questionnaires for displaced persons at both local and national levels should include specific inquiries on land disputes. This information should be incorporated into humanitarian programming.
- **Local Monitoring:** Humanitarian actors in the field should track local land issues in the course of their activities and develop a practical understanding of local tenure systems, grievances, dispute resolution procedures and available evidence supporting land claims of displaced persons. Local property issues may be tracked at the central level through a simple, common reporting template.
- **Understanding Local Dispute Resolution Mechanisms:** Where formal institutions are not accessible, local customary dispute resolution procedures are likely to fill the gap. Such bodies may be non-transparent or discriminate against women or marginalized groups, but enjoy local authority and may provide the only effective local remedy for land disputes.
- **Flexibility regarding evidence of land rights:** In settings without formal land administration, the rights of individuals and families to land resources are rarely registered. Under such circumstances, humanitarian actors will need to exercise particular care in ensuring that their own use of local land resources is anchored in locally legitimate practices and should also encourage efforts to document the land claims of displaced persons by identifying what non-traditional evidence may be available and, where appropriate, assisting to compile and safeguard such evidence.
- **Contribution to Early Recovery Strategy Development:** Humanitarian actors should contribute with their observations on land disputes in the process of development of early recovery strategies. Such information should support the development of a typology of land disputes, identification of necessary legal and institutional reforms and analysis of the effectiveness of existing procedures.

DON'TS

In order to avoid aggravating ongoing or latent land disputes or jeopardizing individuals:

- Do not collect sensitive information unnecessarily and without informed consent
- Do not store, share or distribute sensitive information in a manner that would put individuals' safety or rights at risk.
- Do not assume there are no claims or rights to any given land and property other than those of the people currently occupying or using it.
- Do not rely exclusively on formal records and documentation in situations characterized by weak land administration and/or legal pluralism
- Do not overlook the rights of women, children and vulnerable groups
- Do not attempt to 'solve' land disputes or take responsibility for 'approving' local agreements or the resolutions arrived at in informal adjudications or mediation – seek assistance and guidance.

Democratic Republic of Congo (D.R.C.) Land issues are at the heart of much of the violence in the Kivu (Eastern DRC). After conflict and insecurity, access to land is the main obstacle to return for refugees and Internally Displaced Persons (IDPs). Ownership of the rich Kivu soil, pastures and underground resources is also a subject of dispute between various ethnic groups and has led to interferences by neighboring countries. Sale under duress or land and cattle confiscation are common features of the current conflict while occupation of land

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

and vacated houses by villagers, IDPs or armed groups has also led to complex land disputes upon the return of refugees and IDPs. The fact that the 1973 Land law is not widely disseminated and a large majority of land transactions or disputes are settled through customary law has also created confusion for some stakeholders. Consultations with land stakeholders have shown that there are more than 25 different types of disputes and conflicts over land in the Kivus. Some are related to relatively simple individual disputes, for example over boundaries, others are much more complicated and engage large territories and resources; others center around the issuing of deeds for the same property to multiple persons due to irregular procedures or lost land files. The issuing of large land concessions without the required consultations with communities is leading to forced evictions and tension between the new owners and the local communities, some of which date back to the 1970s. Thus, there is a need to systematically identify the various types of conflicts, specify the territories in which they occur and classify them according to the mechanisms needed to resolve them. Under the UN Security and Stability Pact, UN-HABITAT, in close collaboration with UNHCR, has begun a programme to support the resolution of current land and property disputes, primarily in North Kivu, but also in Ituri.

Timor There tend to be many different types of land conflicts within rural communities in Timor-Leste. These range from minor disputes between two members of a family to larger disputes between two different uma knua (clan groups), aldeia (hamlet) or suco (village). These types of conflicts have distinct impacts on peace and security within programme areas. They can be extremely old family disputes or result from Indonesian policies of relocation, political and resistance tensions or IDPs' use of abandoned properties. There have been a number of locations where uncertainty of land tenure arrangements led to confusion over land use for livelihoods and disaster risk reduction projects (creation of irrigation canals for community rice paddies where the land was said to belong to a family that had moved to a different part of the country, the building of emergency shelter locations in the event of floods and landslides were also contentious, although ultimately resolved.) Concern Worldwide undertook a study into a particular traditional mechanism in Timor-Leste known as Tara Bandu. The Tara Bandu includes community prohibitions and rules on conflict resolution revolving mainly around natural resources but also including many social and criminal prohibitions. Land was identified in the post 2006 crisis era as one of the most likely causes of future conflict. One of the reasons for the project was to assess whether Tara Bandu would be an appropriate form of conflict resolution (of which there are many in Timor-Leste) to promote as a model for resolution of land disputes.

Burundi In Burundi, the largest obstacle to resolving land conflicts is that the country is small and overpopulated, so there is not much land available. Due to the law on "prescription"/adverse possession, those who fled in the 1970's cannot reclaim their land because they left it over 30 years before. A Commission on Land and other Property was created to help resolve land conflicts. Decisions are binding, but can be appealed in the courts. The government has committed itself to compensating the "old caseload" returnees who left over 30 years ago with some land elsewhere in cases where mediation cannot resolve the conflict between the original occupant and the subsequent occupier. In many cases, the alternative land is not as arable as the original land so the returnees are not satisfied. And, as mentioned above, there will simply not be enough land for everybody.

Kosovo - In Kosovo a broad range of HLP issues existed, including informal settlements, unregulated illegal construction, illegal occupations, problematic housing restitution, ineffective dispute resolution mechanisms, lack of documentation, inaccurate and incomplete property rights registries, conflicting and overlapping legal regimes, inadequate and discriminatory administration systems, and issues linked with returns and minorities as well as lack of coordination and synergy through the property rights related institutions. One of the most useful processes was the Standards process prior to Kosovo's unilateral declaration of independence. This process, while flawed, did bring together the various stakeholders into one working group. It facilitated a comprehensive strategic plan for improving protection of HLP rights taking into account the different systems and institutions involved and facilitated coordination. The process was assisted by the existence of one organization, the Organization for Security and Cooperation in Europe (OSCE), that developed and maintained an overview on the issue and was able to provide technical support. In Kosovo, for instance, with the return of

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

the Kosovar Albanian refugees, UNHCR and OCHA initiated a GIS effort using data from a Rapid Village Assessment (RVA) to help assess basic needs and answer pressing questions such as: What is still in place and where? What is functioning? Where are the priorities in terms of shelter, health services, and basic infrastructure networks? Not all issues were settled. For example, the cadastral records held by Serbia were not returned because in order to create political leverage during status negotiations and political decision makers did not prioritize their return

Tools and References

- GTZ (2008), Land Conflicts: A Practical Guide to Dealing with Land Disputes, Eschborn.
- FAO (2006) Land Tenure Alternative Conflict Management, Land Tenure Manuals 2, Rome.
- FAO Land Tenure Series, Land Tenure in Post Conflict Situations
- FAO, 2004, Access to Rural Land and Land Administration After Violent Conflicts
- International Peace Academy, 2005, [Housing, Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming.](#)
- OECD, 2004, Land, Violent Conflict and Development. Working Paper 233
- Overseas Development Institute, ODI, Humanitarian Policy Group (HPG), London, Pantulliano, *Uncharted territory, Land, conflict and humanitarian action*
- UNSCC (undated), Conflict-sensitive approaches to development, humanitarian assistance and peace building: tools for peace and conflict impact assessment, Turin. <http://www.unssc.org/>
- USAID, 2005, Land & Conflict: A toolkit for intervention
- USAID, 2007, Land Tenure & Property Rights: Volume 3 Assessment tools

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

2. LAND RECORDS

Land records are the evidence of ownership and use rights. Land records are typically associated with formal land administration systems. In countries where land is administered through customary bodies, including where formal legal systems are not accessible to significant parts of the population, records are kept locally and transactions recorded through simple sales contracts, witness statements or local knowledge and attribution. Incomplete, out of date or contested land records can pose a threat to tenure security that is heightened in settings characterized by legal pluralism where statutory law does not recognize the existence of any other valid system of rights. Failure to identify and address land records issues can result in consequences such as:

- Tensions with host communities over inappropriately sited settlements for displaced persons;
- Loss of the possibility of durable solutions for displaced persons unable to document land rights (normally including women and vulnerable groups);
- Tensions and new displacement as a result of disputes that cannot be authoritatively resolved;
- Loss of traditional lands by indigenous and tribal groups unable to formally prove their rights;

What are the issues?

- **Inadequate Land Records:** Unreliable pre-conflict formal land records can complicate the identification of appropriate sites for shelter and livelihood activities for displaced persons and hinder early recovery goals by discouraging functioning land markets.
- **Fragmented Responsibility for Land Records:** Responsibilities for land records are often split between various authorities, complicating coordination and rapid assessment of what land is available for use or investment.
- **Lost, Stolen or Fraudulent Land Records:** Displaced persons often cannot access documentary evidence of land rights and public records may be destroyed, moved or tampered with during conflict, resulting in the inability of displaced persons to provide evidence of their land rights.
- **Women and Children's Property and Inheritance Rights:** In societies where women and children's land rights are guaranteed through their family or community, there is a risk of dispossession upon the death of male heads of household.

SEE ALSO: Key Issue 4, HLP IN DISPLACEMENT AND RETURN; Key Issue 5, VULNERABLE GROUPS; Key Issue 2, LAND RECORDS; Key Issue 7, URBAN SETTLEMENTS;

Options for Action

- **Identify and Analyze Formal Land Records:** An important early priority should be to identify all land registries, cadastres, maps, possession lists, survey records, text and graphical evidence; subsequently, an analysis of the completeness, accuracy and vulnerability to removal or tampering of official records, as well as their relationship to informal and customary practices may be undertaken.
- **Identify Customary and Informal Sources of Land Information:** Where relevant, identify authority figures and other sources of local knowledge on land relations, as well as local records of unregistered written or oral contracts.
- **Use all available land information for site selection or infrastructure:** Sites for transitional shelter and other assistance should be chosen based on confirmation of their availability through both a search of the any formal records and consultation with customary authorities.
- **Compile available evidence of land rights:** Identify and advocate the preservation of all types of evidence that would secure the land tenure and food security of non-displaced conflict-affected populations and safeguard the rights of displaced populations to lands they left behind.
- **Advocate Steps to Secure Land Records:** Where official land records are at risk of destruction, removal or tampering, humanitarian actors should advocate measures to secure such records, including their temporary removal to safer places, or the creation of back-up copies.
- **Secure Evidence of Individual Rights:** In cases where displaced persons' evidence of rights to abandoned properties are at risk, humanitarian actors should advocate, or where necessary, facilitate the recording and

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

preservation of such evidence in forms that would meet admissibility requirements under local law and custom.

- **Encourage Alternative Means of Recording Land Information:** Under post conflict conditions of legal uncertainty (for instance where displaced or resettling communities find themselves living on land that may be subject to claims but no information is available), advocate simple recording of transactions, and identification of existing parcels of land, structures, and occupants and users.
- **Monitor Land Grabbing, New Construction, and Occupation:** Where corruption and ineffectiveness in the official land records system foster predatory capture of the land of conflict-affected communities, humanitarian actors should treat such events as security incidents, record them in standard incident reports, and raise the awareness of other humanitarian, human rights and early recovery actors in order to seek a common position against usurpation of conflict-affected communities' land (see Key Issue 10, ADVOCACY).
- **Support Reform of Land Records:** The insights of humanitarian actors in the field can be crucial to land experts in their longer-term efforts to assess the nature and quality of existing land records and propose reforms, including adjudication and titling programs, for greater tenure security.

Box 2: Identity documents

The lack of official documentation in the aftermath of a conflict has many implications for the capacity of individuals to secure their access to land. Some of the issues are:

- **Lost documentation** – including both documents proving property rights and those proving identity. Displaced persons, in particular, are often unable to access such documentation.
- **Inheritance issues** –women and children may face discrimination in situations where documentation is only issued in the name of male heads of household. Widows also face difficulties legally proving the fate of disappeared husbands in order to claim their inheritance.
- **Temporary replacement documents** - Where large numbers of people have lost their identity documents, the simplest solution may be to issue temporary replacement documents free of charge. This often requires the establishment of special offices accessible to displaced communities or deployment of mobile registration teams. Information campaigns should be conducted to inform affected persons of their rights to such documentation and procedures for accessing it.
- **Prior lack of documents and official records** -Some of the countries which have experienced the worst displacement crises in the world also have extremely weak state institutions and significant sections of the population have never been issued with official documents. Where the courts lack capacity or public legitimacy, people often do not register property transactions officially and rely on customary documents instead. Many births, deaths and marriages are also never officially recorded. Particular groups of people, such as those from rural areas, indigenous people and certain ethnic minorities are less likely to be registered. Women are also disproportionately excluded from official records and less likely to be in possession of official documents than men.

DON'TS :

- Do not assume that official land records: cover the entire territory of the country; are accurate and updated; are seen as legitimate by all communities; or are comprehensive,
- Do not ignore or exclude local practices for recording rightful ownership or use of land.
- Do not rush to support land rights registration ("titling") programmes without advance guarantees that they will confirm and protect (rather than supplant) locally recognized use and ownership rights and procedures; that they will be based on the informed participation of all affected communities; and that adequate capacity and budget resources exist to carry them out.

Cambodia Land ownership is the main problem post-conflict due to the destruction of all cadastral records during the civil conflict. Without clear cadastral demarcation, disputes over boundaries and ownership of land and housing are very common. In a context where the government has no integrated plan for land use, land

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

laws are ambiguous and the land administration system has almost collapsed, the most vulnerable groups, including women and indigenous people, are often unaware of their land rights and subject to land grabbing. Even when land is allocated to the poor, it is often sold or abandoned because of the presence of landmines and other hazards or because it lacks supporting social and economic infrastructure.

Somalia In Somalia one of the main challenges is ensuring security of tenure in a lawless context. UN-HABITAT wanted to provide security of tenure to the beneficiaries of its permanent resettlement project, but the overlapping of the dysfunctional land administration systems (secular, Islamic, and customary) was a problem. The issue was resolved by issuing letters of allotment signed by the representatives of the different systems: Ministry of Interior, Mayor, Sharia Court representative, and clan elders. A substantial media campaign was carried out to create awareness in the community about the ownership of the shelters, and discourage possible looting by authorities or powerful groups to the detriment of the beneficiaries. Over a year after the project completion, the beneficiaries are still enjoying their rights.

Timor In Timor Leste, NRC (Norwegian Refugee Council) is currently attempting to implement projects for providing transitional housing to IDP's facing re-integration problems in their original communities. A major obstacle involves difficulties identifying appropriate tracts of land for housing. Government allocation of land is difficult because no accurate data exist of who owns what, although a large scale mapping project has recently been undertaken by a USAID funded project called 'Ita Nia Rai'. Similarly, the lack of appropriate compensation regulations and transparent methods of negotiating between land claimants and the government makes it less likely that people are being dealt with fairly, or that appropriate land that will not be subject to later counterclaims and conflicts.

Burundi In 2007-2008, after Tanzania decided to close camps where refugees from Burundi had lived for decades, UNHCR established a voluntary repatriation program that provided transportation from the refugee camps to designated entry points at the border. Refugees that still had family members in Burundi or could at least indicate their place of origin were referred to as "avec reference" and were assisted in reaching their indicated destination with the help of UNHCR and its implementing partners. Once settled in their villages of origin, they received a ration card entitling them to food aid for six to nine months from WFP acting through CARITAS. However, many arrived to their villages of origin only to find their land and houses occupied by those they saw as responsible for the genocide and their exile. Such persons had no reliable formal or informal system to regain their homes and lands and most were forced to return to the entry points at the border, where they were no longer eligible for food aid and household items, as they had not managed to establish themselves in their villages of origin. A new designation was created for these cases: the "sans-reference". This category included those who could not return or did not know where to go, including those born in Tanzania who had never been to Burundi. UNHCR set up transit camps with barracks but with no provision of food aid, water, household items or land. As these transit camps were far from urban areas, it was not possible for the sans-reference to find sustainable income generating activities. The number of sans-reference living in transit camps kept increasing and became a significant problem. The Government and UNHCR responded with a process of 'villagization'. The idea was to create 'Villages de la paix' (Peace Villages) with houses, basic infrastructure and a plot of land for each family, to allow the 'sans reference' to settle on land identified as vacant by the Government and located far away from the existing settlements. The first Peace Village in Makamba province, which hosts the largest entry point for long-term refugees, had capacity for 100 families, leaving 900 more in the transit camps without any sort of assistance. Once the first 100 families settled into the village, the local community started presenting claims for the land where the settlement had been built. Two contemplated solutions were either to move the peace village somewhere else, or to compensate the local community for the land that had been taken. But, due to the lack of official documentation it was impossible for the local community to demonstrate their rights over the disputed land. Due to these difficulties UNHCR asked the Government for some proof of the fact that the land identified for the development of the other villages was undisputed. The Government had no such documentation and the

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

planned expansion of the "villagization" process essentially came to a halt. As a result, over 1,000 families were left stranded in transit camps without assistance for nearly a year, living in conditions of extreme poverty and food insecurity. The land tenure problem for sans-reference returnees in Burundi has not been fully resolved yet and is a potential threat to the peace between historically opposed ethnic groups.

Tools and References

- Eldis, www.eldis.org
- Global Land Tool Network: <http://www.glttn.net>
- FAO, Land Tenure studies, www.fao.org/IN1_fr.htm
- FAO (2005) Access to Rural Land and Land Administration after Violent Conflicts, Rome.
- UN-HABITAT (2007) A Post-Conflict Land Administration and Peace-Building Handbook: Volume 1 – Countries with Land Records, Nairobi.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

3. LIVELIHOODS

Livelihoods consist of the capabilities, assets and activities required for a means of living. Housing and land assets are central to livelihoods in both urban and rural post-conflict contexts. The recovery or replacement of such assets for displaced communities – or the facilitation of access to them for marginalized groups – can be crucial factor in encouraging self-reliance and achieving durable solutions. Failure to address the nexus between land rights and livelihoods can result in:

- Loss of livelihood skills related to land resources necessary to achieve durable solutions;
- Further economic marginalization of female-heads of household and other vulnerable groups;
- Undermining of institutions central to community identity and coherence.

What are the issues?

- **Land and property as livelihood inputs:** Access to appropriate land and property is crucial to the development or achievement of independent livelihoods. This holds most obviously for agricultural land, pastures, fisheries and forests in rural settings but also applies to urban areas, where secure tenure can be crucial to maintaining small businesses.
- **Land and social capital:** Disruption of social networks due to conflict may group solidarity and institutions, threatening the ability of communities to maintain or rebuild common land resources and infrastructure and undermining customary land administration regimes.
- **Land and financial capital:** Legally recognized land rights are typically a precondition to productive use of land and access to credit. Persons who did not enjoy such rights prior to conflict may be doubly vulnerable afterward as increasing land values may further restrict access.
- **Displacement and livelihoods:** People displaced by a conflict are separated from their sources of livelihood as well as their homes.
- **Tensions with host communities:** Humanitarians may exacerbate these problems by supporting settlement and practice of livelihood activities in areas that lack sufficient institutions and capacity to manage increased use of natural resources, or where the land resources used cannot support additional use or are subject to competing claims
- **Durable solutions and land:** In the course of conflict, community and household livelihood strategies usually turn short-term and unsustainable due to the lack of security. Consultation and awareness of such changes should facilitate appropriate assistance both during displacement (e.g., training and livelihood inputs) and in reintegration (e.g., through attaining not only access to land but also access to inputs, credit, markets and services).

SEE ALSO: Key Issue 4, HLP IN DISPLACEMENT AND RETURN; Key Issue 6, RURAL LAND USE; Key-Issue 5, VULNERABLE GROUPS;

Options for action:

- **Analyze land and livelihood patterns:** Elicit information on the livelihood patterns of conflict-affected communities through ongoing participatory analysis of humanitarian need. Established toolkits and methodologies should be used.
- **Support land and property-based livelihoods strategies:** Take steps during displacement and reintegration to facilitate access to appropriate training, tools, inputs, credit, markets and services, as well as secure tenure in land and property for conflict-affected communities.
- **Promote security of tenure for vulnerable groups:** Promote security of tenure in livelihood-related urban and rural property assets for persons previously denied such rights. Ensure that women enjoy equal access to such assets. Promote recognition of customary and informal rights.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

DON'TS :

- Do not wait to address land access and tenure issues. The delay can result in a prolonged need for external support to the displaced communities that would otherwise attain or resume self-reliance.
- Do not ignore people's livelihood strategies or assume that they are not in the process of long-term change due to factors both separate from and related to conflict and displacement.
- Do not underestimate the pressure that new transitional or permanent settlements will create on existing land resources and the local institutions for managing them.
- Do not underestimate the many social implications of customary land tenure and livelihood. The effects of the collapse of these systems, especially for marginalized groups, are not always obvious.

References / tools:

- *FAO Livelihood Support Programme*
- *FAO, ILO, Disaster Livelihood Assessment Toolkit, FAO Rome, ILO Geneva*

4. HOUSING, LAND AND PROPERTY ISSUES IN DISPLACEMENT AND RETURN

Violent conflict is often characterized by high levels of displacement, both of refugees who cross international borders and internally displaced persons (IDPs). Evictions and confiscation or occupation of housing, land and property (HLP) is often used both as an initial tool of displacement and a longer term means to prevent the return of those affected. Failure to address these issues by humanitarians can result in:

- The permanent loss of livelihood and residential assets, perpetuating dependency on aid;
- Loss of livelihood skills related to land resources necessary to achieve durable solutions;
- Forced urbanization processes and subsequent increase of urban informal settlements (slum areas);
- Further economic marginalization of female-heads of household and other vulnerable groups;
- Perpetuation of grievances threatening basic security and political stability.

What are the Issues?

- **Conflict Related Loss of Access to HLP:** Persons displaced from their homes and lands typically face physical obstacles to accessing them in the form of insecurity, land mines and hostile “secondary occupants” and users. In some cases, they also face legal obstacles, with their HLP assets ostensibly confiscated and their rights reallocated to secondary occupants.
- **Lack of Documentation:** Persons fleeing conflict may be forced to sign over their rights to others or not have time to bring documentation demonstrating their rights with them. Central records may not exist or be removed or destroyed in conflict, complicating return.
- **Vulnerability during Displacement:** Loss of access to HLP assets is a direct cause of vulnerability and humanitarian need. Homes and lands are necessary for basic needs such as safety, shelter and privacy, as well as for many livelihoods
- **Political Resistance to Restitution and Return:** Confiscation of displaced persons’ HLP assets is a recognized human rights violation. However, local actors may have vested interests in blocking return where abandoned property has been doled out to political constituencies or economic interests. Claims on such property can face stubborn and even violent resistance.
- **Complexity of Resolving Property Claims:** Even in situations of good faith respect for property claims, the complications involved balancing the claims of the displaced against the rights of secondary occupants is challenging.
- **Lack of Recognized Pre-Conflict Rights:** Displaced persons may have held their HLP assets in customary or informal tenure not recognized by the state, complicating their ability to claim it. Such persons, including renters, sharecroppers and pastoralists, face difficulties returning and typically come to comprise a ‘residual case-load’ in camps. Female heads of household and unaccompanied children may also face denial of HLP rights.
- **Existence of Pre-Conflict Disputes and Inequality:** Displaced persons may have suffered discrimination or exclusion prior to displacement and have been homeless, landless or land-poor as a result. In other cases, displacement may reinforce longer-term patterns of migration from untenable places of origin due to endemic poverty, overpopulation or environmental degradation.
- **Capacity and Enforcement:** In situations of low state capacity, formal systems for adjudicating and enforcing the property claims of the displaced may not exist, requiring local mediation.

SEE ALSO: Key Issue 1. LAND DISPUTES; Key Issue 2, LAND RECORDS; Key Issue 3, LIVELIHOODS ;

Options for action:

(a) During Displacement

- **Assessment of Rights to Abandoned Property:** From the earliest instances of displacement, humanitarian actors should include standard inquiries to record basic information from each displaced household regarding any abandoned assets, such as description of the assets, duration of use or ownership, available evidence to prove the claim and circumstances under which it was abandoned.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

- **Identify Vulnerable Groups:** Seek information on categories of people denied equal rights or access to HLP assets due to the displacement, as well as groups that were homeless, landless or had precarious access to or insecure or disputed tenure in HLP assets prior to displacement.
- **Identify Displaced HLP Authorities:** Identify existing expertise and authorities that played a role in the administration of HLP assets or adjudication of HLP disputes prior to displacement. Support a continuing role for them in discussions of durable solutions and abandoned HLP assets.
- **Steps to Secure Documentation:** Humanitarians should work together with land experts to identify what types of evidence of HLP rights may be available to displaced households, including witness statements and community maps, and to preserve it through backed up copies.
- **Database:** Where resources and capacity permit, enter all information and evidence related to the claims of the displaced to abandoned HLP assets into a database, respecting relevant rules on informed consent, privacy and confidentiality.
- **Dissemination of Information:** Provide displaced persons with updated information regarding the condition of their HLP assets; the security situation and possibilities of durable solutions; as well as their rights under domestic and international law and realistic options.
- **Consultation and Assistance:** Displaced communities and households should be encouraged from the outset to actively discuss possibilities for durable solutions and what is needed to achieve them. Assistance and training activities should be adapted to the express wishes of the displaced, e.g. focusing on skills transfer to support return or new skills for resettlement.
- **Steps to Resolve Disputes:** Where disputes over abandoned HLP assets persist within or between displaced communities, facilitate mediation efforts in order to avert eventual conflicting claims.
- **Mobilization to Ensure Equality:** Where customary or informal HLP regimes are arbitrary or discriminate on the basis of gender, social status, ethnicity, religion, etc., support efforts to introduce more transparent, predictable rules that guarantee equal access and tenure security.
- **Advocacy Measures to Secure Rights:** Competent authorities should be called upon to prevent any tampering with land records to the detriment of the displaced, recognized customary and informal rights and the equal rights of women, and protect properties abandoned by displaced persons from looting, destruction and unlawful occupation or confiscation.
- **Advocacy Measures in Peace Negotiations:** Humanitarian actors should advocate the inclusion of mechanisms for redress for HLP rights violations and durable solutions in peace agreements.
- **Support Spontaneous Return:** Where spontaneous return takes place, humanitarian actors should provide support by, as appropriate, seeking humanitarian access to returning communities from competent authorities, providing assistance and advocating restoration of HLP rights.
- **Support Interim Integration:** Where displaced persons have been discouraged from local integration in order to maintain an emphasis on their return, humanitarian actors should support interim integration measures to allow displaced persons to exercise their basic human rights.

(b) For Durable Solutions

- **Target Assistance to Support Durable Solutions:** In reintegration contexts, humanitarian assistance should be sustained in a manner that supports durable solutions including inputs and food assistance for returning communities. Initial investments on infrastructure have often proved to be a good mean to avoid conflicts with the local community during local integration and resettlement.
- **Monitor the Exercise of HLP Rights:** Keep track returning, resettling and locally integrating communities and identify obstacles to the enjoyment of HLP rights in the course of ongoing participatory needs assessments.
- **Advocate HLP Redress for All Displaced Persons:** Remind competent authorities that restoration of rights to HLP assets is crucial for restoring self reliance regardless of whether displaced persons choose to return or not.
- **Contribute to Broader Reform Efforts:** Humanitarian actors should contribute their knowledge of the HLP issues of displaced persons and other conflict-affected communities to broader discussions of land tenure reform in the context of peace-building and early recovery.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

Kenya In Kenya, ethnic conflicts and the resulting internal displacement have caused a lasting alteration of land occupancy and ownership patterns, leaving many displaced persons virtually destitute, despite having land titles to their homes. The relationship between land and conflicts are complex and humanitarian agencies tend to see land ownership problem as too sensitive to be addressed, resulting in approaches that tend to be superficial and ad hoc. However, it is clear that competition over land has been a critical cause of violence that has repeatedly led to humanitarian need and cannot be addressed by humanitarian assistance alone. Violence has also triggered new competition over land as well as massive population movements, especially in the Rift Valley. Access to land should therefore, be of particular concern to humanitarian agencies, especially with respect to return of IDPs because access to land affects the choice to return and prospects of recovery. Political interests have been in the forefront of recurring land clashes manifested in tribal/ethnic oriented conflicts, hampering long term reintegration.

Sudan In South Sudan it is difficult to establish who owns land that has to be cleared of mines. Due to the lack of clear land rights, mines are occasionally cleared from occupied land, encouraging the occupants to settle in permanently. IDPs and refugees often have been away from the land for a very long time due to the conflict or other factors. When they return, other families may have been living on their land for up to 20 years, leading to confusion over whose rights should prevail. In addition, the government has confiscated particular areas of land, forcing resident families to move.

DON'TS :

- Do not assume that any one durable solution is always the most appropriate option in any situation.
- Do not assume that only documented rights of ownership should be eligible for inclusion in restitution or compensation programs.
- Do not encourage spontaneous return in situations where the conditions for voluntary return in safety and dignity have not been created – but support it when it occurs.

Tools and references

- COHRE, www.cohre.org
- IDMC, Housing Land and Property Issues webpage: [http://www.internal-displacement.org/8025708F004D404D/\(httpPages\)/152E9BD4211524FA802570A10046E36D?OpenDocument](http://www.internal-displacement.org/8025708F004D404D/(httpPages)/152E9BD4211524FA802570A10046E36D?OpenDocument)
- Ardsley: Transnational Publishers, 2003, Leckie, *Returning Home: Housing and Property Restitution Rights for Refugees and Displaced Persons*.
- Ardsley: Transnational Publishers, 2008, *Returning Home, volume II*,
- Brookings Institution 2008, *Addressing Property Claims of the Displaced: Challenges to a Consistent Approach*
- International Centre for Transitional Justice, 2007, Williams, R. [The contemporary Right to Property Restitution in the Context of Transitional Justice](#),
- OHCHR Human Rights in the Administration of Justice: A Manual for Judges, Prosecutors and Lawyers,
- Internal Displacement Monitoring Group, *The right of IDPs to return home and property restitution*
- New York: Cambridge University Press, 2009, Leckie, *Housing, Land and Property Rights and Post-Conflict United Nations and Other Peace Operations – A Comparative Survey and Proposal for Reform*.
- OHCHR (1998) Guiding Principles on Internal Displacement: <http://www.unhcr.ch/html/menu2/7/b/principles.htm>
- Protection Cluster (HLP Working Group), Handbook on the Pinheiro Principles: <http://www.humanitarianreform.org/Default.aspx?tabid=434>
- Protection Cluster Working Group, *Handbook for the protection of Internally Displaced Persons*, GPWG, 2007
- Protection Cluster Working Group/Early Recovery Cluster Working Group, GPWG and ERWC, 2008, *Protection of conflict-induced IDPs: assessment for action*,
- UNHCR Protecting Refugees – A Field Guide for NGOs
- UNHCR, 2005, Leckie S., *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework*,

5. VULNERABLE GROUPS

In post-conflict situations, many groups suffer as a result of a “protection gap” relative to the rest of the population. For some groups such as female heads of household, unaccompanied children, or ethnic minorities, vulnerability may come as a result of discriminatory laws or practices. For others, such as demobilizing soldiers, their perceived role in the conflict may undermine their reintegration into local communities. Failure to address the land-related special needs arising from such protection gaps can have the following effects:

- Erosion or loss of rights to livelihood and residential assets, perpetuating dependency on aid;
- Further economic marginalization of female-heads of household and other vulnerable groups;
- Perpetuation of grievances threatening basic security and political stability.

What are the issues?

- **Women’s Land Rights:** The rights of widows, unaccompanied women and female heads of households to own and use land may be curtailed by statutory, customary or informal rules restricting or denying land rights to women, or allowing access and use of land only through male relatives. At the same time, access to land or security of tenure may best be guaranteed through social and communal networks.
- **Children’s Land Rights:** Unaccompanied children and orphans may be denied access to or income from land and housing when their rights depend on the appointment of a guardian and no effective institutions exist to prevent abuse of trust by such guardians.
- **Land Rights of Minorities and Indigenous Groups:** Minority and indigenous groups may be marginalized by encroachment on traditional lands before conflict and can be exposed to further conflict-related land-grabbing failing recognition and protection of their customary rights.
- **Demobilizing Soldiers and Youth:** Ex-combatants, including youth, may suffer discrimination as a result of their perceived political allegiances and, consequently, may be unable to access lands and livelihoods and may end up at risk of engaging in criminal activities or in post-conflict militia.
- **Other Vulnerable Groups:** Groups that require particular attention in humanitarian assistance settings, such as the elderly, the disabled and persons with HIV/AIDS, may also suffer particular obstacles in reclaiming property abandoned during conflict or accessing inherited land and housing.

SEE ALSO: Key Issue 1, LAND DISPUTES; Key Issue 3, LIVELIHOODS; Key Issue 4, HLP IN DISPLACEMENT AND RETURN

Options for action:

- **Take land into account in assessing vulnerability:** Access to land and housing, and the role these play in the satisfaction of basic needs and livelihood strategies should be an explicit part of the assessment of vulnerability of conflict-affected populations. Targeted consultations should provide opportunities to identify specific groups facing threats related to land and to support their livelihoods strategies.
- **Information and Awareness Raising:** Disseminate information on the rights of vulnerable groups under international and domestic law. The language, content, and means of communication, should be designed so as to be accessible to the specific groups targeted.
- **Advocacy and Community Mobilization:** Advocacy efforts for must take into account the fact that their vulnerability may result not only from discriminatory laws, but also from the cultural practices of their own communities. Community mobilization is critical to building consensus to change such practices.
- **Referral to legal support:** Legal aid and information programs are important measures to support the land rights of vulnerable groups, particularly when those rights are recognized by law but not implemented due to political resistance or lack of information or will by local bodies.
- **Inventory of children’s land rights:** To protect unaccompanied children and orphans, a separate inventory can be developed and monitored including the names and addresses of their guardians and the location and parcel number of their land holdings.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

Liberia - In Liberia, especially the rural areas, land conflicts often arise between the youth and their communities. Due to the conflict the youth have been excluded from both the traditional socialization processes and the modern educational system. They do not recognize themselves in the institutions and often do not share the traditional values of their communities. There is limited acknowledgement of the youth's needs and the issues they face and due to their age they are often not allowed to present their claims. Feeling excluded and discriminated against, they often take violent actions to resolve land issues without regard for traditional values and established norms of their elders and ancestors. It is not possible to amicably resolve land conflicts in Liberia and for people to peacefully coexist unless attention is given to the justice and fairness of the process for all parties involved as well as the outcome of the resolution of the land conflicts.

DON'TS :

- Do not focus exclusively on supporting immediate humanitarian needs without addressing the overarching issues of rights, livelihoods and participation.
- Do not seek to protect womens' and children's land rights exclusively through formal, statutory law. Often things work very differently on the ground.
- Do not underestimate the effects that the exclusion of specific groups (e.g., on grounds of age, sex or ethnicity) from decision making processes, training or information regarding evolving tenure arrangements (formal or informal) may have.

Tools and references

Publications

- FAO, SEAGA Guidelines
- UN-HABITAT, [*Indigenous Peoples' Right to Adequate Housing: a Global Overview, UN Housing Rights Programme, report series N.7, UN-Habitat, 2005*](#)

6. RURAL LAND USE

In humanitarian settings, the need to balance short and long-term goals impinging on rural land can lead to difficulties. Immediate humanitarian needs such as emergency and transitional shelter, job creation, livelihood support, and reconstruction for durable solutions can conflict with the longer-term goals of sustainability and social integration. Rural transitional shelter can take a number of forms ranging from dispersed self-settlement and host-family accommodation to planned camps. Failure to be conscious of and address these issues can result in:

- Unsustainable use of land and natural resources, undermining the livelihoods of local and displaced communities;
- Risks of insecurity, conflict and additional displacement where competition for land leads to poor relations with host communities;
- Reduced investment due to uncertainty over ownership or delays in negotiating access to land;
- Delayed extension of infrastructure and services;
- Inappropriate targeting of beneficiaries due to lack of information;
- Reluctance of beneficiaries to invest in shelter or sustainable livelihoods without any guarantee of long-term security of tenure and food security.

What are the issues?

Some of the common land-related challenges include:

- **Unsustainable land use and conflicts:** Short-term livelihood needs and competition between the displaced and host communities result in inappropriately intensive use of land, forest and water resources, degradation of such resources and tension or even conflict.
- **Targeting IDPs and excluding the Host Community:** Conflicts may also emerge related to shelter or humanitarian assistance, with displaced persons receiving more benefits than host community members, particularly if the latter have been excluded from assessments and consultations.
- **Availability of land for shelter purposes.** In many cases, conflicted-affected persons have limited options regarding the type of land they occupy: security, livelihood needs, or simple availability will determine where they settle, including locations that may be claimed or owned by others or prove unsustainable or prone to natural disasters and hazards over the longer term.
- **Weak state and traditional institutions capacity:** Conflict conditions undermine the capacity of formal and customary authorities to act effectively in managing rural land use, particularly where established patterns are disrupted by displacement.
- **Security of Tenure:** In addition to tenure security the short- and long-term tenure needs of host communities and other rights-holders, shelter providers must also address of beneficiaries.
- **Hazardous land:** Settlements may be located on hazardous land – at risk of flooding, prone to landslides, or contaminated with landmines, UXOs or other conflict-related hazards.
- **Compatibility of shelter solutions with development goals:** Unclear land relations caused or aggravated by transitional shelter in rural areas can hinder efforts to promote investment and use land-related taxation to finance the extension of infrastructure and services.

Box 3: Planning Tools for Rural Land Use

A wide variety of land-use and planning tools exist for different contexts and purposes, including:

- **Participatory Rural Appraisal (PRA):** PRA uses a variety of participatory techniques to understand local livelihood systems, institutions and priorities. Many include elements related to land-use.
- **Community Land Management:** Developed by FAO and applied in a variety of countries, community land management includes the mapping of existing rights and claims, current land uses, and existing assets. A vision for the future is developed and incorporated into a social territorial pact and a land-use management portfolio that includes measures to secure tenure, review concessions, promote environmental conservation and actions to resolve existing disputes.
- **Community Action Planning (CAP):** Developed by UN-HABITAT and applied in a variety of rural and urban context, the CAP methodology can emphasize the strengthening of local institutions and provides support for people's processes of identifying priorities for reconstruction.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

SEE ALSO: Key Issue 1, LAND DISPUTES; Key Issue 8, CAMPS

Options for Action

- **Identify and address land rights and issues through community consultation:** In addition to getting any formal permission necessary to use rural land for humanitarian shelter purposes, use consultative processes to include all conflict-affected communities in the planning and implementation of humanitarian assistance programs in rural areas;
- **Locate Infrastructure to build peace rather than create conflict:** Use the planning, location, and maintenance of secondary infrastructure investment projects such as schools, clinics, water points and irrigation channels to encourage cooperation between conflict-affected communities.
- **Identify options for increasing the supply of land** for housing for all segments of affected population, not only for IDPs: removing mines, UXOs and other hazardous materials.
- **Provide short-term use rights:** Short term use rights can provide security of tenure without compromising the long-term rights of other actual or potential claimants.
- **Anticipate long-term settlement needs:** while providing short-term solutions, consider the possibility that shelter may become permanent over time.
- **Seek local and international advice regarding land disputes:** Avoid ad hoc arbitration of disputes and boundary demarcation in favour of siting shelter towards the middle of 'plots'.
- **Promoting mobile shelter solutions:** Use locally available, re-usable and easily transportable materials or mobile shelters in the event that disputes arise or to facilitate returns, when appropriate.
- **Link shelter to livelihoods:** In rural areas, consider additional inputs such as seeds, fertilizer, extension services, access to credit, access to markets, etc.

Cambodia In Cambodia the main land issues include land grabbing, social land concessions, title questions, use of land. Land grabbing is often perpetrated by people in a position of authority, the military and the rich, which leads to high insecurity of tenure for the poor. Mechanisms and structures to allocate land for 'social concession' to the poorest were established by the Cambodia Mine Action Programme, focusing on land that was contaminated with mines. Clearance of the land was a prerequisite for social land grants. The project responded to a national problem of land grabbing and displacement. It was a success in the limited confines in which it worked, which is mined land. The main outcome was the allocation and preservation of land for the poorest and returnees, even if it was often hard for the beneficiaries to secure their tenure. Often in fact the land was confiscated by soldiers after the clearance of landmines. The Programme brought the case to municipal and district authorities and then the Mine Action Planning Unit to take action on this issue but the process took a few years to solve.

DON'TS :

- Don't assume that there are no underlying land rights or competing claims when planning humanitarian activities with implications for rural land.
- Don't assume that people are waiting for plans or permission to rebuild or locally integrate; they are often already doing so. Identify ways to support and improve what is already happening.
- Do not rely solely on formal documentation or records in considering whether a particular site is appropriate for, e.g., transitional shelter.
- Do not overlook the land and property rights of women, children and vulnerable groups.
- Do not attempt to 'solve' land disputes – seek assistance and guidance.

Tools and References

Publications

- FAO (200x) Community Land Delimitation
- IFC/World Bank (2005) Involuntary Resettlement Guidelines, Washington.
- Sphere Standards, Section on Transitional Shelter
- UN-HABITAT (200x) Community Action Planning, Nairobi.

7. URBAN SETTLEMENTS

Conflict often accelerates existing trends of urbanization in an uncontrolled and potentially destabilizing manner. Displaced persons and other conflict-affected groups typically seek shelter and livelihoods in urban areas, raising particular humanitarian assistance challenges, swelling the ranks of existing informal settlements and placing new pressures on peri-urban land. Failure to address urban issues can result in:

- Inappropriate targeting of beneficiaries due to the lack of information on or access to population leading to increased vulnerability;
- Risks of insecurity, conflict and additional displacement where the establishment of increasingly permanent settlements and competition for housing leads to poor relations with host communities;
- Reduced investment due to uncertainty over ownership or delays in negotiating access to urban sites, reducing the potential tax base and delaying the extension of infrastructure and services
- Tenure insecurity and forced evictions the inhabitants of informal settlements, including the displaced leading to reluctance of beneficiaries to invest in shelter or sustainable livelihoods.
- Degradation of land and natural resources in peri-urban areas, undermining the food security of both the displaced and local communities;

What are the issues?

Some of the common land-related challenges include:

- **Rapid urbanisation:** Conflict often results in large-scale migration to cities for security, services or jobs. Peri-urban land is often converted from agriculture to shelter or other urban uses.
- **Difficulty identifying those in need of humanitarian assistance:** In situations in which displaced or otherwise conflict-affected persons blend in with poor urban populations, it can be particularly difficult to establish contact with them, assess their needs and deliver assistance.
- **Poor information and weak institutional capacity:** In many countries, urban land use and population data may have been out of date even before the outbreak of conflict. Prolonged conflict undermines professional and institutional capacities and in many cases has resulted in the emergence of informal systems for land delivery, land administration and planning.
- **Informal land rights:** Residents of informal settlements often lack legally recognized land rights, which can complicate their access to both humanitarian assistance and ordinary services;
- **Hazardous land:** Informal settlements may be located on hazardous land that is at risk of flooding, prone to landslides, contaminated, etc.;
- **Unserviced land:** Residents of informal settlements typically have little access to markets, services and infrastructure.
- **Risk of forced evictions:** A common response to the development of informal settlements is their clearance, entailing the eviction of all residents. If procedures related to consultation and compensation are not followed, such clearances risk compounding conflict-related rights violations.

Box 4: Planning Tools for Urban Settlements

A wide variety of land-use and planning tools exist for different contexts and purposes, including:

- **Rapid Urban Spatial Analysis (RUSA):** Developed in the Somalia context by UN-HABITAT, the tool aims to (i) better understand how urban space is organised; (ii) identify opportunities to address immediate problems that will contribute to long-term sustainability. The RUSA should be prepared in no more than 2 weeks.
- **Community Action Planning (CAP):** Developed by UN-HABITAT and applied in a variety of rural and urban context, the CAP methodology can emphasize the strengthening of local institutions and provides support for people's processes of identifying priorities for reconstruction.
- **Urban Planning and Management Framework (UPMF):** Developed in Kosovo by UN-HABITAT, the framework avoids the pitfalls of over-ambitious and unrealistic Master Planning approaches in favour of a four-phase process: situation analysis, strategic planning, action planning and the implementation and management of projects.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

SEE ALSO: Key Issue 1, LAND DISPUTES; Key Issue 8, CAMPS

Options for Action

- **Identify and address property and land issues through community consultation:** Use consultative processes to include all conflict-affected communities and other stakeholders in the planning and implementation of humanitarian assistance programs in urban areas;
- **incorporate property issues** in community planning, contextualizing them for example in up-grading initiatives, rather than isolating or politicizing them;
- **Advocate official commitments to tenure security:** Seek public confirmation that there will be no forced evictions from informal settlements and provide information on the circumstances faced by conflict-affected populations in urban areas to land tenure experts working with authorities on the development of long-term policies.
- **Support profiling and land audits:** Assist in surveys to develop a profile of urban displaced populations (trends and numbers, disaggregated by age and sex), as well as to clarify the legal status of land on which informal settlements are located, the existing claims and the conditions in such settlements and to identify urban or peri-urban land appropriate for transitional shelter or longer term housing.
- **Incremental upgrading of tenure:** Seek to grant intermediate forms of tenure that provide short-term security of tenure to conflict-affected populations without compromising the long-term public interest in efficient use of the land.
- **Designating special zones:** Advocate the creation of special zones for low-income communities, including conflict-affected populations and provide occupants with short or medium-term use rights, while ensuring that the existing low-income use is maintained; assist land tenure experts in more detailed work of identifying occupants, clarifying land rights and claims, providing planning guidance, exploring options for infrastructure and service extension, etc.
- **Land sharing:** Seek to facilitate agreements between informal settlement occupants and landowners by which the land is divided between them, and where necessary, advocate a change of the official land-use to allow for increased density or mixed commercial-residential use.
- **Land Readjustment:** Seek arrangements by which several pieces of adjacent peri-urban land held by different owners are joined in accordance with negotiated agreements to eliminate existing boundaries to create a larger site on which to make a new, planned redevelopment site.
- **Locate Infrastructure to build peace rather than create conflict:** Use secondary infrastructure investment decisions (eg. schools, clinics, etc.) – specifically their location, maintenance and grievance redress procedures – to build peace between communities and neighbourhoods;
- **Incorporate a rural-urban linkages analysis to investments:** Examine labour, market, financial and other linkages between towns and rural areas when considering assistance measures;
- **Link shelter to livelihoods:** In urban areas, focus on complementary forms of assistance such as sustainable skills training, room rental, home-based enterprises, kitchen gardens, etc.
- **Contribute to longer-term urban planning:** Support attempts to shift from urban transitional housing measures to effective local integration for conflict-affected persons who choose not to return by collaborating with land tenure experts advocating participatory processes of socially inclusive urban planning.

DON'TS :

- Don't assume that there are no underlying land rights or competing claims when developing plans.
- Don't be complicit in activities that result in forced eviction or further marginalization of the poor
- Don't regard titling (e.g. the grant of full ownership rights) as the only option to secure tenure.
- Don't limit interventions to one-off projects without understanding their systemic or city-wide implications.
- Don't insist that interventions should only benefit conflict-affected populations without taking into account the broader needs of low-income and even middle-income families.
- Don't assume that informal settlement residents cannot afford to pay for services or are unwilling to pay for them.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

Lebanon - Some of the most common land issues faced by humanitarians in south Lebanon relate to post-conflict security of tenure, housing and shelter. In absence of a regulatory framework to manage and control the reconstruction process and since most of the villages had not been surveyed prior to the conflict, there was a lack of proper urban planning rules and regulations. Moreover the inaccurate documentation on housing caused problems in determining and verifying the size, location and ownership of totally destroyed houses prior to the conflict. Informal settlements were developed on the public domain and the access to vacant land was not secure due to unexploded cluster bombs

Tools and References

- FAO (200x) Community Land Delimitation
- IFC/World Bank (2005) Involuntary Resettlement Guidelines, Washington.
- Terra – urban land reform in post-war Angola and Gao - Concessão e Regularização de Terras nas Zonas Peri-Urbanas, Development Workshop Angola: www.dw.angonet.org
- Tufts University and IDMC, Internal displacement to urban areas: the Tufts-IDMC profiling study (September 2008): <http://www.internal-displacement.org/8025708F004CFA06/%28httpPublications%29/A12E9CE395D26F72C12574BA002DAB40?OpenDocument>
- UN-HABITAT (200x) Rapid Urban Spatial Analysis Guidelines, Nairobi.
- UN-HABITAT (200x) Community Action Planning, Nairobi.
- UN-HABITAT (200x) Urban Planning and Management Framework, Nairobi.
- FAO (200x) Compulsory Purchase and Acquisition Guidelines, <http://>
- UN-HABITAT (2003) Handbook on Best Practices, Security of Tenure and Access to Land, Nairobi, <http://www.gltm.net/>
- UNESCAP/UN-HABITAT (200x) Land – Housing the Urban Poor in Asian Cities series, Nairobi, <http://>
- NRC/IDMC Urban IDP Profiling Guidelines **NEED FULL CITE**

8. CAMPS

Camps are generally recognised to be the shelter option of last resort and should only be established as long as the possibility of self-settlement or quick durable solutions and reintegration do not exist. Camps may be planned by competent authorities or humanitarian agencies or established spontaneously by people congregating in the same area, whether IDPs or refugees. Failure to take into account land issues in camp planning and management can result in the following issues:

- Degradation of land and natural resources, undermining the livelihoods of both the displaced and surrounding communities and impeding the achievement to achieve durable solutions;
- Insecurity, conflict and additional displacement due to the establishment of increasingly permanent camps and competition for land between IDPs and local communities;
- Risk of injury or loss of life due to siting of camps in areas prone to natural hazards or contaminated by mines and UXO;
- Further economic marginalization of female-heads of household and other vulnerable groups;

What are the issues?

Land issues related to camps revolve around their life-cycle, beginning with the identification and selection of sites, then moving to operations and finally decommissioning. They include:

- **Identification of suitable sites:** Land should be both legally available and appropriate, in the sense of being free from landmines, UXOs or exposure to other conflict-related or natural hazards and capable of supporting livelihood strategies. Spontaneously settled camps may not meet these criteria.
- **Clarification of land rights and livelihoods systems:** Consultations with both competent formal authorities and surrounding communities are necessary to clarify ownership and land rights, identify the potential impact of the camp on local natural resources and livelihood activities, propose measures that can be taken to mitigate risks and secure formal and local consent.
- **Access to infrastructure and services:** Ensuring that a minimum level of services is provided and that land is made available for these. Safeguards must be put in place to provide security, mitigate safety risks, particularly to women and vulnerable groups, avoid water and soil contamination and land degradation. Similar service levels must also be provided to host communities.
- **Short-term versus long-term issues:** While humanitarian response is predicated on the assumption that most people will return to their homes or places of origin or resettle outside of camps, this does not always happen. Minimal settlement planning is required to ensure that potential long-term needs are provided for in case short-term camps become long-term settlements. At the same time, humanitarians face a dilemma of 'investing too much' by which temporary camps invariably become permanent.

Box 5: Critical Land Information during Camp Intake

The following are examples of some important land issues that can be integrated into camp intake questionnaires. As this may constitute evidence for future claims, great care must be taken in developing the formal questions and in recording the information. Inquiries can include:

- Land/Property Location: address, administrative unit name, etc.
- Tenure status: renter, registered leaseholder, owner, individual or group right, etc.
- Evidence of tenure status: documentation or other evidence to support tenure status
- Name of person identified on documentation/evidence supporting tenure status
- Length of residency: how long has person occupied land/property
- Land/Property Size
- Type of construction

SEE ALSO: Key Issue 6, RURAL LAND USE; Key-Issue 7, URBAN SETTLEMENTS

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

Options for Action

- **Seek available and appropriate sites:** Consult with all official and informal local stakeholders in order to identify appropriate camp locations and secure permission to use them. Ensure that land is free from land mines/UXOs or other conflict-related or natural hazards.
- **Secure the property rights of residents:** Collecting simple data regarding land tenure, property rights and livelihood strategies from an early stage in order to promote voluntary durable solutions for residents of camps.
- **Prepare for long-term settlement:** As early as possible consideration should be given to measures that would be necessary to convert camps into sustainable permanent settlements such as infrastructure, services, green space, and buffer zones for population growth.
- **Engage with surrounding communities:** Involve surrounding communities in ongoing participatory assessments in order to identify and address land-related and other tensions early. Ensure that host communities are integrated into planning and humanitarian response to avoid conflicts.
- **Support sustainable livelihood activities:** ensure that land issues are considered in providing livelihoods inputs and training, in consultation with residents (See Key Issue 3, LIVELIHOODS).

DON'TS :

- Do not assume that any land is 'vacant' – free of any underlying land rights or claims.
- Do not privilege one community over another in terms of security of tenure or access to humanitarian assistance on the basis of need.
- Do not assume that people will be able to return quickly – or at all – to their homes or places of origin.
- Do not attempt to 'solve' land disputes – seek assistance and guidance.

Jordan Palestinian refugees have been living in camps in Jordan for more than sixty years, the majority of them with Jordanian citizenship. In some refugee camps part of the land was state land and part was leased to the Government for up to sixty or even ninety-nine years by private owners. The Government in turn leased land to UNRWA. After sixty years, and with no resolution to the conflict, refugees are still on the same land and some of the leases are expiring. Original owners sometimes are not willing to extend the leases, but their land is now built up with permanent structures housing thousand of refugees, including many in the fourth generation.

The ownership of built structures is also not clear. Shelters and services were provided by UNRWA and various donors, while infrastructure was built by host government. If a solution to the Palestine issue is found, there is no clear plan for the future ownership and use of existing structures. Originally, owners leased their land to give shelter to refugees at a low price, as an act of compassion. After sixty years the camps built on the land have become small cities, with shelters, services and private commercial activities. Some landowners now want to revise the lease agreements and raise prices because they do not see why they should support private commercial activities.

Camp populations have increased dramatically over the past sixty years, sometimes doubling in number. However, camp boundaries cannot be modified, leading to high population density. Some refugees have been permitted to purchase plots adjacent camps and have built houses, renting the shelter they received in the camp to poorer refugees. Residential standards in the camps remain poor because refugees renting shelter cannot pay for maintenance in addition to rental costs, while assigned refugees have no incentives to invest in maintenance of their assigned shelter. As adjacent areas are not an official camp, UNRWA has no mandate in terms of house construction or the provision of utilities for refugees in these areas. Finally, every step undertaken to resolve such issues risks being seen as undermining the right of the refugees to return to their homeland and as such is not always welcome.

Tools and References

- OCHA humanitarian emergencies and cluster system (Food Security/ Shelter etc.).
- Sphere Standards Manual, Shelter Centre on Camp Management

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

9. DONORS AND COORDINATION

Land issues are complex and highly political. In the past donors and humanitarian agencies have been reluctant to engage with the land sector considering it to be outside of their mandate or just too risky. More recently, humanitarian actors have recognized that it is impossible to ignore land issues when entering a post-conflict environment. Interest among actors is high, but coordination remains problematic it has been difficult to achieve long-term commitment and interventions on the ground. Conflicts still exist at many levels: among donors; between donors and Governments; and between humanitarian agencies and actors. It is crucial that the significant financial and other resources that international actors bring to post-conflict environments are used in a manner that addresses land disputes for the following reasons:

- Land is a cross-cutting issue that impacts on a number of sectors and creates challenges that vary over time from the emergency to the early recovery to the longer-term development phases.
- Interventions that lack of coordination and understanding of the land context have in some cases proven to be short-lived or even detrimental to the peace process
- Addressing structural and systemic issues requires longer-term commitments from donors and agencies that should build on knowledge and political buy-in achieved early on.

What are the issues?

Humanitarians recognize the need for more efficient and coherent interventions, especially regarding the land sector, in the transitional period between emergency relief and development.

- Land interventions are increasingly often conceived in the context of emergency response, and therefore require care to ensure that they are not taken on an ad hoc or uncoordinated basis.
- Competition between donor agencies for 'visibility' or 'leadership' in support of the land sector can be counterproductive, along with competition to promote tools, e.g. in land administration.
- The land sector, along with national authorities competent for land issues, are often fragmented and may not have the capacity to engage coherently with donors and other support organizations
- The clear division drawn by donors between humanitarian and development activities may impede early land interventions and complicate the development of holistic approaches to land issues during the transition from emergency to early recovery.
- Relief instruments are demonstrating to be a good input in such situations if they are supported by a broader understanding of the underlying land issues and put into a broader framework. Humanitarians should, in consultation with land tenure experts, use the flexibility they have to quickly seize opportunities to address land issues in the post-conflict context and to manage the risk involved.

SEE ALSO: Key Issue 1, LAND DISPUTES; Key Issue 6, RURAL LAND USE; Key-Issue 7, URBAN SETTLEMENTS, Key-Issue 10, ADVOCACY

Options for action

- **Assessments:** Assessments should include inquiries related to land issues and land-related programs should be designed and budgeted for when drawing up flash and consolidated appeals. Assessments and early action should be included in Flash Appeals, Consolidated Appeals and CERF funding.
- **Creating a shared understanding of the context:** The initial assessments will help create a common understanding of the meaning of land issues in the specific context. This should be sought from the earliest moments of humanitarian response to support coordination and coherent interventions that build on the relative strengths of different agencies.
- **Land sector coordination group:** Humanitarian and development agencies should coordinate their activities related to land issues with each other, as well as national authorities and stakeholders. Establishment of a land coordinating group or focal point can be a successful planning and risk management mechanism.
- **Encouraging national ownership:** Although land issues are often presented in legal or technical terms, they are essentially political and successful interventions require buy-in by national and local government and other key stakeholders in the country concerned.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

- **Mobilizing political will:** Careful thought needs to be given to the design and presentation of the program and the people chosen to lead it. Does the political will exist at the national government level to address land issues and, if not, how can this be built? Would short-term, smaller-scale interventions help build trust for larger longer-term ones? Apart from the government, who are the other actors and stake-holders that need to be involved in an intervention?
- **Consultation and monitoring:** Constantly monitor and evaluate interventions, including through participatory assessment involving beneficiaries, to ensure appropriate responses to the changing environment.

DON'TS :

- Don't rely on direct bilateral assistance for service delivery where government implementation structures have been weakened by the conflict.
- Don't develop fixed-term inflexible projects or rely on technologies or approaches that are inappropriate to the local context
- Don't underestimate the mix of tools required to analyze and address land issues.
- Don't be slow or fail to deliver essential or promised assistance, it will impact the peace process.

References / tools:

- UN-HABITAT (2007) How to Establish an Effective Land Sector?, Nairobi.
- Paris Declaration on Aid Effectiveness (2005).

10. ADVOCACY

Advocacy is critical at all stages of humanitarian response, from relief through early recovery and reconstruction. The sensitive nature of land issues combined with general confusion and heightened insecurity regarding land rights that characterizes post-conflict environments underscore the need for advocacy activities related to land as a key feature of humanitarian response. Lack of advocacy for rights-based land policies and clear information can:

- Exacerbate at country and local level post conflict land grabbing and disputes and place female headed households and other vulnerable groups at particular risk.
- Mean that land issues will not receive enough attention and be adequately funded by Donors in the outset of post-conflict response.

What are the Issues?

- **Fluid Environment:** Accurate information is very difficult to obtain in the post-conflict environment, particularly for the most vulnerable conflict-affected groups.
- **Non-transparent Policy Frameworks and Policy Making Processes:** Policy making often takes place in capital cities, as between government and international actors. Ordinary citizens are rarely informed about, let alone involved in these discussions.
- **Integrating Global Experience with Local Knowledge:** While humanitarians may have experience from other contexts, this must be used in support of people with local knowledge.
- **Lack of Coherent Messages:** Donors, external advisors and other international actors may be providing different or even contradictory guidance regarding policy options.

SEE ALSO: Key Issue 1, LAND DISPUTES; Key Issue 9, DONORS AND COORDINATION

Options for Action

- **Advocate for incorporation of land issues in Peace Agreements:** land issues are critical to peace-building after conflict, but can obstruct the process if not handled carefully.
- **Using Local Consultations to Develop Policy:** Local consultations should be used not simply to validate preconceived policy prescriptions, but to actually develop the policies in the first place. This is particularly critical in post-conflict environments characterized by legal pluralism.
- **Evidence-Based Advocacy:** The sensitivity of land issues makes evidence-based advocacy critical. Research, even with small, but representative sample sizes, should be encouraged.
- **Simple Policy Question and Answer (Q&A) Documents:** Policy documents are written by technical actors and must be translated into simple, clear guidance. Q&A documents have proved useful in the past for making policies and procedures more accessible to local populations.
- **Monitoring Land Issues:** Support should be extended to enable local organisations to monitor issues such as abandoned land, land grabbing, secondary occupation and other protection issues.
- **Combining Public and Private Advocacy:** Some organisations, such as bilateral aid agencies, the World Bank or the United Nations, are more suited to private advocacy – bilateral consultations with Government – while other organisations, primarily national civil society can be more outspoken and even confrontational. A combination of strategies is likely to be most effective.
- **Developing a flexible media strategy:** Media strategies in support of land issues should be adapted to how information is communicated in a post-conflict environment and make use of the most appropriate mediums, in particular, to target messages to specific vulnerable groups.

Box 6: Information, counselling and legal assistance

The Norwegian Refugee Council (NRC) has implemented information counselling and legal aid programs in over a dozen countries around the world that have experienced complex emergencies. Starting in the former Yugoslavia, the program has since spread to the Caucasus, parts of Africa, south Asia and Latin America and includes places that have experienced some of the highest levels of internal displacement of anywhere in the

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

world. The main focus of their work has been in helping IDPs and returnees to recover their homes, land and other possessions so that they can return home in safety and dignity. This has also included helping them to obtain personal documents, particularly those relating to their personal identity, citizenship and status, their entitlements to certain welfare benefits and the restitution of their housing, land and other property rights. NRC has established information and legal aid programs in: Afghanistan, Azerbaijan, Bosnia-Herzegovina, Burundi, Colombia, Croatia, the Democratic Republic of Congo, Georgia, Kosovo, the former Yugoslav Republic of Macedonia, Pakistan, Serbia and Montenegro, Sri Lanka, Sudan and Uganda.

DON'TS :

- Don't underestimate the potential for land issues to disrupt peace agreements
- Don't promote insecurity of tenure through inappropriate or inaccurate information
- Don't assume that information is reaching everyone

References / tools:

Oxfam Land Rights Campaign
Advocacy for Social Justice

11. HIGH VALUE NATURAL RESOURCES

High value natural resources consist of raw materials found in nature and generating large revenues, such as timber, minerals and petroleum. Large revenues mean high stakes, and revenue distribution is frequently politicized, especially in 'war to peace' transition contexts when authority remains contested and renewed conflict a possibility. High value resources are land-based and often involve major land-use changes, as in opencast mining and clear-cut logging. The state generally holds resource ownership rather than local communities, while resource exploitation rights are awarded to commercial companies who often de facto operate in areas controlled by (former) armed groups. Conflicts frequently emerge between these parties over land access and the distribution of costs and benefits resulting from resource exploitation. Failure to address these issues entails the following risks:

- Return to conflict in situations where the large revenues generated by high value resources finance 'peace spoilers' (often military splinter groups seeking to continue hostilities).
- Further displacement in situations where authorities do not honour promises to reallocate land or share revenues in resettling local communities to open up land for resource projects.
- Targeting of humanitarian actors where they are perceived as associated with foreign aid biased in favour of securing resource projects for home companies, particularly where they involve the assistance of humanitarian organizations to deliver development projects in their operation areas.
- Impeding the sound exploitation of high value natural resource can help foster peace, notably through economic recovery including jobs and taxes.
- Fostering through the exploitation disputes, wastage and corruption

What are the issues?

- **Opportunities and risks:** primarily directed at exports, high value natural resources often provide most of the foreign currency and fiscal revenue of conflict affected and low-income countries, thereby creating a situation of 'resource dependence'. Economically it can undermine long-term economic growth, while politically it reduces accountability. Populations benefit through wage labour, trade or revenue allocation, rather than through production as for cash crops such as coffee and cocoa, or through consumption as for subsistence resources such as basic food staples. Yet resource development often means a loss of land access and livelihoods, which is poorly compensated for because of weak institutions and corruption.
- **High stakes sectors:** high value resources often represent a major share of export earning, fiscal revenues, and land use for countries in post-conflict transition, as most war often undermines manufacturing and service industries. These resource sectors frequently involve powerful interests including high-ranking government officials, large foreign corporations, and international agencies (especially export credit agencies). The development of resource projects often constitutes 'national priorities' overtaking considerations for local livelihoods, cultural, and environmental issues. Resource exploitation has wide-ranging and long-term effects, and rushed decisions by transition governments seeking to make a 'quick-buck' can have devastating consequences.
- **Land use conflicts:** High value resource sectors will typically result in land disputes, expropriation, and population movements. Many high value resource sectors are not compatible with previous land use. Land ownership is a major criteria for accessing resource revenues (revenue share or environmental compensation). Resource development can result in expulsions, but also in-migration due to potential job prospects.
- **Undermining governance and political legitimacy:** High value natural resource projects are often controversial. Resource concessions are frequently awarded during or shortly after a conflict, often by authorities with questionable legitimacy. Some business interests tied to mercenary groups or army personnel are rewarded for their services through resource exploitation contracts or the management of high value resource sectors as part of power sharing agreements, or incentives towards conflict termination. The negotiation of high value resource projects are often marred by corruption and/or unfavourable contractual terms negotiated by domestic authorities, with little consultation and approval from local communities. Boundaries between resource concessions are sometimes ill defined. All this makes resource projects more likely to face future challenges, including disputes over land use and ownership.

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

- **Fostering inequalities and distorting land markets:** the presence of high value natural resources can increase land value, but it can also decrease it as people lose ownership and access rights without proper compensation. Very often the land is also degraded as a result of resource exploitation, notably because of pollution. Cash accumulated by local/national entrepreneurs through high value resources exploitation is often reinvested locally through land purchases (agricultural land or urban/peri-urban land), thus affecting indirectly land markets and uses. While this can contribute to broad developmental gains, it can also result in land ownership inequalities and losses of livelihoods.
- **Corporate social responsibility in resource sectors:** despite growing awareness among many companies to carefully consider and preventively address land issues, in practice many companies remain high risk takers with short term horizons.

SEE ALSO: Key Issue 1, LAND DISPUTES; Key Issue 6, RURAL LAND USE

Options for action

The following provides a broad strategy for action and specific programming options.

- **Identify high value resources, land ownership and user rights:** get to know the high value resource activities, potential and projects of your operational area in order to relate it to existing land ownership and user rights and identify existing and potential land-related conflicts.
- **Promote broad developmental outcomes through resource access and revenue redistribution schemes:** priority should be placed on reducing the risk of renewed conflict and improving the lives of conflict-affected populations. Resource-related land use should foster activities that positively contribute to the income and well being of populations while reducing land disputes and are based on the principle of prior, free, and informed consent. This can be done in several ways including: (i) help inform local communities about their land rights and the developmental potential and pitfalls of high value natural resource exploitation; (ii) facilitate legal assistance for them in their negotiations with state agencies and resource companies; (iii) promote complementary activities that can cohabit or bring synergies with resource exploitation activities, a priority being put on maintaining land access; (vi) engage with resource companies and local communities to foster mutually beneficial economic activities;
- **Document and report abuses related to resources and land use:** resource exploitation often occurs in remote locations with limited means of communication, leaving local communities isolated and vulnerable. Humanitarian and early recovery actors can help document and report abuses to local authorities, international agencies, and advocacy organisations.

DON'TS :

- Don't facilitate community relations of resource companies through development projects without careful attention to the broader implications of resource development.
- Don't openly challenge mafia-like resource operations without considering implications for your security and operations.
- Don't promote or build infrastructure such as roads and bridges that will open resource areas with a risk for land tenure and livelihoods.
- Don't buy high value natural resources while on posting. If unavoidable (such as timber for infrastructure building), then source material responsibly.

Sierra Leone

Diamond mining in Sierra Leone has been linked to a wide range of security concerns, from interpersonal violence associated with theft and land conflicts, to the regionalisation of conflicts, and international terrorism. Diamonds financed all sides in the Sierra Leone conflict, including mercenary groups, and rebel leader Foday Sankoh was nominally put in charge of diamond management as part of a power sharing agreement. Diamonds figure prominently among resources 'conflict commodities' financing civil wars. Diamonds have come under more UN Security Council sanctions than any other commodity and rough diamond trade is under the international

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

Kimberley Process Certification Scheme since 2003 to prevent 'conflict diamond' laundering. Diamonds are also linked with numerous development concerns, including exploitative labour relations, persistent poverty within mining communities, agricultural land and environmental degradation, and poor governance characterized by corruption and high levels of income inequality. Yet the developmental potential of diamonds has also been demonstrated in Botswana and among some local communities in artisanal mining areas through land access fees, food markets. Artisanal mining provided an important source of livelihood and capital accumulation in the immediate aftermath of the conflict, but curbing down illegal mining, unfair exploitation schemes, and smuggling were constant preoccupation. A solution frequently advocated was a shift to industrial mining, which is slowly taking place but results in several forms of land conflicts including competition between artisanal and industrial miners, population relocation as a result of mine blasting, and competing land use. Aid projects have sought to address these concerns through a computerized cadastre of mining licences, conflict resolution mechanisms between companies and local communities, and poverty alleviation schemes including diamond valuation skills and alternative livelihoods. These schemes have helped prevent conflicts and better balance the fiscal gains of the state from industrial mining with the livelihood opportunities of artisanal mining. In contrast, the diamond sector in Angola has been dominated by heavy repression against local populations in mining areas and against artisanal mining (yet tolerated by some corrupt security forces).

Cambodia and Liberia

Timber dominated the war economy of both countries, and both went through devastating logging practices during periods of transition. Sanctions on log exports were banned from Cambodia to curtail Khmer Rouge financing. Yet they were badly drafted and prematurely lifted, which resulted in massive timber exports with little fiscal benefits for the government and continued military strife until international campaigning succeeded in closing the border to Thailand. Although the logging sector included numerous small Cambodian entrepreneurs generating a source of livelihood, highly mechanised foreign companies dominated the sector. A crackdown on 'illegal logging' closed most small-scale Cambodian operations while leaving big companies in impunity until independent monitoring and donor pressure resulted in suspension of logging concessions. Meanwhile the Cambodian population was affected by construction timber shortages and high prices. Logging-related land conflicts then moved to deforestation associated to palm oil plantations. In Liberia, after a long period of impunity, sanctions were finally imposed on timber exports as the regime of Charles Taylor was crumbling. While some had argued that logging provided an important source of jobs, logging companies had pillaged the country for very little official fiscal gain, while abusing populations with their private militias and assisting in arms trafficking. In contrast with Cambodia, the ban was maintained during the transition era and a set of conditions put in place before logging could restart. Unable to prove their legality all previous logging concessions were cancelled and with a new elected government and stronger institutions logging was about to restart. Ironically, some of the bidding companies award the new contracts were companies that operated in Cambodia. Both country experiences demonstrate the importance of early and thorough timber export bans, matched with policies reducing land conflicts and serving the livelihood and reconstruction needs of local populations.

Oil wealth sharing, land rights and compensation in Southern Sudan

Plans to extract oil have played a significant role in the conflicts that affected Southern Sudan since 1983. No oil was extracted, however, before the 1997 Khartoum Peace Agreement that brought a cessation of hostilities and wealth sharing agreement between the government and Southern splinter rebel groups in oil areas. Oil operations were conducted under a 'scorched earth' policy that included population displacement and aerial bombing of civilian targets. Fast rising oil revenues did consolidate the Government of Sudan's security apparatus, but also intensified wealth incentives for Southern groups. Negotiations culminating in the Comprehensive Peace Agreement (CPA) in 2005 included oil wealth sharing and a future referendum over Southern sovereignty. An immediate shift in land and natural resource (including oil) ownership was unacceptable for Khartoum. The 2004 CPA protocol on wealth sharing simply agreed on an unspecified future process to resolve this issue. Amendment of existing laws to recognise customary rights were also due for future consideration. None happened yet. The CPA's wealth sharing protocol also states that oil contracts "shall not be subject to re-negotiation", but that "persons enjoying rights in land shall be consulted and their views shall duly

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

be taken into account...share in the benefits of that development...are entitled to compensation in just terms...[and] have the right to participate, through their respective states/regions, in the negotiation of contracts". The protocol also specifically states that "people whose rights have been violated by [existing] oil contracts are entitled to compensation. On the establishment of these violations through due legal process the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused". Critics argue that the Government of South Sudan (GoSS) seems not to have made efforts to put these principles into practice, and may not have been able or willing to stop further population displacement as a result of new oil development. Four avenues for compensation are examined: a North-South peace agreement protocol allocating a fixed sum by the GoS for distribution among victims (e.g. Darfur Peace Agreement), a UN Compensation Commission (e.g. for Iraq), extra-territorial prosecution of oil companies (e.g. under US Alien Tort Claims Act), prosecution under Sudanese jurisdiction (North or South), and voluntary compensation schemes by companies. The Greater Nile Company and the Ministry of Energy, for example, have set up a joint committee to "look into compensations issue for people affected by the oil operations in Unity and South Kordofan States".

Tools and References

General Resources

- Global Witness: www.globalwitness.org.

Publications

- Environmental Law Institute, Washington, DC, Post Disaster Natural Resource Management
- Global Witness, The Sinews of War:
http://www.globalwitness.org/media_library_detail.php/480/en/the_sinews_of_war
- IISS – Fuelling War: Natural Resources and Armed Conflicts, Le Billon, P. 2005.
- IPA - Profiting from Peace: Managing the Resource Dimension of Civil War, edited by K. Ballentine and H. Nitzschke, 2005.
- ODI – Power, livelihoods and conflicts: case studies in political economy analysis for humanitarian action, edited by S. Collinson, 2003. www.odi.org.uk/resources/download/241.pdf.
- Sustainable Development Institute and FERN, 2007, Alden, Wily, *So Who Owns the Forest? An Investigation into Forest Ownership and Customary Land Tenure in Liberia*.
- World Bank - Natural resources and violent conflict: options and actions, edited by P. Collier and I. Bannon, 2003.
- OCHA Humanitarian Negotiations with Armed Groups – A Manual & Guidelines for Practitioners

12. ASSESSEMENTS AND RAPID APPRAISAL GUIDES

Rapid appraisal guides have been developed by some donors to help field staff gain an initial understanding of some of the most important land issues in a conflict or post-conflict setting. They are a set of questions that can be posed to a variety of actors - from other humanitarian agencies, to government officials to displaced people themselves. Their purpose is firstly to provide a 'filter' that focuses on potential land-related issues. The first set of questions are intended to help guide the design of a scope of work and to help humanitarian actors think through what programmatic responses may be most relevant. The following is an adapted summary check-list:

Key Land Assessments

- Are the people who have been displaced from their land clear about their rights in relation to land or are there competing notions of land rights?
- Is this common understanding supported or contradicted by the country's legal framework?
- Do rights-holders have documents to support their claims, what other types of evidence do they use and are these considered acceptable as proof?
- Are the main government and quasi-government organisations relevant to land and property issues doing an adequate job? Are there any specific weaknesses or gaps in this area?
- Are the laws and policies related to land in line with international standards and best practices and are they actually being applied in practice?
- Is their adequate institutional capacity to implement these policies and resolving disputes or does this need to be strengthened?
- What support should be given to both formal and informal dispute resolution mechanisms? Do the institutions concerned have sufficient trained personnel and how accessible are they to potential users? How fair are their decisions?
- Is there a concern about corruption?
- Does the government have the political will to address the relevant land and property issues?
- Are there other key stake-holders who need to be involved in and supportive of programmatic interventions (e.g. large land owners, land associations, etc.)? If these are likely to oppose an intervention are there ways in which it can be reformulated to neutralize this opposition?
- What is the time-frame in which the issues need to be addressed and can different issues be strategically targeted in the short, medium and longer-term?
- Are the main issues rural, urban or both?
- What special factors are likely to lead to competition over particular areas of land (e.g. soil fertility, access to water, proximity to urban areas, transport links, minerals, etc.)?
- Are there particular flash-points or trigger-events that could spark violent conflict over land?
- How well qualified and equipped are existing international agencies for dealing with land issues?
- How effective are the national and international coordinating mechanisms for dealing with land issues and how could this coordination be improved?
- What value could an international intervention on land-related issues add to the current situation?

Issues at Different Phases of Conflict

(i) Relief

- How many people have lost land temporarily or permanently and what are the land requirements for temporary and transitional shelter
- How much land is available for livelihood requirements of displaced and settled population
- Has an environmental assessment been carried out
- Has there been a review of available land for site selection
- Have steps been taken to ensure any government acquisition of land for sites conforms to international legal standards

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

- What is the potential for ownership disputes due to unclear ownership/legal pluralism
- Have the relevant authorities made public statements in support of security of tenure and against forced evictions

(ii) Recovery

- What is the status of land documents and records: how complete are they, how many have been lost or damaged, how reliable are they, what is the likelihood of fraud and corruption in the society
- How can the records be secured from further loss or damage
- If people have lost or do not possess official documents is this likely to cause them problems and in what alternative ways can they prove who they are and assert their tenure rights
- How much detailed information exists about land tenure and institutions in the society and how accessible is this to those working with affected populations
- Is satellite imagery of the affected land available and has it been analyzed
- What is the capacity of the existing institutions for dealing with land-related issues and what is the relationship between the formal system and customary mechanisms
- Are there any particular issues of concern regarding both systems – such as corruption or discrimination – and, if so, how can these be addressed
- What are the potential obstacles to return and how realistic is it as an option
- Has an analysis being carried out of how land and natural resource issues will affect the livelihood strategies of those in displacement
- Would granting displaced people short-term occupancy permits help to increase tenure security
- Have all the land-related programs being developed with gender-sensitivity and do they take into account the particular needs of vulnerable groups.

(iii) Reconstruction

- Is the existing land law adequate for dealing with the situation
- Do planning mechanisms exist that take into account the need for risk reduction and addressing the vulnerabilities of all the population
- Are strategies in place for upgrading informal settlements and dealing with the social, economic and environmental consequences
- Do reconstruction projects include restoring and upgrading the land administration system
- Have programs been implemented to address the land-related needs of particularly vulnerable
- What measures have been taken to strengthen land governance systems

References / tools:

13. MAPPING

A map is a communication tool. It can tell us 'what is happening where' and adds a spatial dimension to planning. Non-experts can interpret well-prepared maps very quickly, making them useful aids for monitoring trends and to support decision-making. Nevertheless, humanitarians need to be aware of the following:

- Many land rights, particularly on customary administered land, are not recorded on maps;
- Securing land for one person or group, may increase the insecurity of neighbours or neighbouring communities;

What are the Issues?

- **Map Availability:** the availability of maps, aerial photographs or land records is often limited. In most countries, there is limited up-to-date land information even at the best of times. In conflict-affected countries, maps may be lost, stolen or simply unavailable. More recently, however, maps can be obtained much more readily and rapidly decreasing costs. Some sources are identified in the references below.
- **Technical Considerations:** users need to be aware of some basic considerations, including the purpose of the map, the geographic coverage required, the scale/resolution (1:2,500 to 1:1,000 for plot level)
- **Technological Sustainability:** In many instances, there is no need for expensive or complicated mapping tools; simple hand-drawn maps do not always need to be linked to Geographic Information Systems (GIS). In addition, operating costs, human resource capacity and cost-recovery are not always factored into solutions.

Options for Action

Mapping can facilitate humanitarian action and early recovery processes in various ways, including:

- **Coordination:** spatially presenting information on 'who is doing what where' in the land sector; the land sector is characterized by many institutions and actors and in which coordination is a real challenge.
- **Boundary Identification:** Maps can be useful for clarifying boundaries, which can facilitate housing reconstruction and the restoration of livelihoods, but great care must be taken in formalizing boundaries;
- **Site Selection:** Maps can often be used to identify land for temporary shelter or camps, though humanitarians must take care to presume that 'vacant land' is unoccupied or has no underlying land rights;
- **Community and Land-Use Planning:** Whether hand-drawn maps or rural land-use plans, maps can provide a rapid overview of community assets and hazards, as well as concessions or other infrastructure. The process of preparing such plans can strengthen community solidarity and help secure customary land rights.
- **Conflict Mapping:** data and information on conflicts can be mapped to present the spatial distribution of conflicts by type and scale. In some cases, incidents have been reported by mobile phones (SMS).
- **Documenting HLP Claims:** time series photography can be used to determine destruction or loss of housing, land and property. This can serve as evidence for restitution or compensation processes.
- **Urban Services & Taxation:** Mapping the 'footprint' of houses and structures in urban areas can be used to create a simple tax register, which, when linked to an agreement to improve service delivery can strengthen local governance.

SEE ALSO: Key Issue 1 LAND DISPUTES; Key Issue 4, HLP in DISPLACEMENT and RETURN; Key Issue 6: RURAL LAND USE; Key Issue 7: URBAN SETTLEMENTS

DON'TS :

- Beware of underlying land rights that may be 'invisible' on maps
- Do not rush to formally map boundaries, particularly in customary areas as you may not be aware of the full extent of existing and sometimes overlapping land and use rights as well as competing claims;

References / tools:

- Map Action, Field Guide to Humanitarian Mapping, First Edition, March 2009.
<http://www.mapaction.org/more-news/183-new-gis-field-guide.html>
- www.reliefweb.int

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

- www.bing.com/maps
- <http://earth.google.com> and <http://maps.google.com>
- www.ppgis.net (public participation GIS)

Georgia: Documenting Losses to Housing, Land and Property

In Georgia, ethnic conflict in the early 1990s led to the internal displacement of up to 240,000 people from the breakaway enclaves of Abkhazia and South Ossetia to other locations within Georgia. In August 2008 conflict between Georgian and Russia led to the displacement of over 100,000 additional people. Time-series satellite imagery has been used from before and after August 2008 to document the destruction of houses, which may become important evidence in any future restitution efforts.

Kenya: Conflict Monitoring using SMS and Google

In 2007-08, Kenya was rocked by violence following the national election, leaving thousands displaced. Housing, land and property was destroyed or occupied. A website was established to enable people to report on post-election violence – all forms of violence, including land-related. Called [Ushahidi](http://www.usahidi.com), which means "witness" or "testimony" in Kiswahili, the website presented information received by SMS or email on a Google map. The information was verified and used by NGOs to facilitate their programming. Please see: www.usahidi.com--

Community Land Adjudication in Banda Aceh, Indonesia

The Indian Ocean Tsunami of 2004 brought an end to the conflict in Banda Aceh. Aceh has become a model of the possibilities, and limits, of community-based adjudication (CDA). Under CDA, each landowner signs a statement of ownership that is endorsed by her neighbours and the village chief. These statements of ownership are then endorsed in a community meeting, which will also agree to a community map showing land parcels and boundaries. Where the landowner is deceased, CDA provides for a form for family agreement and identification of heirs. This form is witnessed by the village head and village *imam*. The village head and *imam* will also endorse forms in the manual that identify guardians for under-age landowners. In both cases (i.e. inheritance and guardianship), a mobile Syariah Court provides legal confirmation of the decision by the village head and village *imam*. Community-driven adjudication of land rights in Indonesia was highly successful in providing sufficient security of tenure for house reconstruction. However, it was less successful as a basis for the systematic registration of all tsunami-affected land parcels. The reasons for this relative lack of success included (1) insufficient legal support for community-driven adjudication, (2) capacity problems in the National Land Agency, and (3) difficulties integrating community-driven adjudication products with land registry maps and databases.

GLOSSARY

Common Land and Housing Terminology

ADVERSE POSSESSION - Some countries have laws which stipulate that anyone who lives on a piece of land for a certain period of time (usually five or ten years), without being evicted or charged rent or challenged by any person claiming to own that land and who pays land taxes for that period of time, can become the *de facto* owner of that land by "adverse possession". The idea behind adverse possession is that those who occupy and use land, without anyone objecting, should be entitled to own it.

CONSENSUAL DISPUTE RESOLUTION METHODS - **Conciliation** In a highly-polarized conflict, this is where a neutral third party attempts to engage stakeholders separately in a network, promoting communication and helping them jointly to choose a method of conflict resolution. **Mediation** The intervention in a conflict of an acceptable, impartial and neutral third party who has no decision-making authority. The objective of the intervention is to assist the parties in voluntarily reaching an acceptable solution to their conflict. **Negotiation** A consensus-driven conflict management method conducted directly between the parties who are in charge of finding a resolution with or (more often) without a facilitator. **Facilitation** The intervention of a neutral third party whose duty is to assist stakeholders before and possibly during the conflict resolution process.

CADASTRE - A parcel-based land information system containing a record of interests in land rights, restrictions and responsibilities.

CHIEF - A land chief normally acts as the mediator between people and land, and traditionally holds power over land in customary societies, without actually owning it. The land chief often has both quasi-political and quasi-religious or spiritual roles in relation to land.

COMMON HERITAGE/PATRIMONY - Common rights over shared resources, which are governed by common rules aimed at protecting and perpetuating this resource. It may be invested with a specific legal status and may involve various legal entities which share the objective of protection and conservation. The term can also be used to recognize the claims of groups that lack formal legal status, for example a village community.

COMMUNITY LAND MANAGEMENT - This approach aims to encourage the development of rural communities through participation and capacity-building activities. Community members plan, manage and invest in the resources within their local area, over which they are assured a degree of tenure security. It may or may not be legally legitimized and implemented.

CUSTOMARY LAW - Customary law is the set of rules regulating social behaviour that have developed in a particular community over time. Sometimes this draws on a community's religious beliefs and it is usually interpreted and enforced by male 'elders'. Land ownership and tenure rights are often regulated by customary laws.

LANDLORD - The owner of property that is leased out to tenants or lodgers on certain conditions, usually involving the payment of rent by the tenant.

LAND ADMINISTRATION - Those institutions that manage rules of land and make them relevant and operational.

LAND DEVELOPMENT - The application of resources to improve land for more efficient use.

LAND GOVERNANCE - The process by which decisions are made regarding the access to, and use of, land, the manner in which those decisions are implemented and the way conflicting interests are reconciled is often defined as land governance. Ultimately, land governance is about power and the political economy of land. Although land raises important technical issues, it is ultimately a political and governance issue about how societies balance the conflicting uses that land can be put to with the basic needs for their poorer and most vulnerable citizens. The quality of governance determines how this competition is managed, and also how any disputes and conflicts are resolved.

LAND POLICY - This is the set of intentions embodied in various policy instruments that are adopted by the state to organize land tenure and land use. It is usually guided by a set of basic principles, some of which are based on international agreements, others of which are based on specific national circumstances.

LAND TENURE - Land tenure is commonly understood to mean the set of rules that define the rights of access to land and governing the way in which it may be used. This can include the rights over the soil, water, air and minerals on a particular plot of land and on how it can be bought and sold, or otherwise transacted or given away.

LAND TENURE SYSTEM - Land tenure comes in many different forms and degrees of formality and different types of land tenure systems may exist side by side. Some tenure rights are held by individuals while others are held collectively by a group. Sometimes tenure is defined by formal titles and sometimes by customary law. Some tenure rights come with time limitations or with restrictions on how the land can be used, sold, transferred or passed on to children. Many governments reserve the right to take away an individual's or a community's right to stay if the land is needed for some public purpose.

Formal system: Such a regime exists where state legislation and institutions govern land and natural resource rights within state boundaries. In the formal system, the legal settings define and protect tenure and access rights while exercising a legitimate capacity to remedy any violations that may occur. **Informal system:** This arises where neither formal nor

Land and Conflict: A Handbook for Humanitarians: September Draft 2009

customary legal frameworks are effective or appropriate; it may have its own rules, authorities and institutions. Its lack of legitimacy makes it an insecure land tenure system.

LEGAL PLURALISM - This occurs when different land tenure regimes (formal and customary), each with their own legal framework, have legal authority over rights and are legitimized to resolve conflict.

LIVELIHOOD - The capabilities, assets (both material and social) and activities required to make a living. A livelihood is sustainable when it can cope with and recover from stresses and shocks, and maintain and enhance its capabilities and assets both in the present and in the future, while not undermining its natural resource base.

OCCUPATION - The physical occupation of land may create overriding interests that are not registered under the system of land registration. In order to identify any occupier's rights it is necessary to inspect the land and to make enquiries of the vendor about the situation.

OVERLAPPING RIGHTS - Multiple rights over the same parcel of land may be recognized and held simultaneously by different levels of right-holders, or they may be held by different groups at different times. For example, the landholder, the tenant, the sharecropper, their communities and families may have coexisting rights (whether complementary or contradictory) over a particular piece of land.

POSSESSION - Possession of land may involve physical occupation with or without permission from the owner, or the right to receive rents or profits from the land.

PROPERTY RIGHTS - The owner of a property enjoys a wide range of rights, including: natural rights, rights of alienation, rights of enjoyment, etc. Some of these are: **Formal**. These are rights and sanctions legally recognized by the state and protected by the state's legal system. Most often they are titled and/or registered or recorded under a state system. **Informal**. These rights do not have official state recognition and may or may not have official protection, but they are recognized by customary law or by local authorities. **Extra-legal**. These rights are held informally and are not against the formal law but not explicitly recognized by it. **Illegal**. These are holdings that contravene the rule of law. Holders are vulnerable to state interference and sanctions and are unlikely to use the state judicial system for dispute resolution.

REGISTRY (LAND) - This is where legally-recognized interests in land (land title or landholding rights) are officially recorded. Land registration aims to guarantee security of property transactions and to protect the owner from encroachment by third parties.

RIGHTS - Rights are defined by the legal framework and legal provisions of a given regime. Different societies have different attitudes to rights. As a result, the nature of these rights varies, even if there are some rights that are almost universally recognized as fundamental under frameworks such as the Universal Declaration of Human Rights. ...**Of access** is the ability to use land and other natural resources, to control the resources and to transfer land rights to the land to take advantage of other opportunities. In many customary frameworks, rights of access to land stem from membership of a particular social group. The nature and strength of the access rights held by a given member of society are determined by his or her participation in a network of social relations. ...**Of security**. This is the certainty that a person's rights to land will be recognized by others and protected in case of specific challenges. ...**Of use**. These are rights to use the land for agriculture, grazing, gathering of forestry products, etc. The right to use land is one of the essential rights of landownership, but may also be the right to use and profit from immovable property as if the user were the owner (usufruct).

SOCIAL CAPITAL - This is the notion that social bonds and norms are important to the achievement of livelihoods. Access to land depends upon social status, power and identity, and must ultimately be gained through the different social relationships held by the actors, and social capital networks.

TENANCY - This is a temporary occupation or holding of a property by a tenant. There are different kinds of tenancy depending on the context, the following being the most common: **Hold-over tenancy**: A tenancy that arises when a tenant remains in possession of property after the expiration of the previous tenancy, e.g. as under a lease. It may be established at will by recognition of the landlord, e.g. by accepting rent. It may sometimes be statutorily converted to a periodic tenancy for the same or a different term than that of the original tenancy. **Joint tenancy**: A tenancy in which two or more parties hold equal and simultaneously-created interests in the same property, and in which title to the entire property remains with the survivors upon the death of one of them (as a spouse) and so on to the last survivor. **Life tenancy**: The tenancy of one with a life estate. **Periodic tenancy**: A tenancy that is carried forward by specified time periods (e.g. months) without a lease and that may be terminated by the landlord or tenant after giving proper notice. **Tenancy at will**: A tenancy that is terminable at the will of the landlord or tenant provided that applicable statutory requirements for notice are met

TITLE - This is the contract document that transfers ownership in land. Registration of this title is, in many jurisdictions, sufficient to prove right to ownership.