

Land Administration in Post-Conflict Areas; A Key Land and Conflict Issue

Jaap ZEVENBERGEN, the Netherlands and Tony BURNS, Australia

Key words: land administration, post-conflict, land policy

SUMMARY

Access to land and related resources is nearly always an issue during and shortly after a major conflict. Sometimes difficulty with access to land and related resources is one of the causes of the conflict, in other cases it is more a side-effect of the conflict.

There is a growing recognition of the importance of addressing land issues early and effectively at all stages of the humanitarian response to a post-conflict situation. Some of the land-related challenges that arise in post-conflict situations include: loss or destruction of property, secondary occupation, landlessness, insecure use or mobility rights and lack of clarity regarding ownership or use rights. Failure to address these issues can create significant obstacles to humanitarian interventions and early recovery responses and, if unaddressed, may contribute to renewed violence.

If land issues are to be recognized, put on the agenda and addressed from first response to a post-conflict situation into early recovery basic knowledge of land issues is required by those in the field. Those involved in first response and early recovery are typically humanitarians deployed by UN agencies, the Red Cross/Crescent organization, donors and specialist NGOs. These individuals need to look at a broad scope of issues and typically do not have a background in land issues. On the other hand land professionals have little experience with and capacity for adequately providing assistance in post-conflict situations. The variety of expertise needed to cover all key issues and the tight time frames typically involved present significant challenges.

UN-HABITAT has been working closely with different partners such as the “Housing, Land and Property Group” of the Protection Cluster and the “Early Recovery” Cluster in Geneva, as well as with the “Framework Team” in New York to develop appropriate tools and guidelines for different target audiences as part of a broader strategy to strengthen the international community’s capacity to address land issues in post-conflict situations.

The authors have contributed to some of this work and the paper will review key land issues that typically arise in post-conflict situations, give an overview of the tools and guidelines being developed, and suggest what we as land professionals should contribute to the efforts in addressing the land-sector challenges that arise in post-conflict situations.

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1. INTRODUCTION

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There is a growing recognition of the importance of addressing land issues early and effectively at all stages of the humanitarian response to a post-conflict situation. Some of the land-related challenges that arise in post-conflict situations include: loss or destruction of property, secondary occupation, landlessness, insecure use or mobility rights and lack of clarity regarding ownership or use rights. Failure to address these issues can create significant obstacles to humanitarian interventions and early recovery responses and, if unaddressed, may contribute to renewed violence.

If land issues are to be recognized, put on the agenda and addressed from first response to a post-conflict situation into early recovery basic knowledge of land issues is required by those in the field. Those involved in first response and early recovery are typically humanitarians deployed by UN agencies, the Red Cross/Crescent organization, donors and specialist NGOs. These individuals need to look at a broad scope of issues and typically do not have a background in land issues. On the other hand land professionals have little experience with and capacity for adequately providing assistance in post-conflict situations. The variety of expertise needed to cover all key issues and the tight time frames typically involved presents significant challenges.

In this paper we introduce in par. 2 the complex relationship between land and conflict, including issues related to land tenure, HLP Rights (Housing, Land and Property) and the Pinheiro principles on restitution. In par. 3 we move into the effects conflict usually has on the land administration system and how to assess the situation. In par. 4 we describe land administration activities after post conflict situations, including lessons from recent interventions around the world, strategies forward and options for action. In par. 5 we talk about the different actors that need to deal with land issues, from early responders to land experts. UN-HABITAT, especially with the “Housing, Land and Property Group” of the Protection Cluster and the “Early Recovery” Cluster has been working on the development of appropriate tools and guidelines with these different actors as target audiences, as part of a broader strategy to strengthen the international community’s capacity to address land issues in post-conflict situations. In par. 6 we make some concluding remarks.

2. LAND AND CONFLICT

2.1 A Complex Relationship

Throughout history, conflicts have been waged over land. Countries have gone to war over territorial disputes, boundary disputes and the illegal occupation of land. Today, however, the nature of conflict has changed. Rarely do armies square off across borders. Since the end of the Cold War, conflict has moved inside national boundaries; civil wars and insurgencies are much more common today than wars between states. While land remains a central driver of conflict, the relationship between land and conflict is growing more complicated. On the one hand, the relationship seems fairly clear: land issues can contribute to the outbreak of conflict; land and natural resources can fuel and prolong conflict; and, if unaddressed in a post-conflict setting, disputes over land and natural resources can undermine peace and lead to renewed conflict. At the same time, it is also true that not all land disputes lead to violent conflict. (UN Habitat e.a. 2009).

At least four systemic factors contribute to transforming land issues from the realm of dispute into conflict and war. First, unresolved historical grievances related to land and natural resources. These can include previous war or conflict, occupation, colonization or displacement. Second, uncertainty over land rights and insecurity of tenure, if it becomes generalized or widespread, can increase land-related tensions. Third, the quality of land governance, particularly the capacity of institutions responsible for dispute resolution, is critical to determining whether disputes degenerate into conflict. Finally, it is the politicization of land issues that can accelerate the shift from disputes to conflict and war. There may be historical grievances, there may be insecurity of tenure and weak land governance, but if there is good will and confidence in the system, disputes can be resolved. When this confidence breaks down, land issues can be manipulated for political ends.

As much as land issues may contribute to conflict, they can also contribute to peace. Addressing land issues early and effectively can reduce disputes, prevent conflict and, in a post-conflict context, make an important contribution to state- and peace-building. (UN Habitat e.a. 2009).

Land (and/or resources) related conflict can be an issue between opposing groups, as well as between individuals. A constant tension can also be found between private land and governmental or communal land, particularly in frontier states or traditional areas undergoing significant economic development. Lack of tenure security can be found in most cases even before the conflict. Weak land administration systems (LAS) and dispute resolution mechanisms often exist before the conflict and these systems are often further weakened during the conflict.

2.2 Land tenure issues

Many land related issues play up during and after a conflict. Important issues relate to access to land and its resources (discussed below), as well as to the land administration systems that support tenure security (or at least try to). Land can be part of forced transactions during the

conflict and access to land can be a critical issue immediately after the conflict. Furthermore there are the issues related to the rights of people who have been forced to leave an area during conflict and upon return want these rights restituted.

Forced transactions

During a conflict era, and also immediately after a conflict, people might be coerced to sell certain properties by those with more power. The powerful might even 'formalize' such transactions in such a way that they are reflected in the land records. Furthermore the powerful (groups) might manipulate the land records outright. Sometimes the end of the conflict might include a change in those that are powerful, and both the coercion and manipulation might happen again (but with other beneficiaries). Countries like Afghanistan and Timor Leste have gone through several waves of this in a few decades. The land rights of people that have left or are leaving the area (seeking refuge elsewhere or being forced out) are particularly vulnerable to such coercion and/or manipulation. This of course holds for actual use and occupation of houses, land and property, but can also affect the land records in areas where the land administration system is more or less in place. Such transactions shall not be recognized in accordance with Pinheiro principle 15.8¹ (COHRE 2005), see below.

In a situation of massive population movement, secondary occupancy of houses owned by absent right holders may occur. This might be a coordinated temporary allocation, but can also be more in the form of land grabbing or 'self justice' by different groups.

Emergency occupation of land

Emergency camps and spontaneous settlements of internally displaced peoples (IDPs) are likely to occur near larger urban centers. Normally there is not enough time for physical planning and negotiation with those that hold land rights to the land, although international relief agencies particularly try to attend to this. Often these settlements occur on government land, un- or under-used land or communal land with little to no formal tenure arrangements. This in itself can create (new) land disputes or rekindle dormant ones, especially when benefits such as lease payments are being paid out to just one of an array of claimants.

Furthermore (re)planning is often needed due to damage and urbanization (that tends to be speeded up), and decisions made on the relocation of groups that cannot (or do not want to) return.

HLP-rights

Although it is not always crystal clear when an area has moved into post-conflict, the formal end of many conflicts includes a treaty or peace agreement. Sometimes these include some paragraphs related to land issues, but often the issue is not specifically addressed. Displaced people will invariably try to claim or reclaim access to HLP during and after a conflict. This process generates further tension within and across communities, whether in areas of origin, current displacement or upon return or settlement elsewhere. At the earliest stage of displacement during activities such as registration, profiling and surveys of the intentions of displaced persons one should gather as much information as possible concerning the HLP

¹ 15.8 States shall not recognize as valid any housing, land and/or property transaction, including any transfer that was made under duress, or which was otherwise coerced or forced, either directly or indirectly, or which was carried out contrary to international human rights standards.

situation in the area of origin. Even within rapid surveys or accelerated registration processes, a few simple but strategic questions can identify immediate protection issues today as well as constraints to achieving durable solutions in the future. Such information can include area of origin and living arrangements pre-flight, prior arrangements for access to land and property (individual or family, statutory or customary ownership, pastoral rights, social tenancy, rental, etc.); possession or absence of supporting documents, and any reports of property destruction or occupation.

Many land issues are highly political, such as the questions whether ‘decisions’ by different administrations (which can have changed during the conflict and can include different factions, short-lived governments, occupational forces, warlords and international troops) related to land are valid, and which hierarchy in time and groups are attached to factual occupation and residual rights, as well as what hierarchies in evidence (written documentation, other paper trails, oral testimonies) should be applied. Each choice will have certain groups that stand to lose and others that stand to win. HLP-rights (Housing, Land and Property), especially the right to restitution for those that were displaced, need to be interpreted carefully in the light of the events as they transpired. When considering return, displaced individuals often base their decisions largely on whether they will be able to reclaim their HLP and thus rebuild livelihoods; after return, their attempts to reclaim assets may lead to renewed conflict.

The Pinheiro Principles

The normative framework for addressing housing, land and property rights in the context of displacement is summarized in the 2005 Principles on Housing and Property Restitution for Refugees and Displaced Persons (COHRE 2005). Known as the “Pinheiro Principles”, this document is not a new international treaty but rather a compilation and restatement of existing rights based in international human rights and humanitarian law. The Pinheiro Principles reaffirm that all displaced persons—whether internally displaced or refugees, and whether or not they return—shall be protected from arbitrary and unlawful deprivation of any housing, land and/or property, and retain the right to have such property restored to them or be adequately compensated. The Pinheiro principles make some references to land administration issues as well.

3. STATE OF LAND ADMINISTRATION AFTER A CONFLICT

3.1 Effects on the Land Administration System due to Conflict

Here we will focus on the assessment and some lessons concentrating on land administration as a component of wider issues. Land administration is about managing land and information about land. It is about the tenure, use and value of land, respectively supporting tenure security (ranging from protection against eviction to underpinning an active land market), land use planning and monitoring, and (real estate) taxation. Land administration deals with the humankind to land relationships, which vary according to the different circumstances and are influenced by cultures, legal systems, geographic circumstances and economic and political power balances. These circumstances are prone to constant modifications all over the

world, but of course these dynamics are much more prominent during and shortly after conflicts.

Land administration systems can suffer in several ways during a conflict. The most obvious blow follows from the loss of staff and records.

Staffing

Staff can be killed, (forced to) leave the area or not be able or willing to return to their jobs within the LAS. In all cases it is important to quickly identify available experienced staff and try to get them back to work as soon as possible. Problems might arise with staff belonging to a previously dominant group that has lost much of its power, particularly where another group, which before had little or no access to government positions and/or services (like land administration) is now dominant. Most land administration staff are professionals with specific expertise, and except for the (top) managers their positions should not be political, but this depends much on local circumstances. In Kosovo for instance, in the years before the violent conflict, many Kosovar staff disappeared from the offices, but were able to return in the post-conflict era. Serb staff in general had left the area by the time the conflict had ended and except for a few regional offices would not have been in a position to regain public trust.

In a post-conflict environment it is nearly inevitable that not enough of the needed staff levels will be available. Therefore capacity building is an immediate concern. This has to start pragmatically by (re)training people to perform routine activities, but preferably also sending away younger staff on more extensive training programs (including Master programs abroad, such as land administration courses at KTH Stockholm, University of Melbourne, TU Munich or ITC). Land administration is a 'long breath' activity, and it is tempting to think only of the short term needs, but to (re)establish a sustainable system, very early on long term training is also needed. Experienced staff that are available should be wisely used to train and support the staff with limited if any job training that are assigned post-conflict. These experienced staff should work on complicated cases themselves and support the less experienced staff who would be assigned routine cases. Ad hoc training for identified gaps (e.g. related to new technologies, changed legislation or new tasks, e.g. related to restitution) should be organized early on so as to disrupt ongoing work as little as possible. Development of reusable training materials and training the trainers, as well as flexible delivery of training are ways to cope with this. Many land administration systems suffer from lack of cooperation between contributing disciplines (such as land surveying/geomatics, land law, planning, real estate economy and IT), and in a post-conflict situation it is even more important that these disciplines work together. This can be stimulated by awareness building of each other's contribution and interdependency via workshops, visits to each others' offices and even via study tours to other countries. In most countries the professionals contributing to the land administration system are not limited to government agencies. Private practitioners, such as land surveyors, land lawyers (conveyors, notaries), valuers and planners, might also have a vital role to play. Care should be taken that not only the staff of the governmental offices, but also those in private practice are offered (re)training to prevent gaps emerging within the system.

Land records

Land records exist in many sizes and shapes and differ in their practical impact, their level of authoritativeness, their formal legal meaning and their acceptance by different dispute resolution institutions (including the statutory courts). During conflicts and immediately thereafter land records face a number of threats. They run the risk of being damaged or even lost due to the hostilities, due to random violence directed at government offices or even targeted violence to land offices (like in 1999 in Timor Leste). Fully paper based systems are even more vulnerable since no formal backups usually exist. However it is very rare that only one copy of a document exists or even that the information is only contained in one document. Both formally and informally there are usually copies or related records around, be it with the risk of being of a lower 'value', less reliable and/or more easily falsified.

On the other hand, especially during less stable times, people tend not to rely on one system, and vary the mechanisms they rely on and apply when searching for tenure security, documenting their transactions or seeking to resolve disputes. (see e.g. Barry 1999, Barry and Fourie 2002, Augustinus and Barry 2004).

Land records can be taken away by retreating powers when they are forced to leave an area, or be hidden with good or bad intentions. Kosovo is a case in point. The retreating Serb Army took part of the land records from Kosovo with them, whereas some other parts of the records were hidden in Orthodox monasteries. There are other cases: a copy of the Ottoman records of Palestine rests in the UN buildings in New York; the (Indonesian) head of the Dili land office took the main books into safety during the violence in Timor Leste. In all cases there is however no (easy) access to the records. Land records can be simply ransacked or partly destroyed. Increasingly salvage of paper is possible from certain forms of damage (a substantial part of the water damaged records from Aceh after the tsunami were able to be retrieved via a deep-freezing approach; whereas paper with smoke and limited burn damage can also still be scanned/copied in certain cases). In all these cases, as well as when offices are ransacked, it is important to index the salvaged documentation, which can at times be an improvement over the original situation (see e.g. the LTERA project in Afghanistan). The priority and effort that will be given to this kind of salvage operations should be justified by the importance these documents have in the de facto system of tenure security, also in relation to other sources of the same or similar data. Scanning and indexing land records, even when they are not damaged, is often a first step to improve a LAS, since in many cases the conventional system of record keeping has not been meticulously undertaken, and the archives are in some state of disarray.

Land records, as described in paragraph 1, are in many developing countries rather limited in their impact, which also limiting the devastating impact of their destruction (compare Fitzpatrick 2001). They are limited in the areas they cover (e.g. only the formally developed upper-class districts of the cities), and even in such areas in numerous cases the updating might have been weak, meaning that the present right holder is not reflected on file. In such cases it might still be useful to have access to the land records, when the present right holder has (informal) documents supporting the link between the last right holder on file and him or her.

Other records, like receipts of payment of municipal taxes and utilities bills, etc., can be evidence of long-term occupation. In certain legal systems this leads to full land rights after passage of a certain time period through rules of prescription, or at least strengthens the claims of a 'squatter'.

3.2 Assessing Land Administration

There is a great variety in land administration systems around the world, especially with regard to the extent and nature of the segments of society covered, and the level of completeness and up-to-dateness of the records, or in other words, the impact land records have in a society (which for instance was limited in Timor Leste, see Fitzpatrick 2001).

It is very important to make an assessment of the status and impact of land administration in an area early on after a conflict has ended. In many areas worldwide this impact is limited to small parts of society, even without conflict. Prolonged conflicts are sure to have skewed the land records in one way or another, including land right holders taking multiple avenues to protect their land rights as much as possible. Like with dispute resolution mechanisms, parallel tenure arrangements and parallel land administration institutions are likely to be around and used by the people. Sometimes people belonging to different groups (even before a violent conflict) make use of different parallel systems (e.g. the two sides in Mozambique's war employed quite different approaches to local communities and land administration, which in several ways were purposefully different from the opposition (Unruh 2004)), but often even the same people use different systems in uncertain times to maximize their tenure security (see before).

It is important during the post-conflict assessment to find information on a number of things, some of which are not always easy to find out, and in nearly every country not uniform throughout the country. This information includes:

- relevant provision(s) in constitution on land (if any)
- laws dealing with land tenure arrangements
- laws and regulations dealing with land registration and/or wider land administration
- land policy(-ies) and their impact
- organizational structure of land administration actors (public and private sector), and what capacity is (still) available, in staff, equipment, etc.
- indication of the part of country (and specific areas) covered by the formal system
- indication of quality of the land records (up-to-dateness, level of indexing (including graphical), completeness, accuracy, ..)
- indication of case load of land related court cases, and time it takes to reach a verdict
- indication of trust that people (especially land right holders) have in the formal system
- presence of customary/traditional institutions in the area; especially land tenure arrangements, and if so
 - o level of acceptance of those arrangements by the formal sector (national government, local governments, LA actors, courts)
 - o percentage of land under these arrangements

- strength of customary/traditional organizations, esp. in land matters, and the trust the people (land right holders) have in those, for land allocation, land transactions and dispute resolution
- speed of change in the land tenure arrangements and organizations (like individualization of land rights, commoditalization of land, paperization of transactions, record keeping)
- threats of land grabbing of land under this system
- presence of informal land tenure arrangements, and if so
 - level of tolerance/acceptance of those arrangements by the formal sector (national government, local governments, LA actors, courts)
 - percentage of land under these arrangements
 - strength of informal organizations (incl. pro's and con's) compared to the formal sector
 - strength of informal (land) organizations, like local records of land use, and the trust the people (land right holders) have in those, for land transactions and dispute resolution
 - speed of change processes, like slum improvement, formalization/regularization, emergence of 'slum lords'
 - threats of land grabbing of land under this system
- presence of damaged land records in the area; any records totally lost or taken away
- presence of relevant land information with other actors (like local governments, utilities, private practitioners, people themselves)
- strategies of people (perhaps different for different groups) during uncertainty to use multiple channels of seeking tenure security, including forum shopping for dispute resolution

Unless there has been a prolonged violent conflict, there are likely to be (partial) studies around related to land administration. National Agencies, donors, consultants, academics and students are constantly studying land matters all over the world. The question is how easily information can be identified.

Special care should be taken to find out whether customary/traditional or informal practices are around (and even whether they have a particular significance). Formal sector actors have a tendency to underplay the role of these traditional systems. It is not uncommon to find out that for instance staff of a land office or land related university program are only talking and teaching about the formal land administration system, even though their own home is held outside of that system.

On the other hand it can be observed that customary land tenure arrangements are changing, especially in areas where land pressure is mounting (such as peri-urban areas, areas with an influx of refugees, areas with natural resources of interest, etc.). The position of customary leaders is also changing (sometimes they become more professional (literacy becoming more important than lineage), but just as easily they can become a land elite (treating communal lands as their private property)). These change processes are usually stronger during and shortly after conflicts. A 'nostalgic' view on the customary (land) system is also a trap that should be avoided.

It is important to have a comprehensive overview of the circumstances related to land administration to prevent isolated, and often overbearing, interventions in relation to a part of land administration. Copying of a land administration approach from a Western country, for one, is not a good starting point.

4. LAND ADMINISTRATION ACTIVITIES AFTER POST-CONFLICT

4.1 Lessons learnt of activities

Risk of overly complex approaches

Land administration is a complex affair, involving many stakeholders, and combining numerous disciplinary approaches. Getting it right is a very challenging undertaking in any developing country, let alone in a post-conflict situation.

The design and roll out of a land titling project, the most common type of project within the sphere of land administration, takes a lot of effort, both in terms of time and money. For projects covering a whole country or at least a number of provinces, one often has to think of decades and tens of millions of dollars. Although first steps in such a direction can already be set soon after the end of a conflict, the bulk of the work and needed expertise are outside of the scope of programs to address post-conflict situations. Options and opinions vary, and there is also disagreement in practice and in the literature concerning how and when to proceed. For post-conflict situations we recommend a step by step approach that is more concerned with reaching as many people as possible, than with legal or technological optimization. Even in the Western Balkans (especially Bosnia-Herzegovina and Kosovo) where land records existed before the conflicts emerged, their impact had its limitations, see for instance UN Habitat 2007.

Delay in tackling land administration

In case of other recently ended conflicts, (international) land administration initiatives were in general not taken on from the beginning of the post-conflict period. It usually takes a while before the importance of these issues came to the forefront and specific expertise is called for, and actual work started. Of course on the ground people somehow have to deal with land issues, and sometimes pre-conflict institutions continue to hang on (the resilience of Afghan land agencies (including rescuing records from the military) is reported in Stanfield 2005), or local solutions emerge as government functions are being set up (like presently in a number of Somalian cities). Extensive land administration activities have been and are currently undertaken in a number of post-conflict areas, of which Kosovo, Cambodia, Sierra Leone, Liberia, Côte d'Ivoire, Sudan, Bosnia-Herzegovina, Timor Leste, Afghanistan and Rwanda are the most reported ones. Several approaches have been implemented, including locally based or initiated approaches, and different agencies, donors and experts have given varied advice. Land administration is only one component of wider land issues, which tend to have a very political nature.

Part of wider land policy

At the national level, especially when formulating land policies, drafting land laws and (re)organizing land agencies, many stakeholders are involved, and things usually do not move very fast, nor necessarily in a coherent manner. Restitution of land rights and land reform are issues that have both potential winners and losers, and also the introduction or re-design of a LAS tends to change power relations (where some stand to lose certain benefits). Stanfield mentions a number of constraining factors that could have occurred during LTERA when revitalizing the land record archives in the Afghan courts by structuring, scanning and indexing the records, (although they did not occur in this case):

- Risk of resistance from those being able to find documents before;
- Risk of maintaining enough technical qualified staff with the low salaries;
- Risk of resistance by powerful people who had been able to manipulate the system in the past. (Stanfield 2005, p. 10).

In this case one of the outcomes was a simplification of the procedures, since the courts could do more of the work themselves, could access the records online from the courthouse and less steps were needed to check with other agencies (land offices and municipalities). What those other agencies thought about this was not mentioned in Stanfield's paper.

In many countries (judicial) land records only contain textual descriptions of the land that the registered rights refer to. Such an approach makes it very hard to get an overview of the humankind to land relationships in a whole area (e.g. a city or village), which would be needed for using the information also for (urban) land management and real estate taxation. Such purely textual records also have only a limited positive effect on the prevention and settlement of boundary disputes.

The Afghan LTERA project had the intention to create parcel maps and land records of informally held areas. Under the name 'land clarification' a number of pilots (mainly urban) were run in cooperation with the municipal authorities, but somehow without the approval of Central Cadastral Authority (AGCHO), and thus these parcel maps did not gain a formal position. This kind of problem with the position and role of different agencies within the country, and their varying relationships to international donors, is not uncommon and of course has a huge impact on project outcomes. It limits the level of authoritativeness of certain project outcomes, and also is a threat to the sustainability of the project outcomes after the project has ended.

Participatory mapping/inventory

In the early post-conflict era it may be necessary and useful to collect information from different sources and index it in different ways, including geographically even when there might not be an official (legal) mandate to do so. Innovative land tools to deal with such 'inventory' instead of full fledged land registration are under development, including STDM (see Augustinus e.a. 2007).

Such inventory like approaches are also being applied in certain rural areas in Afghanistan where local committees indicate the land rights within the community. Aerial imagery is used to map the rights, which include more individual as well as communal (and even public)

rights of access to land. The imagery is sometimes already available (acquired for other purposes), and in certain pilot areas was collected by helicopter and processed locally within a few weeks. In Timor Leste a 'claims register' is being set up supported by mapping based on aerial imagery.

Feeding inventory information into the (formal) system

Such participatory approaches were also applied in Aceh soon after the tsunami in 2003 (the area combines elements of both post-disaster and post-conflict). It started as very local village mapping exercise, largely undertaken with NGO support. Later guidelines were developed to support it, with input from and approval by the Indonesian national land agency. The original idea was that the information from the village mapping would be the main input for an adapted process of adjudication to result in formal registration (and the whole package received multi-donor support through the World Bank-coordinated RALAS project) (see Haroen e.a. 2006). However, in the end no special legal mandate was given for this approach, and the draft-regulations on which it had been based were never formalized, and the adjudication process reverted back to the conventional, slow and bureaucratic procedures, with very few title certificates being issued when compared to the number of land parcels dealt with by the village mapping exercise.

This is an example of a project to extend a national LAS that had several major challenges, and after nearly 50 years has covered just over a third of the non-forest areas in the country, to a whole post-disaster area in an innovative way. Local records were created during the first period after the disaster, but it became problematic to incorporate those into the 'normal' LAS (certainly at scale). The local records have served a purpose in the immediate post-disaster years, but it is unclear whether they will be kept up-to-date in the years ahead.

Similarly in the Afghan situation the courts usually only accept land rights that have gone through the complicated, formal procedure, even though only a limited part of the country, even in Kabul, is covered by this system, and the system is not really accessible for the poorer sections of society. Innovative approaches for rural areas, but also for informal settlements on the outskirts of Kabul, technically on rural land, seem to be supported by the local communities and local administration. But what their status is when a national (land) agency would claim such land as public land, or when someone, somehow, shows up with formal land documentation is unclear. The present attitude by the courts suggests the right holders stand to lose their land, and often even their livelihood.

4.2 Strategies

Long way to complete records

In the ideal case a land administration system contains all information that is relevant to determine the humankind to land relationship of any particular parcel of land, and that information should be up-to-date, should not contain any contradictory elements, and should be authentic (fully true and acknowledged as such by government, the courts and the population).

It is not easy to reach this stage (and taking all kinds of (public) restrictions into account no country has reached it), and one should take a step by step approach in the direction of this ultimate goal. Certainly in post-conflict areas we recommend the first steps to be small.

Start with simple support

Existing land offices in developing countries, certainly after a conflict, are nearly always lacking appropriate office equipment. Good filing cabinets, also for maps-sheets of larger sizes, are often not around in sufficient numbers. Also simple cards and matching boxes for paper indexing systems are typically in short supply. A supply of desks, chairs, paper (also the larger sizes again), pens and pencils and the like are also usually in short supply. Donating a base quantity of such materials will help the offices perform at least the core of their pre-conflict tasks, which is worthwhile when they are seen as relevant by (parts of) the society. It also helps to start building a relationship between the international community and the land agencies. Perhaps a few simple desktop PC's and a copier can strengthen this relationship further, assuming electricity is no big issue.

This type of material support also helps the land offices fulfill Pinheiro principle 15.5² (COHRE 2005) which says that copies of relevant documents should be made available (free or at a low charge).

Bulk of the cases versus complicated cases

From the point of view of land administration, it is an issue to find the right balance between dealing with the bulk of the cases, and making sure each special situation is covered. Especially when systematic approaches (entering a whole area into the system at once) are applied, this is an important balance to keep in mind. A notion similar to the IT-development '80-20' rule should be kept in mind (this rule assumes it takes 20% of the effort to deal with about 80% of the cases, and 80% of the effort to deal with the remaining 20%). And although land administration systems aim at near complete cover, that is once again something to be reached step by step. If we can already increase the tenure security of 80% of the people quickly, we should not wait to be able to deal with the rest, but we should not leave them behind for ever either.

Assuming that the pre-existing land records are limited in the area covered, not really up-to-date and/or partly destroyed, the situation is not very different from one where a new system has to be set up from scratch. The pre-existing information is best seen as one form of evidence, but not as more than that. Action should be taken as soon as possible to prevent (further) manipulation of the records, and after it has been determined that they are worth it, indexing and/or scanning should be undertaken. Normally, however, these records only deal with certain groups of the society, and care should be taken not to focus too much on these records, compared to the problems of those having informal tenure and/or undocumented land rights.

² 15.5 States and other responsible authorities or institutions should provide, at the request of a claimant or his or her proxy, copies of any documentary evidence in their possession required to make and/or support a restitution claim. Such documentary evidence should be provided free of charge, or for a minimal fee.

Dispute resolution

Land issues in post-conflict areas include conflicts and/or competing claims to the same land. Special attention should be paid to dispute resolution in relation to this, especially as part of the process of dealing with restitution claims. It is important to connect the two. The dispute resolution mechanisms should use the information that is available (either from the pre-existing LAS or from the new land information system), but it is vitally important that the outcomes of the dispute resolution are added to the information available in the land information system. Although a decision is still pending, it is very useful to record the information and the status of the dispute so that the information is publicly available and the LAS can be quickly updated once the dispute is resolved. The same holds for restitution claims, as soon as they are made and after the outcome of the claims settlement.

Limit the number of goals in the first phase

A step by step approach is recommended, and includes prioritizing the LAS goal(s) in the short to medium term. These may include:

- improving land tenure security
- regulating the land markets
- implementing urban/rural planning
- providing a base for land taxation
- managing natural resources

Ultimately all are desirable, but one has to be realistic and take a phased approach and focus on what is most urgent in the specific circumstances.

Land information systems for tenure security

In the immediate post-conflict situation supplying tenure security to everybody might be a more logical first goal, and that would call for a different approach than the one above. Reliance on multiple sources of information and evidentiary documents and a phased development of a land information system, regardless of the exact formal meaning of these steps and tools should be the first step. As much as possible this should be undertaken in harmony and cooperation with the formal institutions to avoid the creation of just another (parallel) structure that is primarily adding another layer to the confusion.

Some kind of land market will always emerge, which can often be best supported by a deeds based approach. The transaction documents, where possible and realistic in some kind of formal(ized) way, should be witnessed by a relevant (land) administration office. Furthermore the information from these documents ('deeds') should be added to the land information system. However, the risk whether the seller was indeed entitled to do so, and whether a (restitution) claim might still emerge, should not be the concern of the administration, but of the buyer(s), who of course should be made aware of these risks. Often local buyers, however, have access to local knowledge which will help them to make a sensible decision with regard to this risk.

At present work is ongoing in Timor Leste to set up a first phase land records system that collects all claims and also maps these claims. Although primarily a claims register, the

register is open for inspection by everybody, and can thus also be used for inspection by potential buyers (and even creditors). In the areas covered to August 2009 the percentage of land without any overlapping claims was 91%, even though there is a general notion that ‘all’ is contested in Timor Leste due to the prolonged conflict, with different phases³.

4.3 Options for Action

Sporadically (re)introducing titles

Where support of the land market is a major goal, one should realize that title guarantee demands thorough adjudication, investigation on transfer (and accurate boundary survey), and that undertaking this via a systematic process will freeze the land market for an extensive period.

Such a system would mean that due process is needed in adjudication and processing transactions. It is important that claims (especially restitution) are settled, and one should remember that there typically is (or has been) legal ambiguity and therefore there is a need for alternative hierarchies and thorough (judicial) review. Special measures should be taken to protect those who are absent from the area, for instance by public notice and a waiting period before claims can no longer be made.

To get to ‘marketable title’ one should take a sporadic approach (case by case), and pass (large parts of) the costs on to the parties that want to transact.

Alternative hierarchies of evidence

On every input into a land administration system (and most prominently on the first entry), the question is what kind of evidence/proof is needed and available. This is complicated in a post-conflict situation, since different parties subscribe to parallel realities of the truth.

Documentary evidence might be non-existent, might be wholly or partly damaged, might be (near) inaccessible, might only be available in non-authoritative forms, might only be derived from other data-sets (like tax or utility payments), might be contradictory (either due to the different realities at different times or due to fraudulent activities). Under stable circumstances the problem caused by the above is relatively limited when the legal system accepts the notion “possession is nine tenths of the law”. In post-conflict areas that approach collides with the right to restitution for different kinds of right holders that are not currently in possession. A different approach to the evidentiary hierarchy is needed than under normal circumstances. Nevertheless to prevent too much litigation, it might be possible to combine a number of sources for a first administrative round of determining the right holder, e.g. when the same name appears in several pre-conflict data-sets, or when no competing name emerges (this approach was taken in Bosnia-Herzegovina). Of course in all such cases a simple review process should be available when additional evidence emerges (e.g. presented by another claimant). Unfortunately different claimants might have acceptable claims by these standards

³ Review undertaken by Tony Burns in August 2009 at which stage 2,614 parcels and 2,822 claims had been recorded with a total of 278 disputes recorded or about 9% of claims, of which 5.3% were disputes with the state and only 3.7% were disputes between private individuals or organizations.

from different eras. Based on principles of international law, clear instructions to deal with such cases should be drafted to avoid prolonged disputes and opportunities for manipulation. For the more complex cases 'closure' is more important than speed, but this should not hold up the straightforward cases.

Title or deeds registration

The discussion about introducing a title or deeds based registration system is another contested issue in land administration literature (see e.g. Zevenbergen 2002). However, more authors accept the benefits of a deeds based approach under the special circumstances related to post-conflict than in general. It fits better with the soft system approach of people using different institutions in conflict times (Augustinus and Barry, 2004). Kaufmann (2000, quoted by Batson 2008) agrees that during a transition period the book-keeping or "accounting" side of the cadastre is most important. Batson (2008) adds that we should realize that title systems have only been introduced in developed countries over a long time (centuries in Western civilization), and that the conditions to repeat this in months are not present in the developing world, certainly not in a post-conflict era. In his words, supporters of a deeds approach, state "A deeds-based model seeks to rebuild a post-conflict society by taking advantage of, and building upon, the integrity of centuries-old customs of recording land exchanges. The goal of a deeds-based model is to map the relationship between people and their land as quickly as possible -disputes, ambiguities, and all- and make this information available to local leaders, officials, judges, and citizens so the competing claims can be adjudicated and local social structures can be restored, without waiting for the central government to develop a corruption-free and competent public administration." (Batson 2008, p 88). The advantages of a deeds approach in post-conflict areas are also given in (Zevenbergen & van der Molen, 2004), and recognized by McAuslan, who feels that they moved into full fledged titling too quickly in Rwanda and Afghanistan (Mc Auslan 2005).

Geographical indexing

One of the reasons for confusion in the debate on title versus deeds relates to the notion whether the systems are person or property based. Deeds systems are traditionally person based, with textual property descriptions. Clearly a deeds system will be much more successful and usable for land management when it is supported by a geographical index, like a cadastral map, and several 'improved deeds systems' operate in such a way. Such an index can be established rather quickly when use is made of aerial imagery and notions like 'general boundaries', which follow terrain features instead of requiring neighborhood consent, corner marks and (accurate) boundary surveys. Compare the work being done in Rwanda (Sagashya and English 2009) and (not post-conflict) recent testing in Ethiopia (Lemmen e.a. 2009).

The kind of land information system suggested before could easily fulfill both the role of geographical index ('map') and administrative index (searches on names, document numbers, property identifiers) to support a deeds based approach.

The system setup during LTERA appears to fulfill these roles in a correct way. (unfortunately 'buy-in' seems to be limited to the court-based land registry function, thus missing out on some of the other functions, at least in relation to the formal mandates of stakeholders).

Social Tenure Domain Model (STDM)

The Social Tenure Domain Model (STDM) is a pro-poor land administration tool. It is based as such on the Land Administration Domain Model (LADM, currently under consideration at ISO to become a standard). It covers also land administration in a broad sense including administrative and the spatial components. Traditional (or conventional) land administration systems relate names (or addresses) of persons to land parcels via rights. In the STDM, an alternative option for this is to relate personal identifiers such as fingerprints to a coordinate point inside the land in use by that person, via a social tenure relationship. Depending on the local conditions, there can be a variety of social tenure relationship types and other rights. The STDM thus provides an extensible basis for efficient and effective systems of land rights recording.

The STDM describes the relationship between people and land whereby it strives to record all forms of land rights, social tenure relationships and overlapping claims or rights over land. STDM is designed to support land rights recording in areas where regular or formal registration of land rights is not the rule. That is, STDM makes it possible to record rights which are not necessary registered rights, nor registerable, as well as claims that need to be adjudicated both in terms of the 'who', the 'where' and the 'what' type. The focus is on recorded rights (or social tenure relationships) and not only registered rights. This means recording personal land use rights and not only real rights – this implies that real rights are included. STDM handles the impreciseness and possible ambiguity of the description of the rights, both in terms of 'who', 'what' and 'where'. STDM, therefore, records not only registered, but also the range of rights in the continuum simultaneously; e.g. there can be, apart from formal rights: non-formal and in-formal rights, customary types, indigenous rights, tenancy and possession. Financially, STDM records options such as group loan and micro credit.

Similarly, STDM records the types of person ('who', e.g.: a group with non-defined membership, a group of groups, natural persons, companies, municipalities, co-operatives, married couples, ministries, etc.). STDM also records a range of spatial units ('where', e.g. a piece of land which can be represented as a single point – inside a polygon, one point – street axes, a set of lines, as a polygon with low or high accuracy coordinates, as a 3D volume, etc.). (Zevenbergen e.a., 2009; papers in the special session on Social Tenure Domain Model at FIG Sydney).

The claims register presently being set up in Timor Leste to a large extent follows the same approach, even though it is set up with the clear intention of being a first step towards more conventional land administration to follow soon.

Geospatial information (GI)

Many different international (and national) agencies are in need of (overview or index) maps after the conflict. Increasingly satellite imagery is available for this, often with high resolutions. If a very high resolution and more accuracy are needed orthophotos are being made relatively quickly as well these days. The resolutions needed for land administration still come at a considerable price, but combining data acquisition by the government for different usages might be a way to deal with this.

Such imagery can be the backdrop of participatory mapping approaches (like in the rural pilots in Afghanistan and Rwanda), as well as input for a land information system like the STDM. Even with lower resolutions it helps to provide overviews of important data sets such as public land, and when the dates of data collection are known it can be used as evidence for cutoff dates (especially for the legalization of buildings built during a certain period). Older imagery can also help to support claims relating to restitution with regard to whether certain plots were built or unbuilt and whether they were used or unused (and to some extent also the type and intensity of use) at a certain time. It might be worth checking the available imagery before fixing formal (cutoff) dates to avoid a lot of evidentiary confusion during implementation.

5. ROLE OF LAND PROFESSIONALS

5.1 Early responders

The first responders to a post-conflict area deal with urgent issues like medical attention, supply of drinking water and food, and (emergency) shelter. Even though this touches upon land issues very quickly (where to put distribution points, set up emergency shelter/camps, etc.), land issues only slowly come to the radar. The Quick Guide on Post-conflict land issues has been developed to help those early responders to be aware of issues and the possible downstream consequences of choices made in this early phase. The target audience is humanitarians with limited land background, which are supplied with clear and simple guidance for the immediate post-conflict environment from a “Do no harm” perspective, and set out references for further information. The Quick Guide was reviewed during a technical workshop in June 2009 in Geneva, organized by GLTN, UN-HABITAT, the Cluster Working Group on Early Recovery (CWGER) and the Protection Cluster HLP Group.

More extensive descriptions from different perspectives and ways forward can be found in publications by e.g. FAO (Unruh 2004), USAID (2004), OECD (Pons e.a.) and the forthcoming Guidelines for Land experts working on crisis situations. These guidelines are aiming at more specialized people, like national land experts and humanitarians with a background in land, and supply a detailed analysis of land issues and operational and programming guidance for different contexts. Important input for these guidelines was given during the technical workshop “Land and Conflict issues and tools” in September 2009 in Nairobi, organized by UN-HABITAT, GLTN, the Cluster Working Group on Early Recovery (CWGER) and the Protection Cluster HLP Group.

5.2 Land experts bias

Unfortunately, land professionals in most countries are typically trained in one of the contributing disciplines and not all of which have developed a wider overview of the issues. Such an overview calls for a more interdisciplinary approach which is increasingly included in the training in a lot of countries. In both cases the bulk of training is focused on the formal, statutory legal system and related conventional land administration approaches. But these are

rarely available for the poorer segments of society in developing countries at the best of times, let alone after a conflict. The speed needed for a first cut at restoring normality, supplying security of tenure and allowing for a land market to (re)start calls for more innovative approaches that can later grow towards these formal systems. Assuming that reaching all in society is considered a worthy goal for land professionals and for the land administration systems they contribute to, this means a change in mindset for many of us. That is not easy to do overnight, and FIG, as the umbrella of national land surveyors associations, has been promoting this. Both in the training of young students in our field, as well as in CPD activities this broader mindset needs to be conveyed.

Only with such a mindset is it useful to learn more in detail about the specifics of post-conflict land administration, which to a large extent is a ‘pressure cooker’ variety of the challenges phasing land administration in much of the developing world.

Nevertheless academic institutions should focus more on post conflict issues in their land related study programs, as well as in their research. Access to areas for case studies is often difficult in the earlier stages, and therefore clear documentation via reports and papers by those involved on the ground are highly appreciated. FIG events have been an important platform for such writings.

6. CONCLUDING REMARKS

There is no doubt that land issues contribute to the emergence of conflicts in many cases. Better dispute resolution mechanisms and appropriate land administration systems can sometimes even reduce this risk. Even after conflicts that were not primarily land related, unresolved land issues can rekindle the conflict in due course.

Tackling land issues (early) after the conflict has ended often happens only haphazardly. A more comprehensive approach would be very useful, but calls for the right expertise and attitude by those involved. From the point of land professionals, especially related to land administration, this calls for an open mind to a step by step approach to collecting land information and supplying tenure security. Also special knowledge related to HLP-rights and their underlying problems are important.

Much of this is primarily undertaken in a ‘pressure cooker’ environment that adds complexity to the issues challenging land administration in many developing countries, when trying to reach out to customary and/or informal land holders. A lot of UN related agencies and other international actors are increasingly aware of the need for tackling land issues (early) after a conflict, and it fits the renewed profile of land professionals to pick this up. Both special workshops and writings are needed to stress this and bring knowledge to the active professionals, as well as embedding in generic land administration education and research is needed. This paper is just a very first step to reach those goals.

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BIOGRAPHICAL NOTES

Jaap Zevenbergen has recently become a professor in land administration systems at ITC, now a faculty of the University of Twente in the Netherlands, after many years at the Delft University of Technology which he will leave later this year. He combines a legal and surveying background and has focused on cadastre and land registration for many years in research, teaching and consultancy work. He was involved in preparing the first post-conflict land issues handbook in 2003-2004.

Tony Burns is the Managing Director of Land Equity International, a company that specializes in helping countries develop strong land administration systems. He has a survey and mapping background and has extensive experience working on land administration projects for the World Bank, bilateral donors and governments.

CONTACTS

Prof.dr. Jaap Zevenbergen
University of Twente - ITC
P.O. Box 6
Enschede
The NETHERLANDS
Tel. + 31 53 4874351
Fax : +31 53 4874575
Email: j.a.zevenbergen@utwente.nl
Web site: http://www.itc.nl/about_itc/resumes/zevenbergen.aspx

Delft University of Technology - OTB
P.O. Box 5030
Delft
the Netherlands
Tel. + 31 15 278 4418
Fax + 31 15 278 2244
j.a.zevenbergen@tudelft.nl

Mr. Tony Burns
Land Equity International Pty Ltd
Suite 12-13, 74 Kembla Street
PO Box 798
Wollongong, NSW, 2500
AUSTRALIA
Tel. 61 2 42276680
Fax. 61 2 421289944
Email: tburns@landequity.com.au
Web site : <http://www.landequity.com.au>