

Integrating land issues into post-conflict response: Case study evidence and implications

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Abstract

Humanitarian organizations are among the first on the ground in post-war situations, and as such can play a substantial role in addressing land and property issues both for displaced and resident populations. The limited efforts undertaken so far in the humanitarian sector have suffered from an inherent bias towards the needs and rights of the displaced, especially through a focus on the restitution of land and property. The paper builds on a recent ODI book which examines the key land issues that humanitarian organizations should consider when operating in conflict and post-conflict contexts, and suggests ways in which humanitarian actors can better integrate land issues into their responses.

Keywords: land, conflict, displacement, humanitarian response, restitution, Sudan, Rwanda

Overview

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. A growing body of work is emerging on what have become known as Housing, Land and Property (HLP) rights. Although HLP issues have been incorporated into a number of UN and other peacekeeping operations, for instance in Bosnia, Kosovo, Timor-Leste and Burundi, practical application has been limited, often because the complexity of the issues involved is not sufficiently acknowledged. Interventions have tended to focus solely or primarily on the restitution of property to returning IDPs and refugees, usually guided by a restrictive interpretation of the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons. These principles, named after the former Special Rapporteur on Housing and Property Restitution, Paulo Sergio Pinheiro, were approved by the United Nations Sub-Commission on the Promotion and Protection of Human Rights on 11 August 2005. They provide practical guidance to governments, donors, UN agencies and other international organizations on all aspects of property restitution for IDPs and refugees. Restitution rights are of course of critical importance to millions of uprooted people throughout the world, but restitution is only one of a myriad of HLP issues that arise in conflict and post-conflict countries (Leckie, 2009). Return is a much more complex business than it appears, and it is dangerous to limit engagement on land and property issues to a mechanical application of the Pinheiro Principles. Refugees and IDPs may never have had property in the first instance (as in Afghanistan), cannot access what property they have (as in Colombia, Guatemala, South Africa and Sudan), have settled on land they know belongs to others but have nowhere else to go (as in Colombia, Rwanda and Timor-Leste), or are in direct competition with others, including the state and its foreign or local business partners (as in Aceh, Angola, Colombia, Liberia and Sudan). In all these cases, the focus on land and property issues must be much broader and integrated within the overall humanitarian and recovery response (Alden Wily, 2009).

The multi-disciplinary nature of land issues, which frequently cut across traditional sectoral and thematic divisions within agencies, is also often problematic. This is because interventions tend to be narrowly framed in the context of specific thematic perspectives, such as governance, economic growth, agriculture or the environment (USAID, 2005). Capacity issues and institutional divisions are key obstacles in developing and delivering more integrated approaches. It is also important to note that donors seem to show little interest in land tenure issues (Vlassenroot, 2008).

This paper builds on the conclusions of a recent book published by ODI on the interface between land, conflict and humanitarian action (Pantuliano, 2009) and suggests ways in which humanitarian actors can better integrate land issues into their conflict and post-conflict responses, building on an analysis of the relationship between land and conflict.

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 (de Waal, 2009). 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 (Elhawary, 2009), 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. Analyses that emphasize the idea that land scarcity or inequality lead to conflict, often fail to understand how these issues relate to other factors, such as governance and identity. For example, while land scarcity is often cited as at the root of the conflict in Rwanda, issues of power, the nature of the state and ethnicity were all important (Elhawary, 2009.). 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 (Foley, 2009). Conflicts also accelerate the drift into towns and cities, making land in urban and peri-urban areas a pressing social issue (de Waal, 2009).

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 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 (Alden Wiley, 2009; Foley, 2009; Pantuliano, 2009b).

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 (Unruh, 2009).

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 1: 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
- Weak or divided security agencies: difficulties in enforcing laws
- Lack of shelter due to destruction of housing stock
- Large numbers of female- and child-headed households, and other vulnerable households
- A political focus on emergency 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

Adapted from Augustinus, C. and Barry, M. B. (2004) in Huggins (2009)

Humanitarian engagement in land issues in conflict contexts

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.

Humanitarian engagement in post-conflict land issues

Acting on land issues in a post-conflict environment is of crucial importance in order to support a peaceful transition from conflict. The management of land relations is intrinsically linked to a range of peace benefits, from investment in agriculture (Cramer and Weeks, 2002) to service expansion. Certainty of tenure and adjudication of disputes is essential for recovery, particularly for the reconstruction of housing for returnees. Security of property rights also helps to foster confidence among resident and returning communities, contributing to the process of peacemaking and reconciliation. However, establishing (or re-establishing) tenure security can be very complicated in countries emerging from years of conflict, especially where land records are not available or are badly organized, and where statutory and customary systems overlap (Fitzpatrick, 2008). It is critical that disputes over land and property are tackled quickly in the immediate post-conflict phase; if left too long, they can become intractable. Furthermore, the potential for land grabbing by the powerful is greatest in the post-conflict phase, given the often chaotic nature of land management and administration in transitional periods and the shaky rule of law that prevails in these contexts. Events in Rwanda and Sudan at the end of the conflicts in these countries are cases in point (Bruce, 2009; Huggins, 2009; Pantuliano, 2009).

Approaches to land policy and management and dispute resolution in post-conflict environments tend to be piecemeal and uncoordinated. In Bosnia, externally imposed mechanisms to support restitution clashed with flawed national legal frameworks. In Afghanistan, inappropriate advice from international actors led the transitional administration to focus on restoring order in land ownership by seeking to return land to its pre-1978 owners. This was a flawed approach in a society where the concept of 'ownership' is very difficult to define, and the problems that ensued in Afghanistan

reinforced the perception amongst donors that land disputes were ‘too complex, bewildering or sensitive to address’ (Alden Wily, 2005). In Southern Sudan, UN agencies and donors offered technical assistance in a variety of land-related issues without any overarching strategy, rendering the assistance provided inappropriate and confusing (Pantuliano, 2009).

Land issues play a particularly important role in the return and reintegration of IDPs and refugees, and it is this area of humanitarian action that has witnessed the highest level of engagement by humanitarian organizations and donors in the last decade. Much of the debate has been construed in terms of rights, particularly the rights of IDPs and refugees to restitution and compensation. International standards such as the Pinheiro Principles have been developed, and most interventions at the local level have focused on providing legal support to returnees to regain access to previously owned land, or obtain compensation. Although important, this approach tends to overlook wider structural issues, such as competition over land, demographic pressures, corrupt and dysfunctional land registration and inadequate land laws (Huggins, 2009). While the foundations for land-related work in post-conflict contexts are taking shape, the principles underpinning these developments have been heavily influenced by experiences in the Balkans, and therefore by a model of tenure and restitution alien to societies where customary laws predominate and local-level customary authorities enjoy significant autonomy (Huggins, *ibid.*). Furthermore, as noted, while there are clear international principles relating to the right to property of returnees and displaced persons, there are no similar international standards governing the rights of those who did not flee during the conflict. The focus on IDPs and refugees in most humanitarian responses, both during and after conflict, tends to overshadow the needs and rights of the resident population. While protecting returnees in a post-conflict environment is entirely appropriate, it is important to look at land rights more broadly. In fact, the evidence suggests that land ownership issues, including barriers to access, are surprisingly similar for returning refugees and for host communities (Huggins, *ibid.*).

The emphasis on the return and reintegration of IDPs and refugees in humanitarian action often fails to take into account pre-conflict land issues and the processes of change that occur during crises; attempts at return and reintegration will therefore fail in the long term if underlying competition for land and poor systems of land governance are not tackled (Fitzpatrick, 2008). While allowing people to return to their homes should always be a priority, these efforts will prove futile if they are not accompanied by adequate attempts to address the concerns of *all* the contesting parties, including those responsible for interim and unlawful occupations of land, and by an effort to solve the fundamental land conflicts that are often the main cause of displacement and instability. It is also important to remember that the notion of return could be a false assumption as property disputes may have characterized land relations pre-war as well. Refugee and IDP return strategies therefore need to address both land access and the security of property rights more broadly, especially given the institutional vacuum that usually accompanies post-conflict transitions. Managing these issues effectively in a peace process is crucial to prevent continued instability and to sustain reintegration, including people’s re-

engagement in traditional land uses that sustain the agricultural production, food security and trade on which recovery can be built. No post-conflict operation implemented by the international community to date has tackled land and property issues in an integrated and comprehensive manner (Leckie, 2009).

In many post-conflict contexts there is excessive keenness, often due to political priorities and a willingness to demonstrate quantifiable results, to accelerate the return process by the international community without taking land issues into consideration. In Afghanistan, for instance, the combination of continued insecurity, major drought, insufficient assistance and widespread landlessness often led to further displacement and meant that the process of return was unsustainable, with many returnees finding themselves worse off than before. In Sudan the UN-supported return intervention actually brought people back to areas where tension around land was already extremely high (Pantuliano et al, 2007).

The absence of systematic and better-informed humanitarian responses stems in part from a lack of expertise and capacity around land issues in the humanitarian sector. Initiatives are often dependent on individuals, coordination is generally deficient and clear leadership is not provided. Recent reforms in the humanitarian system have not helped bridge the gap in expertise and coordination on land and property issues. The UN cluster approach, launched in 2006, has failed to provide an overall focal point or provider of last resort, and these issues are currently dealt with by three different clusters – early recovery, protection (with a dedicated sub-cluster on HLP issues) and shelter – with insufficient coordination and harmonization. Many humanitarian organizations regard land and property issues as beyond their remit, despite the fact that they are usually among the first actors to provide assistance in the post-conflict phase, including supporting return and reintegration. The immediate post-conflict period has been described as an ‘open moment’ when intense periods of social rearrangement occur, particularly around land disputes (Lund, 1996). This open moment provides a unique opportunity for external actors to influence the evolution of land relations (Unruh, 2004).

Humanitarian responses in post-conflict contexts must be informed by a greater understanding of land and property issues in general, and by a deeper analysis of the context in question. Land relations are complex and varied, and responses must be built on local solutions. Attempts in this direction are being made by humanitarian agencies undertaking legal aid interventions and supporting local dispute resolution mechanisms, but many of these responses are focused on customary systems and informal institutions and fail to create adequate links with the state, largely because traditional leaders tend to be the first authorities humanitarian agencies encounter on the ground. Working with these institutions in isolation from formal structures can undermine or prevent the state from getting involved or damage other processes of legal reform (Balke, 2008; Vlassenroot, 2008). The humanitarian implications of this are extremely wide-ranging. A grassroots-focused process could require longer engagement in countries than many humanitarian agencies are prepared to contemplate. Appropriate leadership through the cluster system and coordination mechanisms in-country must therefore ensure that the appropriate links are built between humanitarian organizations and others with land

expertise, who can take over in a timely fashion. Inputs from the international community on land and property best practices and lessons for post-conflict situations should begin – at least in countries where land has played a significant role in conflict – during the peacemaking process to inform the agreements reached, bearing in mind that political arrangements in peace negotiations, though contravening international standards, may be needed to find and maintain peace (Bruce, 2009).

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. Notwithstanding these efforts, there is a danger that land and property issues will continue to be ignored or downplayed. There is therefore a need to build on past experiences to ensure that land and property issues are systematised within UN peacekeeping operations and large-scale humanitarian responses. It is essential that capacity is created to allow holistic analyses of the context, including its historical and political dimensions, and avoid pre-packaged plans (Huggins and Clover, 2005).

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. Peace agreements tend to ignore land issues or leave loopholes that can be exploited by recalcitrant parties. In most cases, instruments to discourage abuse are lacking. 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 the international community 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 (Alden Wily, 2009), 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.

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