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# Uncharted territory: land, conflict and humanitarian action

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## Key messages

- Land issues are often an underlying cause or casualty of conflict, especially in protracted crises, and are thus central to understanding how complex emergencies function, and how humanitarian agencies should respond.
- Land and property disputes tend to increase in the post-conflict period, particularly in the context of large-scale returns of displaced populations. If these issues are overlooked, they are likely to threaten the fragile stability of post-conflict transitions.
- Humanitarian agencies have avoided land-related issues, believing them to be too complex, politically sensitive and outside their mandate. Where agencies have engaged, their efforts have been narrowly focused on restitution for the displaced in a return process.
- Engagement needs to be much broader and more nuanced, based on an understanding of the wider dynamics of land-related conflict. Humanitarian organisations can respond to land-related issues in conflict and post-conflict transitions in many ways, including research and monitoring, advocacy, legal aid and oversight.

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Land is often a critical issue in conflict-related emergencies, and can play a key role in post-conflict recovery. The end of a prolonged armed conflict will frequently see a large proportion of the population claiming or reclaiming access to land and land-based resources, with important implications for return, recovery and reintegration processes. Yet despite the importance of land in these contexts, humanitarian actors have tended to regard land issues as too complex and politically sensitive, and as such the province of organisations more concerned with development, peace-building and human rights. Where humanitarian actors have sought to engage, their efforts have tended to focus on returning land and property to displaced people, with little consideration of the wider implications of their activities and their effects on vulnerable populations.

There are, however, signs of increasing awareness of the importance of land issues in humanitarian crises. In 2005, the Humanitarian Response Review identified land and property

as a major gap in the humanitarian response system, and the Inter-Agency Standing Committee (IASC) subsequently launched various initiatives aimed at improving preparedness and contingency planning around land issues. Guidelines are also being developed by UN-Habitat for the Cluster Working Group on Early Recovery. This HPG Policy Brief seeks to inform and build upon these various initiatives. Humanitarian action is understood here in its broader form, extending beyond mere relief to include advocacy, protection and attention to livelihoods and early recovery.

## The relationship between land and conflict

A number of different factors make access to and control over land central to understanding how complex emergencies function. Territorial acquisition and defence play a central role in conflict. Belligerents often seek to control land or the natural resources that lie beneath it by dispossessing the populations that live on or

use that land. Land dispossession has often been the cause of rural resistance and insurrection. In other contexts, local tensions around access to and control over land have been manipulated politically to co-opt people into national conflicts. Land is also used by belligerents for personal enrichment or to reward their proxies or allies. This is the case in Colombia, where paramilitaries have forcibly displaced the peasantry in order to acquire their land, and in Darfur, where the government lured landless pastoralists into allied militia with the promise of expanded access to land and water. Land is also used to extend patronage. The most common form of land conflict is often played out at the local level between communities (along borders, between pastoralists and farmers), frequently in the context of a state that has little interest in seeing a resolution, or where the state has collapsed or is powerless.

Land issues are rarely the sole cause of conflict. Analysis that emphasises the idea that land scarcity or inequality lead to conflict often fails to understand how these issues relate to other factors, such as governance and identity. For example, while land scarcity is often cited as at the root of the conflict in Rwanda, issues of power, the nature of the state and ethnicity were all important. Likewise, in situations where land was not in itself a trigger for war, conflict and associated displacement are often accompanied by a breakdown in law and order, which can lead to tensions over land. Conflict also leads to secondary occupation of land, especially in protracted crises. People who have been forced from their homes often have no alternative but to occupy land that belongs to others, leading to problems as the original owners seek to reclaim it. Meanwhile, families may change during the time they spend in displacement; they may grow larger, leading to disputes about how to divide the land when they return, or they may split due to death or separation, leaving widows or orphans with weak tenure rights. Conflicts also accelerate the drift into towns and cities, making land in urban and peri-urban areas a pressing social issue. Box 1 suggests four general categories for understanding the links between land and conflict, both as *cause* and *casualty*.

### Land in post-conflict contexts

Land issues are of crucial importance in the post-conflict period, even when they were not the cause of the crisis. Property conflicts tend to increase when a conflict ends, sometimes as a result of a failure by national and international actors to understand or constructively manage post-conflict property relations. Post-conflict transitions are often accompanied by continued violence, at times culminating in a resumption of war. Countries may suddenly find peace, but competition over land may continue and may regress into conflict. IDP

### Box 1: Categories for understanding the relationship between land and conflict

- Grievances that trigger conflict.
- Land and property issues that emerge during war due to a breakdown in the rule of law, the policies of those in control during the conflict and, especially, forced displacement.
- Property issues that arise or are exacerbated because of a poorly managed peace.
- Inequitable property relations, especially in agrarian societies, which risk causing further violence if left unresolved.

and refugee return processes disturb settlement patterns, land use and the property market. Land also becomes vulnerable to elite capture and new disputes may emerge, especially in contexts where communities fail to return or are unable to farm as before, in urban and peri-urban areas where land is valuable and in areas with investment potential, as in Afghanistan, Angola and Sudan.

The land disputes that arise as people return take a variety of forms: they occur over the occupation of property abandoned by others during the conflict or through competing claims over the same plot. Property disputes can also arise within families over the inheritance of land. Returnees may find that the ethnic composition of their villages has changed, and may therefore have to seek alternative livelihoods elsewhere. Land disputes often lead to violence between individuals, within families and between groups. In Afghanistan and Sudan, land disputes have emerged as the principal obstacle to the successful return and reintegration of IDPs and refugees.

One key property issue in post-conflict agrarian societies is the co-existence of different systems of authority related to land, based on statutory law, customary law or religious norms (for example Islamic law). Conflict-induced displacement can play a primary role in the development of this ‘legal pluralism’ with regard to land. The physical separation of people from their home areas and traditional land use and land tenure arrangements usually changes approaches to land rights, ending or putting on hold prevailing social rights and obligations, affecting the way access, claims and disputes are handled and prompting resistance and animosity towards returnees by community members who chose to stay behind.

It is important that land claims and land grievances are addressed promptly at the end of a conflict. If these issues are overlooked, property disputes will inevitably escalate and may threaten the usually fragile stability of a post-conflict transition.

## Box 2: Common challenges to post-conflict land and property rights

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

## Humanitarian engagement on land issues

Humanitarian agencies have tended to avoid land-related issues. In both the most immediate phase of an emergency and in medium- to long-term phases of response, land issues are given barely any attention, even in the selection of potential sites for refugee and IDP camps. At best, these responses miss important opportunities by failing to take land issues fully into account; at worst, they can feed tensions or create conflict between groups seeking access to land. In-depth and ongoing analysis of land and property issues needs to be built into the diverse phases and areas of response, especially in crises characterised by widespread displacement, where return and reintegration processes loom.

Many of the land issues that come to the fore during a humanitarian response touch on different sectors of intervention, including food security, protection and shelter and camp management. Food security interventions in crises tend to focus on the short- and medium-term availability of food, establishing therapeutic feeding centres, providing food aid and distributing seeds and tools. The last of these activities in particular is often carried out with little understanding of people's access to farming land, and is usually not linked to interventions designed to maximise this access. Humanitarian organisations also tend to pay limited attention to how local production systems and land distribution change over the course of a crisis.

In the aftermath of war, humanitarian efforts tend to focus on activities that aim to restore the pre-war

status quo. These efforts are based on the assumption that there is a clear distinction between war and peace. In reality there is no clear-cut division, as these states overlap and co-exist. Furthermore, violent conflict destroys not only political, economic and social structures, but is itself a process of transformation in which alternative systems of economic accumulation, social regulation and political governance emerge. These changes are part of an 'accelerated transition' that invariably accentuates processes of change that in most cases are already under way, and that are in any event irreversible. Returning to the status quo ante is usually impossible and may in fact not be desirable if it fails to tackle the grievances that led to the conflict in the first place, or that have emerged during the conflict.

These considerations seldom underpin efforts to help IDPs and refugees return to their homes once a conflict is deemed to have ended. Instead, displaced people are encouraged to return to their areas of origin without an adequate understanding of the role that land issues played in the conflict that led to their displacement. This shortcoming is evident in the UN Principles for Housing and Property Restitution for Refugees and IDPs. Also known as the Pinheiro Principles, the framework provides guidance on how best to manage the technical and legal issues associated with housing, land and property (HLP) restitution. The principles are grounded in the idea that people not only have the right to return to their areas of origin but also to the property they left behind. Restitution rights are of course of critical importance to millions of uprooted people throughout the world, and humanitarian agencies and donors have focused most attention on this area. Restitution is, however, only one of a myriad of HLP issues that can arise in conflict and post-conflict countries.

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

The absence of systematic and better-informed humanitarian responses stems in part from a lack of expertise and capacity around land issues in the humanitarian sector. Initiatives are often

dependent on individuals, coordination is generally deficient and clear leadership is not provided. Humanitarian responses in post-conflict contexts must be informed by a greater understanding of land and property issues in general, and by a deeper analysis of the context in question. Land relations are complex and varied, and responses must be built on local solutions.

### Charting a way forward

The absence of appropriate expertise in land and property issues is a significant gap in humanitarian response. Whilst land tenure experts are legion, very few individuals have expertise in both humanitarian *and* land and property issues. Even where this expertise exists within a humanitarian agency, these individuals are usually not the first to deploy in a humanitarian emergency or in the immediate post-conflict phase. Meanwhile, land tenure specialists have been unable to translate concepts into practice for the humanitarian community, at least so far. The Cluster Working Group on Early Recovery has taken on this task, and has been developing guidelines on land and property issues in post-conflict contexts. It is essential that capacity is created to allow holistic analyses of the context, including its historical and political dimensions, and avoiding pre-packaged plans.

At the systemic level, agreement must be sought within the UN on the most suitable institutional arrangement to provide leadership and coordination in this area, both globally and at country level. Such leadership should facilitate the development of an overall agreed framework on land and property matters within the aid community, to help find common ground and avoid the provision of divergent or inappropriate technical advice to national actors. Learning could be distilled from non-conflict situations. Donors also need to be sensitised to the importance of land and property issues in conflict and post-conflict humanitarian responses, and should support appropriate interventions by providing funding that is flexible and sustained over a longer period than is currently the case. The common emphasis on quantifiable results in IDP and refugee return processes must be replaced by greater attention to the key determinants of sustainable reintegration, of which land and property issues are a cornerstone.

It is also important that land and property issues are included in peace negotiations and reflected in peace agreements and UN Security Council resolutions. Humanitarian organisations could include land and property issues in advocacy messages while peace processes are ongoing. Agreements should seek to protect customary and long-term occupancy until mechanisms to deal with disputes are fully operational; freeze new logging,

mining or agribusiness concessions until procedures to protect customary interests are properly in place; lay down procedures to bring people suspected of corruption to account; and prioritise investment in urban planning. It is important that international actors approach the issue of refugee and IDP return with a strong commitment to international standards, a thorough understanding of the history of land claims and a realistic appreciation of what is politically possible.

Urbanisation is one of the most pressing priorities in a post-conflict situation, and organisations need to start engaging immediately after the end of a conflict. Humanitarian organisations could help develop interim titles (temporary, renewable or other forms of occupancy and housing permits or short-term land use agreements) and pre-emptive protocols, as well as monitoring the acquisition of sites. Humanitarian agencies are also well-placed to monitor land occupations during displacement and collect vital information in support of return and restitution processes. Monitoring and documentation of abuses can be linked to awareness-raising or legal aid programmes. Monitoring programmes can also help build the capacity of local and international organisations to analyse and address land and property issues.

In post-conflict contexts, NGOs in particular could offer more substantial legal support to vulnerable people, both residents and returnees. Possible interventions include efforts to strengthen the legal position of rural populations and support community representatives to enable them to engage in reforms to change land policy and law. Other areas of engagement include information collection, research and monitoring and advocacy to support land and property rights with both the reconstruction sector and host governments. This could also serve to maintain an emphasis on the rights of women and other vulnerable groups.

Enhanced practice and policy-making on land and property issues in crisis needs to be based on a number of key partnerships. Land tenure specialists should be enlisted to help analyse land relations in specific contexts and help in the formulation of policies and the design of programme interventions. Collaboration with national actors, ranging from governments to local authorities and local NGOs and civil society groups, must be strengthened to ensure that responses are entrenched in local action and do not come to an abrupt end when humanitarian organisations leave.

Mainstreaming action on land and property issues in the humanitarian sector will undoubtedly pose challenges, but there is much to be gained by the contribution that better-informed humanitarian action could make to the management of land relations in conflict and post-conflict transitions.