



**Housing, Land and Property Rights in Post-Conflict Societies:  
Proposals for their Integration into  
UN Policy and Operational Frameworks  
Expert Meeting  
10 and 11 November 2004 - Geneva**

**Main Issues Discussed and Summary Conclusions**

1. This expert roundtable meeting was convened in order to explore modalities for more fully integrating housing, land and property (hereafter HLP) issues into UN operations in post-conflict situations and to look at the type of activities to be undertaken in this regard during the different phases of an operation. The discussion was structured according to the key themes outlined in the background paper by Scott Leckie, Centre on Housing Rights and Evictions (COHRE), entitled *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for Their Integration into UN Policy & Operational Frameworks*. In addition to this paper, written contributions including those from Daniel Lewis and Clarissa Augustinus of UN-Habitat were provided to Roundtable participants. Participants included 32 experts drawn from Governments, the United Nations (UN) system, NGOs and academia. This document focuses on the main issues discussed during the roundtable meeting and the summary conclusions developed as a result of it.
2. The first section provides an overview of the general themes discussed, such as the need to establish a coherent and comprehensive approach to HLP rights issues within the context of the rule of law and transitional justice in conflict and post-conflict societies. The second section outlines the general principles, which participants agreed should inform policy and operational frameworks, while the third section refers to planning and implementation issues such as dispute resolution and enforcement mechanisms. The final section presents the summary conclusions which participants at the meeting agreed should be used as a foundation for the next steps to be taken.

**General Themes**

**Increasing recognition of HLP rights**

3. HLP rights are indispensable components of the post-conflict peace-building process, essential for the democratization of state institutions. This is increasingly recognised in the international community and within the UN

system. For example, the Secretary General's recent report<sup>1</sup> to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies indicates that the centrality of HLP rights is now firmly established. The report recognizes as an essential component of the rule of law the need for effective legal mechanisms for redressing civil claims and disputes, including property disputes arising in post-conflict settings, as well as the need for restoration of property rights or compensation where this is not feasible.

4. Ensuring that housing needs are met, that property rights are protected, that there is fair and equitable access to land and that equitable human rights based HLP-reforms are implemented contributes to post-conflict reconciliation, economic rehabilitation and sustainable livelihood and helps prevent new conflicts from arising. For example, clear and secure HLP rights allow people to take out mortgages on their property, start small businesses and reengage in the economy, each of which is essential for economic growth. Experience has shown that not addressing HLP issues can undermine peace-building efforts and serve as a catalyst for secondary conflict.
5. Resolution 2002/7 on Housing and Property Restitution in the Context of Refugees and other Displaced Persons adopted by the Sub-Commission on the Promotion and Protection of Human Rights, and the subsequent Progress Report on Housing and Property Restitution in the context of the Return of Refugees and Internally Displaced Persons, prepared by the Special Rapporteur Paulo Sérgio Pinheiro, further confirmed the need to consolidate existing international human rights and humanitarian law standards in order to develop a set of principles on housing and property restitution guiding the development of restitution policies and programmes at the national and international levels.
6. Property restitution thus fulfils various functions, including undoing past injustice and providing an environment which facilitates reconciliation, the return of refugees and displaced persons in safety and dignity, and the achievement of legal clarity.

### **Importance of raising awareness and harnessing political will from the outset of any operation**

7. States may question the feasibility of including HLP rights in peace agreements and operations as a key component of post-conflict resolution and peace-building, as the issues at stake may be perceived as too complex, expensive, discretionary and political.
8. Experience, however, proves that it is far less expensive to address these issues immediately in a comprehensive and systematic manner than to seek to address them retrospectively in an *ad hoc* manner. For example, in Kosovo, under the Housing and Property Directorate (HPD) and its Housing and Property Claims Commission (HPCC) the resolution of each dispute costs approximately \$US 850 from pro-active claim intake in the field through

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<sup>1</sup> S/2004/616, 3 August 2004.

adjudication to final implementation of the decision in the field, while, in Cambodia, the social and financial consequences of leaving property claims unaddressed during the immediate post-conflict period are only now being appreciated.

9. History also shows that disputes over HLP rights often play a central role in conflicts themselves.
10. It is, therefore, vital to challenge these perceptions and garner support from States and other actors among the international community. The momentum created by the Secretary General's report on the rule of law and transitional justice in conflict and post-conflict societies should, therefore, be used to ensure that States will raise HLP issues as a point of rule of law before the Security Council in April 2005.

### **General Principles Guiding HLP Policies and Operational Frameworks**

#### **Need for a coherent and comprehensive approach**

11. Currently, there is no consistent approach or policy framework at the international level which guides the development and implementation of a comprehensive programme for dealing with HLP rights at the national level in a post-conflict setting. Too often these issues, if addressed at all, are dealt with in an arbitrary manner which hinders post-conflict reconstruction and rehabilitation and delays the establishment of the rule of law.
12. The development of a UN policy framework on HLP rights would assist in ensuring that these issues are addressed in a systematic, coherent and comprehensive way and, thus, increase the effectiveness of UN peace-building efforts.

#### **Definition and legal framework**

13. The UN policy framework should be based on existing international human rights and humanitarian law, including those compiled in the draft UN Principles on Housing and Property Restitution for Refugees and Displaced Persons currently under preparation by Special Rapporteur Paulo Sérgio Pinheiro. It is, moreover, important that the policy formed and implemented does not weaken existing human rights principles.
14. HLP rights are not discretionary. They are equally as important as all other human rights and cannot be ignored.
15. There is general recognition of the emerging right of restitution at the international level, whereas the right to own property and the right to adequate housing, to which the issue of access to land is inextricably linked, are generally accepted and anchored in international instruments.

16. However, the precise definitions and understanding of ‘property,’ ‘housing’ or ‘land’ may vary in different jurisdictions. A flexible framework, which allows for appropriate responses to regional and national variations in the understanding of these terms, should therefore be developed in order to account for such variations. It is equally important to use the term ‘Housing, Land and Property (HLP)’ rights to ensure that all residential sectors as well as any land rights are included in the development of plans, policies and institutions addressing the legal and physical conditions in which people in post-conflict societies live. Using the term HLP also ensures that the terminology used in one country to describe the rights possessed by everyone, such as ‘housing rights’, are treated as the equivalent of other terms, like ‘property rights’ or ‘land rights’.

### **Sustainable long-term approach to HLP rights: provision of sufficient resources, particularly funding**

17. Addressing HLP rights in a comprehensive manner is not something which is undertaken quickly or superficially and not without significant resources. There must be acceptance and understanding that this is a long-term undertaking, which cannot be accomplished within a few months. Rather, it must be approached with the long-term objective of developing a robust land administration system that is most compatible with the local reality.
18. Often, there is a gap in funding between the emergency and the development stage of operations in post-conflict societies. By the time development actors are mobilized, most of the funds raised during the initial emergency phase have been spent and they, therefore, have to expend valuable time engaging in fund raising activities rather than focusing on establishing HLP policy and programme mechanisms.
19. Adequate and more predictable funding is critical for ensuring the effectiveness and sustainability of efforts to address HLP rights. There must, therefore, be adequate provisions made in the peace-keeping budget for addressing HLP issues from the very beginning of any operation in such a way as to provide for a sustainable HLP rights framework. Provisions for addressing HLP rights should be incorporated into donor funding agreements with various agencies from inception. In addition, project beneficiaries should be identified and involved from the conception of the programme.
20. To ensure that adequate funding is allocated from the initial stages of the operation, the plan to address HLP issues needs to be clarified in the joint assessments carried out by the UN and the World Bank, as these form the basis for fund raising activities.

### **Application of a gender perspective to UN policy and operational approaches to HLP rights**

21. UNHCR and other humanitarian actors need to be cognisant of Security Council Resolution 1325 on women, peace and security, and women's contributions to conflict resolution and sustainable peace.

22. Particular attention needs to be paid to ensuring that women and persons with special needs have equal access to HLP resources.
23. Women often face the double disadvantage of having to encounter not only those difficulties faced by the entire population in post-conflict societies but also traditional inequities in access to residential and rural resources. This may be as a result of restrictions placed on female access to property or as a consequence of missing or dead husbands, which may hinder access to inheritance procedures and, thus, obstruct claims to property. Inheritance laws can in this regard often serve as one obvious example of how legal frameworks on property rights can discriminate against women.
24. Post-conflict reform of state institutions and legal systems may provide a window of opportunity for creating a more equal society. Discriminatory laws should be repealed or reformed, and changes to land management systems should be made in a gender-equal way.
25. It is first necessary to assess whether the regulatory framework, land records and existing institutions are gender-equal. To do so, it is essential to look at access to dispute resolution, ascertain whether there is due process, and review laws and policies related to land, including inheritance and marital property, religious and customary laws, as well as formal and informal types of tenure.
26. In order to assist with formulating gender-equal reforms, it is necessary to collect and analyse gender disaggregated data, taking into account groups with special needs such as widows and children. Forms and questionnaires should be designed with this in mind.
27. Where gender-equal reforms do not take place and women, including female heads of households, are prevented from accessing property or exercising property rights on an equitable basis with men due to discriminatory laws or practices, it is important to ensure that any restitution and compensation framework that is established accounts for these inequities faced by returning women.

### **The right to voluntary, safe and dignified return**

28. In regard to any policies on return, restitution and compensation, the fundamental underlying principle should be voluntary return in safety and dignity based on a free and informed choice. Refugees and internally displaced persons should not be obligated to involuntarily return through the implementation of HLP policies that do not take due consideration of persons with continued protection or humanitarian needs which prevent them from returning. There is, thus, a need for flexibility and for approaches that take the HLP rights of those who do not wish to return into consideration. In some cases, local authorities may have been involved in ethnic cleansing and the international community will, then, need to be sensitive with regard to any bias towards return. Consequently, the extent to which local authorities act to guarantee non-discrimination against returnees in the exercise of their civil

and social rights should also be taken into account in determining whether it is possible to take a free and informed choice regarding return.

### **Collaborative approach**

29. Defining the possible roles (within existing mandates) of UN agencies, including DPA, DPKO, FAO, OCHA, OHCHR, UNDP, UN-Habitat, UNHCR, UNICEF, UNOPS, and others, such as IRC and NRC, as well as other relevant actors, is required. These roles may vary according to the operational context and may be coordinated by a designated lead agency.
30. Although it is important that this be a collaborative undertaking, this initiative would be different from previous inter-agency projects in that the response to HLP rights would be institutionalised and integrated into the UN operational and policy framework and, thus, part of the UN system. This would ensure the existence of a mechanism that would allow the UN to designate the most appropriate agency for the particular operation in question to be responsible and accountable for ensuring the implementation of the UN policy framework on HLP rights and for leading and coordinating the efforts of the pertinent agencies.

### **Considerations with regards to institutional layout, planning and implementation**

#### **Coordinator**

31. One proposal is that a senior coordinator for HLP issues be appointed at the cabinet level of the SRSG or in the mission head's office with the responsibility for ensuring that HLP rights issues are addressed at all stages and at all levels of the particular operation. The coordinator would be responsible for making sure that all HLP issues of relevance for the particular operation are included in the Secretary General's report, reflected in subsequent peace agreements and raised at donor conferences and that institutional mechanisms are developed and the efforts of the various organizations and institutions involved are coordinated. If institutions for dealing with HLP rights already exist, they would be assessed to what degree the set-up is compatible with international standards, whether they are capable of dealing with mass-claims and in which areas international support is needed.
32. The role and responsibilities of this senior level official would, however, depend on the overall institutional layout within the UN system, i.e. whether one of the UN agencies would be the designated lead agency for ensuring the implementation of the UN policy framework on HLP rights in each post-conflict situation or whether the institutional arrangements on the ground would vary from operation to operation.
33. Where there is a UN administration, the international institution or coordination mechanism dealing with HLP rights should be designed in a way

that takes the gradual handover to local institutions into consideration from the very beginning. Therefore, it is vital that the majority of staff is local, thereby ensuring the building of local capacity and the creation of more sustainable structures.

### **National ownership and publicity**

34. In order for any HLP operational mechanism to be successful and sustainable, it is important to ensure broad local and national ownership and commitment. It is, therefore, essential that the policy which should guide the implementation is stipulated in peace agreements signed by the parties to the conflict. Clear references, in peace agreements, to the policies and frameworks which guide the way HLP issues should be addressed on the ground will also enhance the understanding of the HLP rights that the international community expects to be applied. This provides an opportunity for any gaps between international standards and the expectations of stakeholders to be identified and addressed.
35. Public awareness of the process is necessary to ensure that the proposed or established mechanisms for dealing with HLP rights are accepted within the post-conflict society and that people are aware of their legal rights. Publicity and information campaigns about the existence of HLP restitution mechanisms and procedures should, therefore, be an integral part of any such undertaking. This would include information about restitution, how to file claims, any deadlines and where to obtain further information and assistance, if needed.
36. The needs of vulnerable populations must be taken into account when determining how publicity is to be targeted and how the information is to be framed.
37. It is also important to ensure that information about the restitution process is disseminated both within the country of return as well as to refugees and asylum-seekers in countries of asylum, and that resources and procedures are accessible to enable the filing of claims.

### **Planning**

38. Planning is vital to any HLP undertaking, and preparation for operationalizing HLP policies can begin even before there is peace on the ground. Such activities may include the following: obtaining consensus; agreeing upon a strategic policy framework; identifying and recruiting experts; collecting information; gathering, translating and analysing national laws on HLP rights and developing a preliminary plan for dealing with existing institutions.
39. DPKO assessment missions sometimes have as little as two weeks to compile a report, which includes recommendations concerning anticipated staffing needs, for the Security Council. It is important that those undertaking assessment missions understand which HLP-related activities need to take place and what kind of resources are needed.

### **Building a resource base**

40. There are few people in the international community who have knowledge of mass-claims processes, and it is vital that experienced staff be made available for such operations. A roster of experts should be created in order to ensure adequate human resources are available when needed.
41. In order to develop expertise in this field, in addition to defining a roster of potential experts, a resource base of relevant materials including the UN-Habitat Post-Conflict Handbook for Land Administration and other books dealing with legal and operational aspects of HLP rights, articles, lessons learned, legislative analysis and training materials should be compiled.
42. A study of previous HLP frameworks and institutions could be undertaken, which would illustrate which practices and policies were successful and why, and which ones should not be repeated. This could lead to the production of 'best practices' guidelines in this area.

### **Maintaining property records**

43. In order to facilitate post-conflict reconstruction, existing property records must be protected. If records are moved out of the country during conflict, their safe return should be part of peace-keeping operations, and the obligation to safeguard property records and make them available should be incorporated into peace agreements. Furthermore, it is important to ensure that property records are not tampered with by those who may have access to them during or after the conflict.
44. Clarifying HLP rights is essential to post-conflict reconstruction, economic rehabilitation and reconciliation. For example, where records have not been maintained or property titles have been handed down without any registration, it would assist the rehabilitation of the country to invest in proper recording of the different HLP rights.

### **Dispute settlement**

45. Depending on the circumstances, administrative or judicial adjudication, including mass-processing of claims, may be the most appropriate way to settle HLP disputes as it is relatively quick and inexpensive when compared to other methods of dispute resolution, such as mediation. This is particularly the case in post-conflict societies where people may be reluctant to compromise as a result of the recent conflict.
46. Where gender-equal reforms have taken place, one way to address gender discrimination during adjudication is to link land registries to the civil registries. Checking marriage records may assist in ascertaining who has a right to land, and in verifying who paid for the land, who lives there, and in whose name it is registered.



## **Effective legal mechanisms**

47. It is important to ensure that effective legal mechanisms for redressing HLP claims and disputes are established or developed and that these processes are credible and fair, adhere to the principles of equality before the law and procedural and legal transparency, and are consistent with international standards for the independence and impartiality of the judiciary. An effective remedy must also be incorporated into the legal mechanism, for example through the establishment of an independent institution that adjudicates appeals.

## **Compensation**

48. In order not to raise false expectations, compensation should not be publicly discussed before it is determined who would be liable for payment and what the procedures would be. Therefore, it is considered vital to first establish compensation guidelines and to secure sufficient funding for this purpose.

## **Eviction**

49. All persons have the right to be protected from arbitrary, unlawful or other forced eviction from their homes and/or land which they occupy. It shall be ensured that, in cases where lawful evictions are deemed justifiable and unavoidable, evictions are carried out in a manner which is compatible with international human rights standards.
50. Women may be in particular danger of being evicted in conflict and post-conflict settings by relatives and in-laws. This may be particularly the case where their husbands are dead or missing and the women were not included in the property register.

## **Secondary displacement**

51. It is vital that secondary displacement be addressed, particularly where the conflict itself may have developed over resources and assets. For example, the Commission for Real Property Claims (CRPC) established in Bosnia and Herzegovina did not address the issue of the current occupants, while the provisions pertaining to secondary displacement in the legislation of the Iraqi Property Claims Commission cannot be implemented because of the lack of a detailed policy framework.

## **Homelessness**

52. Likewise, in the past, the question of homelessness and landlessness has been neglected. This should be addressed as part of any comprehensive HLP mechanism. If deemed appropriate under the prevailing circumstances, the competent authorities could be encouraged to allocate abandoned housing to those most in need during the emergency phase of operations (as successfully done in Kosovo), or government-owned land to landless persons, which would enable them to establish a livelihood.

## **Enforcement and security**

53. One of the main challenges facing HLP institutions is how to enforce decisions. There must be adequate law enforcement mechanisms incorporated into the operational framework in order to ensure implementation of decisions and to strengthen the rule of law, complemented by the provision of alternative accommodation for those who must vacate their house but have nowhere to go and are needy. Where enforcement is lacking, guidelines could be developed on how to cope with the security situation. In addition, tailored public information campaigns emphasizing a “respect for rights” approach can assist in creating greater awareness and a willingness on the part of the secondary occupants to voluntarily vacate the living space. Depending on the context and institutional layout of the operation, it could also be explored whether enforcement of HLP decisions and the protection of HLP rights, including monitoring of domestic evictions, could also be included in the mandate of peace-keeping forces or in the mandate of international police task forces.

## **Summary Conclusions**

54. The following summary conclusions do not represent the individual views of each participant or necessarily the views of UNHCR or UN-Habitat, but reflect broadly the points of agreement emerging from the discussion.
55. There was general agreement on the need to develop a coherent and comprehensive UN policy framework and operational approach to HLP rights in post-conflict societies, which should be based on existing international human rights and humanitarian law standards and the rule of law. The participants agreed that there has been sufficient experience gained to enable the development of a model policy framework in this field and, although this will take time, it can and should be done.
56. The participants agreed to use the momentum created by the Secretary General’s report on the rule of law and transitional justice in conflict and post-conflict societies to lobby for the establishment of a new position with a HLP portfolio within the UN system, possibly in the Criminal Law and Judicial Advisory Unit in DPKO. Two participants agreed to draft the terms of reference for this specific function and to circulate this among the group.
57. Despite the current lack of a comprehensive UN Policy Framework on HLP rights, it was acknowledged that all organizations and institutions present at the meeting should strengthen their collaborative efforts on HLP rights and strive towards addressing HLP issues in ongoing operations in the most coherent and comprehensive manner possible. The participants also agreed to highlight the importance of HLP issues with members of already existing coordination groups such as the Rule of Law Focal Point meetings.

58. Participants agreed to share information pertaining to their work on HLP issues and that, in general, there is a need for more comprehensive information sharing and coordination among the various organizations and institutions present at the meeting. It was suggested that a mailing list be set up in order to facilitate the sharing and exchange of information.
59. Although there was a general acceptance of Scott Leckie's background paper, indicated above, it was agreed that he should revise the paper in light of the recommendations put forward during this expert roundtable meeting. Together with these Summary Conclusions, the revised background paper will be used to raise awareness and generate political support within the UN system and among States for the need to develop a comprehensive UN policy framework on HLP rights. Toward this end, one approach may be to organize informal meetings with States. Human rights NGOs should also be included in this initiative. The most supportive States thus far have been the United Kingdom, Jordan, Norway, Finland and Germany.
60. Participants also agreed on the need to meet with donors to discuss the establishment of a coherent and coordinated policy and operational approach for addressing HLP rights to ensure that funding can be directed towards this aim in a structured way.
61. This meeting marks the beginning of the collaborative process necessary to ensure that HLP rights are adequately integrated into return operations and development activities. The issues addressed at this meeting require further exploration and, therefore, this expert roundtable meeting is viewed as a key part of an ongoing effort to integrate HLP rights into the policy and operational framework of the UN.
62. Participants agreed that it would be useful and important to meet again every six months, with the next meeting being convened by UNHCR and UN-Habitat in June 2005, to ensure continuity and to further advance the process of developing a comprehensive UN policy framework for addressing HLP rights in all post-conflict situations. UN-Habitat will take the lead in organizing the next meeting, which will focus on the operational aspects of HLP programmes in field operations. Participants will explore how general policy considerations and lessons learned, which were the focus of this meeting, can be translated into an operational approach.

*Geneva, February 2005*