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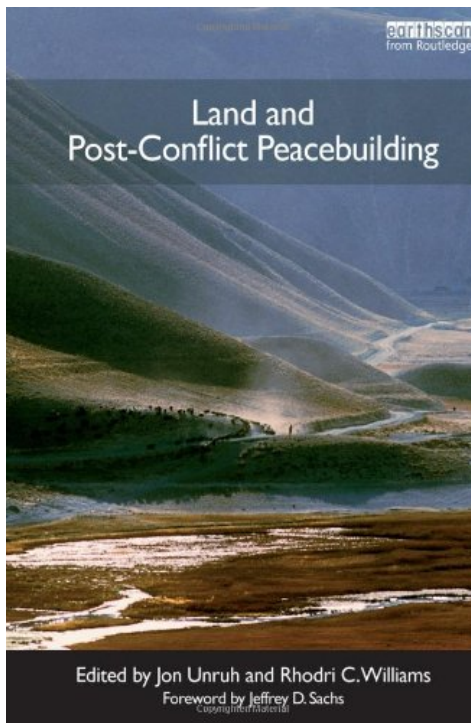
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Land issues in post-conflict return and recovery

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Land issues in post-conflict return and recovery

Samir Elhawary and Sara Pantuliano

Violent conflict has many causes that often interact and change over both time and space. This is particularly the case in what have become known as protracted crises or complex emergencies. In these contexts, there is increasing recognition that land issues are often central to the dynamics of conflict and post-conflict situations (Pantuliano 2009). Grievances over landownership and access are often a source of conflict, such as in Rwanda (Musahara and Huggins 2005), Colombia (Elhawary 2009), and Timor-Leste (Fitzpatrick 2002). Belligerents and others who exploit conflict also often seek to own or control land, or resources that lie beneath it, either for profit or as part of military strategy. This has been the case, for example, in the Darfur region of Sudan (Pantuliano and O'Callaghan 2006), Colombia (Elhawary 2009), and the Democratic Republic of the Congo (Vlassenroot 2008).

Forced displacement and subsequent land appropriation in these contexts is often a means to reward allies, acquire or secure access to resources, manipulate elections, or create ethnically homogenous areas (de Waal 2009). Even when land relations are not a central driver of conflict, they are usually affected by conflict, particularly if there is protracted displacement and land is occupied opportunistically. This results, in many cases, in overlapping or competing land rights and claims, an increase in the legal pluralism of land governance,¹ lost or destroyed documents, lack of adequate housing stock, and increased land pressure, often in the absence of an institutional framework that can effectively resolve these conflicts (Huggins 2009). These land issues affect both the choice to return and the prospects for recovery in post-conflict situations.

This chapter discusses the importance of access to and recovery of land in supporting transitions from conflict to peace. While emphasizing the importance of returning internally displaced persons (IDPs) and refugees to their former areas, the authors warn that restitution and return must be considered in the context of

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¹ *Legal pluralism* refers to the existence of multiple systems of authority over land, based on statutory, customary, or religious norms (Unruh 2009).

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broader land and property rights issues so as to avoid engendering further conflict. The chapter outlines legal, institutional, and customary aspects of land management that must be considered in post-conflict situations. The chapter concludes with potential solutions, outlining necessary steps for humanitarian and aid actors in addressing land issues and facilitating the peacebuilding process.

FACTORS COMPLICATING RETURN AND RECOVERY

Efforts by international organizations to end conflict and the associated social, economic, and political upheaval involve support for three transitions: a social transition from violence to the end of hostilities, a political transition from wartime government or no government to post-war government, and an economic transition from wartime accumulation and distribution to equitable, transparent, and sustainable post-war development (Paris and Sisk 2009). Central components and indicators of these transitions include the return of displaced populations to their countries or areas of origin and their recovery and reintegration into society.

As a result, peacebuilding efforts tend to focus on recovery, rehabilitation, reintegration, resettlement, and reconstruction activities aimed at a return to what is perceived as normal pre-war conditions (Keen 2008). These are based on the assumption that there is a clear dichotomy between war and peace. Post-conflict situations are thus usually conceptualized as blank slates from which to initiate recovery and the broader transition to peace (Cramer 2006). Yet violent conflict not only destroys political, economic, and social structures but also allows alternate systems to emerge in their place (Duffield 2001; Cramer 2006).

This transformation is part of an “accelerated transition” that accentuates processes of social and economic change that in most cases are already irreversibly under way (de Waal 2009). After protracted conflicts, a return to past structures and processes is usually unfeasible and may be undesirable, as they may fail to resolve grievances that led to the conflict in the first instance or that emerged during the conflict. The challenge for a conflict or post-conflict response is to evaluate whether those structures and processes enhance or threaten the effort to strengthen governance and support livelihoods—and to untangle, build upon, and reshape them accordingly (Cramer 2009).

Unfortunately, such considerations seldom guide international efforts to support the return of IDPs and refugees. Once a conflict is deemed to have ended, displaced people are encouraged to return to their areas of origin without an adequate understanding of the role that land issues have played in the dynamics of the conflict. This is evident in a strict adherence to the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (COHRE 2005). Also known as the Pinheiro Principles, they provide guidance on managing the technical and legal issues associated with housing and property restitution. The principles are grounded in the idea that people have the right to return not only to their areas of origin but also to the property they left behind.

Restitution rights are, of course, critically important to millions of uprooted people throughout the world, but restitution is only one of myriad land and property 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 (Alden Wily 2009). Refugees and IDPs may never have had property in the first instance, may not be able to access their property, may have settled on land they know belongs to others but have nowhere else to go, or may be in direct competition with others, including the state and its foreign or local business partners. In all these cases, the focus on land issues must be much broader and integrated within the overall humanitarian and recovery response (Pantuliano 2009). Failure to do so will lead to responses that at best miss important opportunities and at worst feed tensions or create conflict between different groups seeking access to land.

Developments in Afghanistan provide an example of this issue. Within two years after the 2001 military intervention by coalition forces, it was estimated that more than 3.5 million refugees and 700,000 IDPs returned to their homes (Amnesty International 2003). This return was largely encouraged for political reasons. The international community was keen to show improvements that would justify the intervention; Iran and Pakistan saw it as an opportunity to alleviate the pressure of accommodating large numbers of refugees in their countries; the Afghan government used the process as legitimization of its state building process; and the Office of the United Nations High Commissioner for Refugees sought to demonstrate its relevance to the international community (Turton and Marsden 2002).

This massive return increased land tenure insecurity and aggravated conflicts over land. It has been estimated that between 2002 and 2003, 60 percent of returnees were landless, while 60 percent of those going back to rural areas between March 2002 and May 2004 appeared to be relying on land as a means of survival (Ozerdem and Sofizada 2006). Despite this level of landlessness, refugees and IDPs were encouraged to return without the legal and procedural safeguards necessary to address land-related issues, hindering the sustainability of their return and recovery (Alden Wily 2009).

This is not to say that the Pinheiro Principles do not have value in contexts such as Afghanistan. Return is not a precondition for restitution or compensation, and attention should be paid to the rights and needs of displaced people (and other vulnerable groups) irrespective of their chosen location. Humanitarian organizations have successfully used the principles to help many refugees and IDPs to regain access to or receive compensation for their land and property, including in contexts in which land tenure is mainly governed by informal or customary mechanisms (see Barbara McCallin “The Role of Restitution in Post-Conflict Situations,” in this book). However, restitution alone is not sufficient, and in cases in which land and property are disputed or governed by legal pluralism, it must be accompanied by efforts to reform land policy.

POTENTIAL SOLUTIONS

Land and property issues are complex and politically sensitive. But humanitarian and peacebuilding actors can play a significant role in addressing these issues and achieving a more effective and sustainable transition to peace if they are guided by the following recommendations:

- As discussed above, engagement needs to go beyond a sole focus on restitution and compensation—which, although important, can overlook wider structural issues such as competition over land, demographic pressure, corrupt and dysfunctional land registration, and inadequate land laws.
- Effectively supporting return and recovery processes requires addressing land issues at an early stage. Humanitarian organizations can help national and international actors to develop more appropriate responses by investing in more thorough analyses of land and property issues and by monitoring and documenting abuses. To be successful, any attempt to promote effective return and recovery processes must be based on an understanding of the relationship between land and conflict, and the structures and processes that characterize the post-conflict period.
- Legal support and capacity building for vulnerable communities can help resolve disputes and strengthen their ability to engage in land policy reform. These efforts should emphasize the rights of women and other vulnerable groups.
- Rehabilitating land management and administration systems after conflict is a crucial endeavor that requires significant expertise. Conventional cadastral systems are often inappropriate in volatile post-conflict situations as they fail to take into account legal pluralism and communal land governance.
- Efforts to address land issues in post-conflict situations must go beyond displaced populations to take into account the rights and concerns of resident populations. Return and recovery strategies need to address land access and the security of property rights more broadly, especially given the institutional vacuum that often characterizes post-conflict transitions. Addressing these issues in peace negotiations is crucial to prevent continued instability and to sustain reintegration, including reengagement in traditional land uses that sustain the agricultural production, food security, and trade on which recovery depends.
- Land and property issues need to be included in peace negotiations and reflected in peace agreements and UN Security Council resolutions. Agreements should seek to recognize and protect customary and long-term occupancy until mechanisms to deal with disputes are operational. Humanitarian and peacebuilding actors should include land and property issues in advocacy messages while peace negotiations are ongoing.
- Effectively addressing these issues will require adequate expertise, leadership, and coordination. The first phase of post-conflict interventions often has too few land tenure experts, and many actors claim that these issues lie outside their remit or are too politically sensitive to tackle. Land and property issues

should be approached systematically within UN peacekeeping missions and large-scale humanitarian responses to reflect their important role in displacement, return, and reintegration. Agreement must be sought within the United Nations on the most suitable institutional arrangement to provide leadership and coordination for the development of a framework for dealing with land and property matters on which the aid community can agree.

- Lastly, a better informed and coordinated approach can help ensure that land issues are addressed more adequately during return and recovery processes, thereby supporting wider efforts to promote peace and stability. These efforts need to be harmonized and based on partnerships with national actors in order to ensure that responses are on a firm footing locally and do not come to an abrupt end when international actors leave.

Tackling these issues will always pose substantial challenges to those engaged in post-conflict recovery, but the failure to take them into account and develop effective strategies is likely to create problems that will pose even greater challenges.

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