PEER REVIEW

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HANDBOOK FOR PLANNING IMMEDIATE MEASURES FROM EMERGENCY TO RECONSTRUCTION

UN-HABITAT

Disclaimer

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Foreword

Throughout history, conflicts have been waged both over and on land. Confrontations over territory, boundaries, or access to land resources have dramatic consequences for human settlements. This is even truer of very different types of conflict today.

Internal conflicts have become an unfortunate feature of the past several decades. They have direct effects on land occupancy and rights. Terrorising civil populations has become a routine strategy for the armed protagonists. Millions of internally displaced individuals, refugees, and survivors of conflict are left with little but hopeful claims over plots of land. Rival factions assert political power through territorial domination. This typically includes scorched-earth policies, land grabbing and discrimination.

Internal conflict causes innumerable denials of land rights. These are human rights under international law. They are primarily recognised by formal, customary and other national legal systems. These enable most individuals to avail themselves of some sort of rights over particular land parcels.

This is the major effect of internal conflict: what once had been ethnic, tribal or other intermingling, turns into a tangled web of bitter claims and counterclaims. Each is a firebrand of renewed discord and a menace to reconciliation and reconstruction.

In this context, the rationale for UN intervention is nation re-building, rather than bridging intra-national gaps. Peace needs restoring among communities, rather than governments over

territorial claims. Those who effectively make the peace are individual citizens, and one of the primary causes of secondary or ongoing conflict, is disputes over plots of land and property.

To make peace, the citizenry need an enabling framework, which UN-HABITAT outlines in this handbook. The framework combines our expertise in human settlements and the lessons we have learnt from recent post-conflict emergencies. The basic thrust is that beyond the technicalities, land claims mediate between individuals. Fair adjudication and resolution engender peace between yesterday's enemies under the country's civil law. They help rebuild the social compact, even if in a piecemeal way. Resolving land issues is crucial to reconciliation and peace building in the wake of internal conflict.

The UN Security Council should formally include land issues in the mandate and budget of UN peacekeeping missions and forces. This is the very first recommendation UN-HABITAT makes in this handbook of post-conflict land management.

The UN, through its various instruments and operations keeps and strengthens the fledgling peace the citizenry make between themselves over land issues following conflict. This mission must include securing and protecting land records and evicting criminal elements from public property. Beyond that, inclusion of protection of land and property rights in the UN's core missions has a major role to play. It secures for land issues the high ranking they call for on the agenda of any subsequent interim government in which the UN has a role.

Internal conflict obviously sets a nation apart from conflict-

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free countries with a similar degree of development. New management technologies and modernised land administration are only means to a well-defined end. Any approach to land issues must uphold and materialize universal human rights. This includes ownership and secure tenure, regardless of gender and other differences. Post-conflict situations are typically complex and fluid, as this handbook suggests. The UN missions and agencies involved must keep the broader picture and the longer view in mind. They must do so at every step throughout the emergency and the reconstruction periods. In this context, and as it fulfils its specific mission, UN-HABITAT has a special role to play. Provision of adequate shelter for all and sustainable human settlements does more than strengthen civic reconciliation. Reconstruction of records and of an efficient land market can generate much-needed resources for a fledgling government. Reliable, unbiased land services inspire trust in the new public administration. Proper land management places nation building on safer ground.

Internal conflict turns land rights into instruments of oppression and discrimination. With this handbook, UN-HABITAT shows how to turn them back into sources of opportunity and prosperity for all.

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Note to the reader

This handbook is intended as a functional tool. It takes in the fresh insights, lessons, and experiences that have recently come to bear on the rational and integrated approach to protection of land and property rights as they are affected by conflict.

The contents draws on hands-on work in the field as well as on UN-HABITAT's reflections on its own effectiveness, mistakes and successes as it addressed land administration as systemically as possible in the often-chaotic post-conflict environments in which we work.

The configuration of this handbook reflects its functional nature. The authors either suggest or highly recommend various types of activities. This begins with the immediate steps required in the early post-conflict stage, through a mid-term set of measures, all of which share the objectives directly addressed by the longer-term activities that are outlined in the final, third section. All those activities abide by the principles set out in a range of international instruments, including conventions, protocols, resolutions of various bodies of the United Nations and of some special commissions.

Recognition of land and property rights as a critical element in post-conflict situations is in its early days and it is unlikely that every activity can realistically be carried out. However, our experience, as laid out in the document, shows that they should be carried out in order to avoid problems further down the road.

This document is made up of three sections, namely the

emergency phase, the reconstruction phase, and final recommendations. The sections on the emergency and reconstruction phases provide the material required to evaluate immediate land management measures in a post-conflict situation. The report identifies the key items or variables, which any evaluation is likely to focus on, keeping in mind that the order of priority and the exact configuration of the variables are bound to differ across situations and countries. The conclusion draws together additional lessons and discusses the future role of UN-HABITAT in such situations, suggesting some of the adaptations that may be necessary for the agency to fulfil its mandate.

This handbook is designed to help UN-HABITAT staff plan, resource and implement similar projects in the future. Its aim is also to provide an evaluation method for immediate measures in the area of land management in post-conflict situations, from the emergency phase through to reconstruction. As such, this handbook takes into account the long-term development of robust and appropriate land management systems.

Abbreviations and Acronyms

CBO   Community-Based Organisation

CD   Computer Disc

DMP   Disaster Management Programme

EDM   Electronic Distance Measurement

EDP   Electronic Data Processing

GIS   Geographic Information System

GPS   Global Positioning System

IDP   Internally Displaced Person

IT   Information Technology

KCSP   Kosovo Cadastre Support Programme

LFA   Logical Framework Analysis

MOU   Memorandum Of Understanding

NGO   Non-Governmental Organisation

NSDI   National Spatial Data Infrastructure

UN   United Nations

UNDP   United Nations Development Programme

UNDPKO   United Nations Department for Peacekeeping Operations

UNHCR UN High Commission for Refugees

UNICEF UN International Children Emergency Fund

UNON   UN Office in Nairobi

UNOPS UN Office for Project Services

UPS   Un-interrupted Power Supply

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1. THE EMERGENCY PHASE

1.1   Preparations for Effective Action

1.1.1 Peacekeeping, land conflict and UN-HABITAT's role

1.1.1.1 Placing land conflict on the core agenda of UN emergency operations

Whenever it drafts a resolution authorizing the United Nations to undertake peacekeeping operations in a country or territory, the UN Security Council should phrase the terms of reference in such a way as to include the land issue, and even the land records, where land is a major cause behind the conflict. Consequently, solutions to the ongoing conflict over land and property should become integral to the peacekeeping process and should feature in the peacekeeping budget. Moreover, peacekeeping forces should have the added responsibility of securing land records as soon as possible, and of protecting them from damage and alteration. This would ensure financial support for land-related activities, which donors often fear are too politically sensitive for them to sponsor directly. Furthermore, in certain circumstances, evicting criminal elements from public property should be one of the UN peacekeeping force's responsibilities. Most critically, once land conflict is placed on the core agenda of UN emergency operations, it will also feature high on the agenda of any interim government in which the UN has a role in the emergency phase.

1.1.1.2 The need to bring in UN-HABITAT

UN Headquarters and UNDPKO should bring in UN-HABITAT as a specialised agency with a view to:

- Backing up the peacekeeping operation.
- Undertaking the restoration of the property system.
- Assisting in the extension of secure tenure in the country.
- Helping build law, order, stability and governance through these actions.

The peacekeeping budget should provide funding for UN-HABITAT's role to ensure that this is a core activity.

When co-ordinating projects in countries in the emergency phase, the United Nations missions assess their contribution to immediate peace and stabilisation of the country. Once it is understood that land and property issues may trigger secondary or tertiary conflict, it is important for UNDPKO missions to become aware that proposals related to land management in post-conflict situations are an integral part of efforts to restore peace and stability.

During this preliminary period and as part of its preparations, the UN may call upon donors to provide funding for projects. The project proposals it puts to donors must come within the emergency framework and focus on the following elements:

- The cadastre
- Property rights
- Restoring land records
- The development of a legitimate legal framework and adjudication
- The protection of women's land rights
- The potential for the project to deliver early results.

The early results of such projects must include:
- Handling current land and property disputes, evictions and discrimination
- Allocation of land use for temporary purposes
- Securing the land records
- Supplying remotely sensed imagery (aerial or satellite photography) for the purposes of clearing landmines
- Servicing and management of the emergency
- Supplying information to those who have lost their property rights
- Assessing the state of the land records, institutions and problems.

Some donors, under certain situations, may be open to funding projects that will cover both the emergency and reconstruction periods. Any proposals put to them should then be able to deliver outputs for both phases, with some even building bridges between the two, as it were. At this stage, one must keep in mind that land policy development and establishment of Stakeholders' Forums are not considered feasible in the first 12 months of an emergency.

Maintaining close links with the UN peace-keeping structures for the duration of the emergency phase ensures that they remain fully briefed on the land and conflict situation.

1.1.2 Assessing immediate land and property problems, needs and risks

As soon as the situation is sufficiently secure, one or more persons must visit the country or territory to assess the population's needs in relation to land/property issues and

security of tenure. This assessment must take place within the framework of the international human rights principles and conventions, particularly with regard to possible discrimination against women (*for details of international human rights instruments, see* Section 1.1.8 *below*).

Early assessment teams may expect to find the following types of land and property-related user needs, risks and issues.

Need for shelter and reconstruction
- Need for immediate shelter where land is required for temporary occupation (e.g. returnees displaced by conflict).
- Need to rebuild houses that have been partially or completely destroyed.
- Allocation of building permits to reconstruct destroyed houses, which requires evidence of ownership of the land and agreement from the owner.
- Identifying abandoned houses or apartments, with a management system to allocate such abodes on a temporary basis.

Land rights - needs
- Assistance to people evicted from their houses or land and who require evidence of their rights to the property.
- Invasion of public land and property, which may be needed in an emergency or be of symbolic value to the interim administration.
- Allocation of temporary land use rights for drawing water, harvesting, etc.
- Allocation of temporary land use rights for peace-keeping or military operations.

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Eviction and restitution: risks and issues
- Eviction of women (especially widows and children) from family property by relatives.
- Evictions and invasions of homes and land by one group against another group as part of the conflict.
- The informal and at times violent restitution of property grabbed during the conflict.

Information and records: needs, risks and issues
- Need for land information for the establishment or restoration of services.
- Risk of theft or illegal alteration of land records describing users' property rights.
- Problems with the emergence of previously unrecorded contracts or data, carrying evidence of land rights and emanating from parallel/informal structures.

Disputes
- Risk of minor warlords or gangs allocating land or properties – either government-controlled or stolen from the rightful owners (if registry records are anything to go by).
- Problem of people deprived of any security of tenure for any reason.
- Need for some basic legal framework and administrative infrastructure to record disputes and claims and give information and assistance.

In addition to identifying user needs, the preliminary assessment team must procure a rough background of the country with regard to land and property as well as to the broader political and economic issues. The team must put the country or territory and its land and property, and conflict

issues, into context as much as possible. The team must address user needs against this backdrop, and even a rough guide can make a significant difference to a land specialist with broad-based country experience.

The early assessment team should also map out existing land-related institutions such as the surveyor general's or cadastral office, the land registry, the courts, the municipal property offices, the national planning office, and the structure of government. This is an important adjunct to any subsequent search for land records and knowledgeable officials; it will also supplement efforts to identify the areas of the system where intervention will be most useful.

The information thus collected should inform the choices of strategies and priorities to address the situation, as well as the size and nature of the resource requirements, both human and financial. With early post-conflict situations typically in a state of flux, it is very difficult to get an accurate early picture, especially with regard to the scale of a particular problem. It may also happen that once the preliminary assessment team gathers more information, it has good reason to change the initial analysis. Moreover, given the fluid situation and the need to deliver in a short time-frame, urgent matters will take precedence, and the operation will be almost impossible to structure and manage. Rather, it will become a matter of reacting to the situation.

1.1.3 Developing projects, agreements and procedures

1.1.3.1 Developing project proposals and obtaining donor funding

UN-HABITAT's Disaster Management Programme (DMP) has developed a strategic outline of activities that are relevant to the post-disaster or post-conflict agenda; it is actively pursuing resources and contacts within both the inter-agency forums and with bilateral and multi-lateral donors.

The outline casts project formulation in a pre-set format for both the substantive and the financial elements; all field projects may benefit from project proposals that have attracted donor funding in the past, and those past proposals are available from DMP.

One immediate task for staff is to undertake institutional mapping for the deployment and activities of the UN, NGOs and donor representatives. This will ensure that project formulation processes integrate and generate support from those sectors, as well as the authorities or other counterparts in the post-conflict country or territory.

1.1.3.2 Developing MOU and Grant Agreements with Government and the UN

The next step is for donors, the UN and the authorities or other counterparts in the post-conflict country or territory to formalize agreements between them. Where there is a counterpart or partner in the post-conflict country or territory, the UN must come to a formal memorandum of understanding or agreement (MOU/MOA) with them regarding its activities

and methodology. This applies even when the partner is an occupying or custodial administration, and must conform to UN legal conditions. These agreements are activity-specific and come in addition to, and under, any global agreements undertaken between the UN Missions and governments.

1.1.3.3 Emergency administrative procedures between field operations and UN-HABITAT

Because urgent needs call for prompt responses in the fluid and often confusing immediate aftermath of conflict or disaster, rapid results argue against the usual administrative procedures of the UN system. UN-HABITAT and the United Nations Office in Nairobi (UNON) must develop special administrative procedures for these circumstances. Some of these already exist, and systems are in place within other UN agencies (UNICEF, UNOPS, and UNHCR). But others must be developed in the field in response to local conditions. These special administrative procedures must then become standard and all field staff must be trained in them. The basics of such procedures include:

- Ready access to cash and cash reserves for the purchase of vehicles, security equipment and supplies, portable office equipment including computers and generators, cell phones, temporary accommodation, fuel, etc.
- Delegated authority to undertake procurement, recruitment of local staff, payroll for local staff, and establishing banking facilities either in the country or nearby.
- Rapid recruitment of international experts and staff to undertake urgent tasks such as planning, formulation of funding proposals, and programme or project management.

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1.1.4 Early fieldwork land records

1.1.4.1 Bringing in a core group of international survey and registry experts

Some of the actions required in the immediate aftermath of a conflict call for the presence on the spot of a small core group of international experts as early as possible in the relevant area. Their immediate tasks will include:

- Retrieving and assessing land records.
- Determining the degree of validity of the land records.
- Getting the registry and cadastral services running again.
- Launching mechanisms for the resolution of land disputes.
- Informing the population about the above.

These tasks require expertise in land records from the twin points of view of land registries and cadastral registries or maps. More specifically, such expertise ranges from legal-administrative to survey-technical while it also includes an understanding of registration procedures, subdivision and consolidation, mapping and, especially, databases (IT). Depending on the country of origin, the experts should be land surveyors, cadastral staff, registry staff, specialized land lawyers, notaries, conveyancers or land administration experts. Although data recovery is of great importance in the initial phase, early action also requires experts with an understanding of the legal aspects. This is particularly the case with due process in relation to land and the assessment of legal evidence, in order to ensure reliable assessment of legal evidence and data from the very beginning.

Although results are better when these activities take place as early as possible after a conflict has ended, it is also important to keep the reconstruction phase in mind from the outset. In

the emergency phase, every step dealing with land and property should also, as far as possible, serve as a building block for the reconstruction phase. This is because security of tenure rests on long-term horizons.

There are two reasons for bringing international experts in at this early stage. Firstly, they will take a more holistic and objective overview of a given situation, and, secondly, they will be independent of the various parties involved in the conflict. On the other hand, local experts are necessary because of their familiarity with three distinct elements:
(1) local procedures
(2) the location of likely storage facilities
(3) the language.
Their involvement is also a major building block for reconstruction.

1.1.4.2 Finding the land records

Land- and property-related issues are often one of the causes, if not at the heart, of conflicts. Therefore land records are of vital importance for three main reasons: (1) a return to normality; (2) conflict management and dispute resolution; and (3) the prevention of discriminatory or otherwise unfair practices. Finding the current land records is of critical importance in the immediate aftermath of a conflict; such records include the land registry, cadastre, maps, possession lists, survey field records, text and graphic evidence, digital backups and paper maps.

Land records can contain information that is in the interest of some parties but not of others. A dominant group losing power over an area may be prone to taking the land records with them when they withdraw, so as to have proof of the land

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rights situation (usually beneficial to them) that existed just before they left the area. They may also be inclined to destroy earlier information dating from before their group was the major beneficiary of the system. Furthermore, they may destroy any up-to-date data to prevent a rapid return to normality in land issues for the incoming group.

The group taking control immediately after the withdrawal of the previously dominant one is likely to have a specific set of strategies regarding any land records that are still available. They may want to destroy any details of the situation prevailing just before their arrival, as it was beneficial to the previous group. They may want to preserve older data from an earlier period, insofar as such data is beneficial to them. They may also want to alter the records they find in the land administration system in favour of their group. To formalize alterations, they may turn to 'instant' tribunals, or to information emanating from previously informal and/or parallel structures outside government. Returned exiles or underground staff with appropriate skills may quickly take over the offices and land records, and either prevent abuse of the land records as much as possible, or actually be instrumental in altering the records to suit their purposes.

Any kind of group, or individuals, not in a position to do any of the above may, deliberately or not, destroy land records and in particular burn down any offices and storage facilities holding them. Individuals or groups may occasionally remove land records from the offices or storage facilities and take them into hiding, with either good or bad intentions.

Preventive action: It is possible to prevent some of these actions during an emergency post-conflict phase. However, in

order to do so, one needs to identify the land records and their location in the first place. Land records are usually found in a number of different locations, depending on the institutional arrangements and regulatory framework in place. The courts or separate land registries may keep some of them. In some situations, these records can overlap with the textual part of the cadastre, which may be kept by a national, regional or local cadastral authority. Such an authority may be part of general tax-related or municipal structures, or stand on its own. The cadastral authority or surveyor general's offices or lands department may keep the graphical part of the cadastre (boundaries) and the underlying survey documents. In some countries, certain private practitioners (notaries, conveyancers, surveyors) keep (copies of) documents prepared by them before registration, but usually this will only include certain cases within the area. This is why institutional mapping is a critical exercise when planning the recovery of land and property records.

The extent to which land institutions are computerised varies across different parts of the world. Increasingly, the textual part of the cadastre or the registry is computerised. This will also occasionally be the case with the graphical parts. Digital data is easier to copy and, short of specific back-up facilities, specialised companies are likely to have kept copies of such data (at least for as long as the computerised system has been in place). Although not usually up-to-date, at the very least data from these sources will reflect the situation at a certain point in time (which may not be the same across different areas). Identification of digital copies or back-ups at EDP companies will depend on local intelligence or the said data being volunteered by the companies.

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In some countries, registry information may be stored on microfiche, on paper, or in electronic format, or all three, depending on the nature and longevity of the information.

Unless the pre-conflict system is well-documented, international experts will need assistance from their local counterparts to identify all the different locations where they can find certain subsets of the land records.

1.1.4.3 Securing the land records in the short, medium and longer terms
Once staff have identified the whereabouts of the land records, they must transfer them to a secure location as soon as possible. Throughout the fluid, immediate post-conflict period, it may be wise to keep them under physical protection: either security services guard the premises, or the records are moved to a more secure location, such as international compounds. If records are available in digital form and the necessary equipment is still operational, staff must make a back-up copy and keep it secure at an international compound. Where land records are in the hands of a group that took them away as they withdrew, every attempt must be made to recover them.

International experts must take care when using local expertise. Although local experts can be independent professionals, they may also be involved with one of the conflicting groups.

As soon as feasible, the team must prepare an inventory of the newly secured land records. Those in charge of keeping the records must then sign the inventory. Once the situation has become more stable, the inventoried land records must return

to their original offices or storage facilities, unless a different or emergency institutional structure is in place. Under certain circumstances, it may be wise to make copies of the most vital land records (such as the title/land register, parcel/person indexes, cadastral register, cadastral index maps), especially where one cannot rule out the risk of data tampering. International staff should keep the copies.

Once some form of normality has returned, the updating of the land records must resume as soon as possible, otherwise people will transfer their land outside the land administration system. For these purposes, land record offices and any agencies dealing with land and housing dispute resolution must establish effective co-ordination and information flows between them. They must update the records automatically or regularly in batches, to show any decisions the dispute resolution agency has made. Relevant staff must put in place routine technical processes and administrative procedures as early as possible, with proper checks and balances to ensure professional handling of the records.

1.1.4.4 Acquiring high-resolution satellite imagery or undertaking aerial photography

Many countries lack up-to-date large and medium-scale mapping, even prior to any conflict. This is bound to cause problems in many land-related policy development, land management and land administration functions in peaceful times, which a post-conflict situation is only likely to exacerbate.

Depending on the size of territory, the intensity of land use and the ratio between urban and rural areas, the visiting

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assessment team should develop a strategy to create and update maps as early as possible. Beyond prompt responses to user needs, up-to-date maps have a role to play in a variety of functions such as landmine clearance, rapid planning, land management and land use allocation. Thanks to continuous improvement and enhanced capacity for detail, satellite imagery (Ikonos, Quickbird) can deliver the kind of information required for post-conflict civil administration within very short timeframes.

Aerial photographic-based products are useful for smaller territories and (main) urban areas. Unless terrain is very flat, these photographs must be processed into orthophotos. However, aerial photographic missions are only possible once the security situation is sufficiently stable. Both airspace and airports must be open. Moreover, safety on the ground must allow indispensable fieldwork to complement photo-flights, with landmines a particular concern that needs to be addressed. On the other hand, lack of safety and security in a territory or country does not affect satellite imagery.

The major benefit of making detailed geographical or mapping information available shortly after a conflict is that it can also provide proof of the land rights situation on the ground at the time of the photo-flights. The information will also show damaged dwellings and other structures, together with environmental degradation or pollution. It can be used to plan any reconstruction, and as a baseline to measure any future illegal construction.

Although aerial photographic data is expensive, it can also become a source of income for the survey department or cadastre office. It is also likely to be of interest to many other

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organisations and for other functions such as:

- Landmine clearance
- General peacekeeping
- Government policy development regarding spatial planning and land management
- (Re) construction and maintenance of transportation links and utilities
- Local activities, such as urban planning.

1.1.5 Dealing with the population

1.1.5.1 Handling disputes and public campaign on land issues

Where the conflict has included land issues, users are likely to ask the UN authorities to intervene in disputes. If the press is in operation, members will be asking for prompt information from the UN authorities. Therefore the UN mission must set up a secure staffed office environment to receive disputes and claims and to provide assistance as early as possible. Such an office will need a basic legislative framework based on the UN mandate in the country or territory.

Staff will need to carry out three main functions:

(1) Assessing the legal position and any applicable international conventions.
(2) Assessing the type of violations and possible responses.
(3) The reporting and claims process.

As early as possible, the dedicated office must provide the press, radio and television with reliable information about individual land rights and any options for those whose rights have been or are being infringed. The office must also have such information posted on bulletin boards, public notice sites

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and buildings which the population are likely to visit to ask for assistance (e.g. UN offices). The office must inform public relations departments in government as well as political parties and movements of any ongoing developments. As new information becomes available, the dedicated office must disseminate it.

Where appropriate, staff must organize a campaign or media 'blitz'. This would involve press kits, public announcements, posters, briefing papers for officials and news conferences.

1.1.5.2 Identifying and dealing with disputes, and preventing illegal occupation

When land is a cause, if not the core, of the conflict, and when there are population movements (TDPs, refugees, returnees), disputes are likely to arise over the ownership or occupation of land and property. In an emergency phase, many institutions are not running properly, preventing government institutions and society from carrying out the usual duties of monitoring and enforcement vis-à-vis illegal occupation. With regard to land and housing, defacto possession is often considered sufficient. Emergencies create opportunities for the grabbing of land, land-use rights (e.g. mineral rights) and property by many segments of the population, including the poor, the rich or criminals. Political patronage in connection with property is typically very widespread during conflicts, whether from those in power or those in the resistance forces. Especially with regard to the wealthy and criminals, this behaviour must be contained as far as possible, as this type of problem becomes intractable once the situation has stabilised.

Discrimination: Where discriminatory legislation, regulations and policies have been in force either before or during the

conflict, they will have infringed on the rights of the members of certain groups. Groups that have been discriminated against, may, after a change of regime, seek vindication or try to recover former property outside of the legal process. This may involve forcing out the current occupants or persuading the occupants or owners to sell under duress.

Groups that have been discriminated against may never have had access to any formal property rights and may have been living in informal settlements. During the conflict, these informal settlements may have been burned to the ground or cleared. These groups have no formal rights to the land, nor any documentation to substantiate claims. Consequently, they will have great difficulties asserting their rights/claims to land and property. They may not be able to claim housing reconstruction grants either, as these typically require legal evidence of ownership or possession.

Abandoned dwellings: Dwellings that have been abandoned (when occupiers have fled or taken refuge elsewhere) must not be left empty. Staff must inventory them as soon as possible to prevent invasion both by those in need or by criminal elements. The property rights of owners who had to abandon their properties must be respected and protected.

Since conflict or other damage results in housing shortages, inventoried abandoned dwellings must be allocated for temporary occupation, within a rudimentary legal framework. Prior registration with UNHCR may be made a condition for delivery of such temporary occupation permits. On the other hand, effective protection of absent owners is often quite poor for lack of strong legislation or enforcement. This is why people who have fled or been forced out are likely to be at a

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disadvantage. Therefore, additional care must be taken to protect their rights in the immediate post-conflict period.

These situations create an urgent need for appropriate, non-discriminatory mechanisms that will provide due process without being overly bureaucratic. This will probably require development of innovative hierarchies of legal evidence, rather than abiding by standard civil law procedures. Staff will also need to make judgements regarding the magnitude of a given situation and the different types of claims that can arise.

Claims and disputes: The need will emerge for some administrative structure to collect claims, draw an inventory of abandoned dwellings and allocate both temporary and permanent building permits. It may be necessary to establish a specialised tribunal or claims commission to deal with the disputes and allocation of permits for at least one of four reasons:
- The judicial system is not working.
- Government structures are not perceived as impartial enough when administering justice.
- The large number of cases involved will require special capacity to deal with them. Massive claims call for special (administrative) arrangements.
- The cases call for special hierarchies of legal evidence.

In a post-conflict situation, the parties involved in a claim will require some form of mediation if they are to reach a solution. Prompt access to dispute resolution mechanisms is required. As far as possible, there should be two distinct agencies: one for the allocation of building and other permits, and the other for dispute resolution. But they must share a single set of

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guidelines and must co-ordinate activities. The 'permits' unit must be as decentralised as possible. Clear guidelines must delineate the relationship and the distinct functions between the courts and the tribunal for land disputes, in order to ensure both legal clarity and the safety of court officials.

If members of all groups must be in a position to make claims for infringements on their land rights, it may be advisable to facilitate the lodging of such claims in neighbouring territories or even countries where refugees are present. This is especially important where these groups cannot return to the area for security reasons. Short of this alternative, some groups involved in the conflict are likely to find themselves at a serious disadvantage.

Disadvantaged groups: Keeping any infringement of the land rights of disadvantaged groups under check during the physical reconstruction of damaged buildings calls for careful monitoring. This is of special importance when distributing housing reconstruction grants or building permits. A wider than usual range of legal evidence about land and use rights must apply as far as possible. Moreover, (potential) victims must be made aware of where they can safely file complaints either before or during encroachment of their land rights.

Interpreting claims: Once the claims are lodged, they can, on occasion, show that early assessments of the nature and scale of claims were incorrect. It is important to understand why this has happened, as it may be an indication that at least one of three types of event has occurred:
- Properties have been legally sold across the groups after the conflict, since one group does not feel safe to return.
- People are used to selling their property between

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conflicting groups outside of the legal system. This is especially prevalent in countries where this was the norm before the conflict.

- People fail to make claims in order to avoid taxation.

Eviction: When a claim is settled against the current user or occupier of a dwelling or land, an eviction order must be prepared and ultimately enforced. If the occupier is unwilling to abide voluntarily by the eviction order, then the police or security services must be called in to enforce it. Generally speaking, forced evictions are only needed occasionally, as their purpose is to show the population at large that eviction orders are a serious matter. If, however, eviction orders are not enforced, few people will abide by them voluntarily. This will damage the credibility of the entire process of dispute resolution. The mandate of the international security forces should therefore include assistance in evictions, where they are based on eviction orders from reliable dispute resolution agencies. This is a key aspect of re-establishing government and the rule of law as a normal part of life.

Monitoring developments: In a post-conflict situation where massive building works mushroom in peri-urban areas, and especially brick buildings, it is possible that land rights (public and private) are being infringed. In these situations, the interim administration and the security services must act swiftly to determine whether these developments fit in with the basic legal framework that has been set up. Short of rapid action, the situation becomes increasingly irreversible and may well contribute to frustration among the group(s) that are on the losing side of the conflict, and whose rights are being infringed. Such construction activities can also be seen as undermining the rule of law and the interests of civil society

in general. Enforcing orders to pull down constructions (especially if nearly finished) and evicting (would-be) users is harsh under any circumstances, let alone in a post-conflict situation where reconciliation is only just beginning.

Invasion, limitation, eviction: Invasions of land and property should be monitored and prevented as much as possible. Immediate eviction after invasion is standard procedure in most legal systems, but it is important that the appropriate authorities make a quick move (preferably within one or two days).

In the medium to long term, limitation or adverse possession rules must be handled with sensitivity, especially when limitation is short (5 to 10 years). If the laws on limitation allow those in occupation to claim land rights in a short period, groups who have been forced out of the territory or country can lose their rights. Therefore adverse possession claims should not be dealt with until land dispute claims have been settled.

In any case, those being evicted must not end up on the street. To this effect, the authorities also need to co-ordinate their actions with organizations such as UNHCR. Care must be taken with 'double occupancy' situations, where people claim that they have no place to go if evicted, even though they secretly have one somewhere else.

1.1.6 Assessing records and institutions

1.1.6.1 Assessing the comprehensiveness of land records
Staff must undertake a thorough assessment of the scope of

available land records, using the inventories made previously for the purposes of securing the records. The primary objective is to gain an overview of the data as it stood just before the conflict broke out. The nature of the overview will depend on the types of land records available; but as a general rule, any assessment must take in both administrative/descriptive data (lists of rights holders) and geographic/geometric data (maps or plans). Critical data includes the title or land register, data on parcels or person indexes, the cadastral register and cadastral index maps, and registry plans or maps. The assessment should also take in any relevant records, area by area, depending on the administrative/judicial units in place, such as cadastral units or municipalities. The main objective of the assessment is not to reach a statement whereby, for instance, 58 per cent of the data is available. Rather, the objective must be to draw up the most up-to-date overall status of the legal evidence still available for each relevant unit.

If the overview data for any given judicial unit is not available up to the point the conflict broke out, then further assessments are in order. These must focus on subsidiary documents and books or logs testifying to changes. This can include (certified) contracts, deeds or administrative decisions by local or central government bodies, as well as survey notes, fieldwork and parcel plans.

As staff carry out the assessments, they are likely to find large discrepancies in data across different areas, depending on their location in the conflict and the actual degree of conflict-related activities that took place there. However, there can be discrepancies even in data kept in the same office. This can be a result of fires, quick theft, or deleting of data.

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Any data that has been removed from the country or territory must be assessed if and when possible. It is likely that only international experts will have access to this data. The points to establish are: what data exists, whether any was destroyed, and the likelihood of this data being returned to the territory or country. It may well be possible to have copies of the data returned.

Tampering: When examining land records relating to certain periods, such as just before, during and after the conflict, as well as to earlier periods building up to the conflict, a healthy dose of suspicion is in order. These records carry the highest risk of having been tampered with. Examples of tampering include:

- Unusual numbers of transactions of a certain type in a short lapse of time, or even on the same day.
- Transfers between members of different groups in the conflict.
- Transfers from public, common or communal properties to private persons, often in the form of
- Privatisation.
- Periods with few transfers, if any. This may signal that certain parts of the transaction records have been removed (e.g. pages taken out).
- An absence of transfers, where data relating to the situation just prior to the conflict is missing, or a new group has come to power.

Assessing the different subsets of the land records is a critical step in two respects: (1) In the short term, it paves the way for well-founded judgements about the validity of the legal evidence behind land rights. (2) This assessment also exposes

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the gaps that the future system of land administration needs to remedy in a medium to long-term perspective. Assessing the data is also crucial for the purposes of advising the courts (and other forums responsible for any land dealings) as to the most appropriate hierarchies of legal evidence that should be admitted. In other words, based on this information, it must be possible to advise individuals buying and selling land on the security of the rights attached to a particular plot. In post-conflict societies, it is likely that the hierarchy of evidence will have to extend beyond conventional models.

1.1.6.2 Assessing existing institutions

Those institutions associated with land rights and land use allocation and management tend to have long histories in their country or territory of location. These either can be formal institutions, such as a land registry, or a customary group. Moreover, these institutions often hold a variety of recorded legal evidence about land rights. Apart from these, there can be oral agreements made before witnesses and upheld by institutions or social structures within society, both at the group and household levels (e.g. many agreements about rights to the land/house within marriage are oral agreements). Therefore, staff must assess existing institutions with a view to identifying:

- The stakeholders in land use allocation and management
- The institutions normally involved with land and the people currently involved
- Individuals and professional associations with relevant knowledge and skills
- All existing land records.

'Institutions' include formal institutions such as the surveyor general's office, cadastral agency, land registry or court. They

can be found at any level of government, including municipal. They are concerned with land rights, land use and justice (dispute resolution), spatial planning, valuation and tax records. They can also be customary institutions, which in many countries are statutory, and customary land administration and courts are not rare occurrences. They can also be informal institutions where government has not recognised those of a customary nature, or where the institution has developed in an informal settlement outside a customary framework. Religious institutions can also be involved in land, and this is especially important in Islamic societies with regard to both management and inheritance of land.

Some of these institutions may have existed only before the conflict or disaster and may have been transferred out of the territory or country. Some of them may be parallel structures that are in competition with the previous or the current official structure.

1.1.7 Legal issues

1.1.7.1 Assessing the regulatory framework

Any comprehensive understanding of the situation requires at least a modicum of awareness of the regulatory framework. This must include policy, legislation, rules and regulations, administrative guidelines, religious, customary and informal law, and an overview of the various types of tenure. Most important is an understanding of the regulatory and institutional framework in place just before the conflict broke out. Any changes introduced afterwards – either during the conflict or by the post-conflict administration – will also

matter, of course. This well-rounded understanding of the framework requires assistance from local expertise, especially in the areas of law and government policies. Experts are also needed in religious, customary or informal rule systems where they exist.

Translation: Staff must identify any key statutes and regulations with an impact on the land sector and have them translated. This also applies to basic documents describing policies or applicable rule systems, insofar as they are documented. If no documents are available, they should be created, based on interviews with the relevant representatives (from tribal, informal or religious communities). Legislation most likely to require translation includes:
- The civil and land code
- Legislation on transactions in real estate and land
- Legislation on land or real estate registration
- Cadastre and surveying legislation
- Legislation on subdivision or land use control
- Spatial or land use planning legislation
- Legislation on transfer tax/stamp duty
- Legislation on land and property tax
- Legislation on land consolidation.

Local knowledge: Interviews with local experts will shed light on how land-related activities (land delivery, land transactions, subdivision, planning, building permits, allocation of public land) were performed *de facto*. Staff must assess to what extent these activities took place outside the law, for instance through parallel structures. In this respect, it is more important to understand the law as enforced than the law in the statute books.

Staff must also arrive at an overview of the different types and systems of land tenure. They must identify any major discrepancies across different areas. Their focus must extend beyond ownership/freehold/property rights. It is possible that the majority of the land and dwellings are held under rights of use or possession, which may have restrictions on transferability attached. Moreover, titles to land or dwellings may be held under customary, informal or religious law, which all lie outside statutory books.

Discrimination: As they review the legislation, staff must assess whether this legislation discriminated against certain groups. It is possible that at some point in the history of the country, land transactions and allocation favoured certain groups over others. This could involve subtle or blatant discriminatory procedures, such as:

- Rules demanding *prior approval of transactions* (or certain types thereof) by a certain authority ahead of completion. This can easily be used for discriminatory practices, such as blocking transfers from a member of one group to another group.
- *Non-completion of the technical process or administrative procedure*. Staff must assess land transfer activities (e.g. allocation and transactions) to establish three critical points: (1) whether transfers were completed in keeping with appropriate procedures for verification, notarisation, recording and registration; (2) whether these procedures were complemented by the updating of the registry/textual cadastre; and (3) whether these included subdivision procedures, such as surveys, preparation of plans and updating of the index/cadastral maps. These conditions may differ across various areas (urban/rural, inhabited by different groups, very mixed areas) and across different

countries.
- *Unrecorded transfers*: Staff must identify the reasons. Has there been a tradition of recording or registering land rights? Has registration been avoided? Did people try to avoid payment because of taxes or processing fees? Did people try to avoid the lengthy and uncertain procedures required to get permission for the transfer? Were the transfers in violation of the law? Did the transfers go unrecorded because of discrimination issues?

Further steps: Understanding the regulatory framework in any depth is far from easy and may happen only in incremental steps. However, improving one's understanding is a prerequisite for several of the further steps to be taken during the emergency phase, such as:
- Understanding what has been going on, and is still going on, with regard for instance to what is legal, and what is unacceptable.
- Rating the validity of the land records.
- Developing hierarchies of legal evidence to provide guidance on what is a secure land right.
- Designing appropriate mechanisms for dispute resolution.

Far from being only a 'technical' legal exercise, such an understanding must extend to the previous and current state of society insofar as it relates to issues of land and housing.

1.1.7.2 Dealing with legal ambiguity
One can expect that an assessment of the regulatory framework will expose legal ambiguities and contradictions. It is unlikely that clear-cut rules have applied in the past and can still apply in a post-conflict situation. Staff must pay special attention to human rights issues, especially housing

and property rights access to mechanisms for dispute resolution, and due process. Local legislation will probably need adaptation and the introduction of generic international laws, hopefully only when required. Extensive lobbying for legal issues is also likely to be in order if those controlling administrative power are to grant them the required high degree of priority.

Prompt repeal of legislation may be in order where it is clearly discriminatory, and the pre-existing regulatory framework may need adapting. Moreover, post-conflict situations typically attract many foreign consultants who often prove all too keen to introduce new legislation modelled on foreign statutes, instead of assessing and adapting existing laws. In fact, foreign-inspired legislation is associated with three main problems:

- Implementation is more problematic for local staff, owing to a poorer degree of understanding.
- Co-ordination problems and contradictions with pre-existing (and continuing) laws and regulations can be expected.
- Acceptance/ownership may be poor as local staff or (groups of) the population consider the law alien.

As far as possible, any new bill of law must explicitly purport to respond to local circumstances in close co-operation with local experts (or be drafted by local experts with international assistance). This will improve the actual import which the legislation or regulations will have in the short term as well as their sustainability in the longer term.

Local politics: Drafting laws and regulations is one thing, but getting them approved by the appropriate institutions is

another. The process is always time-consuming. Lobbying is in order at an early stage, including explanation of the bills coming up for review and all the good reasons for turning them into law. There is no underestimating the time this can take, especially where the constitutional framework itself is under development, or is made more complex by a dual structure involving international administration. At the same time, often in these situations one needs to make a careful assessment as to when the 'time is ripe' for certain actions, in view of priorities and the ambient degree of awareness about land issues.

Human rights: In the emergency phase and as far as possible, the pre-existing regulatory framework (including administrative/technical) must continue to operate as it did before, but *within a human rights framework* (see below).

1.1.8 Security of tenure in international human rights law

1.1.8.1 Security of tenure as a human right
Security of tenure is one of the elements of human rights to adequate housing and land. Those human rights are laid out in various specific international instruments, including covenants, conventions, declarations and resolutions. All human rights are interrelated and interdependent. They apply to all human beings. Awareness of discrimination against women and minority ethnic or racial groups has led to increased lobbying for the development of specific international instruments which emphasize their rights, and especially those of women, to land, housing and property.

1.1.8.2 International instruments: a primer

Covenants and conventions are treaties under another name and they legally bind the countries that have signed and ratified them. Ratification means that after representatives of a country have signed a treaty, the head of state or government of that country has approved this signature. Covenants and conventions can be bilateral (between two countries) or multilateral (between more than two countries). Where they originate with the United Nations, covenants and conventions are first adopted (by resolution) by the General Assembly and then opened for both signature and ratification by member States.

Whenever a State ratifies or accedes to a treaty, it may make reservations with regard to one or more specific clauses, unless prohibited under the treaty. States can normally withdraw any such reservations at any time.

In some countries, international treaties take precedence over national law; in others, a specific law may be required to give an international treaty the force of national law, even though ratified or acceded to. In practice, States that have ratified, or acceded to, an international treaty must often add to or amend existing legislation if it is to be fully effective on the national territory.

Declarations and recommendations are generally documents of intent. In most cases they do not create *legally binding* obligations on signatory countries. They do not need ratification. However, in some instances, a declaration or recommendation may gain the force of binding law: if its contents are widely accepted by the international community, it achieves the status of customary international law.

Resolutions are documents without legally binding force (except for those of the UN Security Council). However, since they typically emanate from UN bodies, they can carry considerable weight, and often provide a wealth of detail about a particular subject not to be found in other international instruments.

1.1.8.3 Security of tenure: international legal sources
The following international instruments spell out the rights to adequate housing, land and property as well as related rights:

International conventions
a. International Covenant on Economic, Social and Cultural Rights (ICESCR: 1976):
- Article 2(1): progressive realization of human rights
- Article 2(2): non-discrimination
- Article 3: equal rights of men and women to the enjoyment of all economic, social and cultural rights
- Article 11(1): the right to adequate housing (including secure tenure, which includes access to land).

b. International Covenant on Civil and Political Rights (ICCPR: 1976)
- Article 2(1): non-discrimination
- Article 3: right to equality
- Article 12(1): the right to choose own residence
- Article 14: equality before court
- Article 17: right to protection against arbitrary or unlawful interference in home
- Article 23(4): equal rights and responsibilities of spouses during and at dissolution of marriage

- Article 26: equal protection before the law

c. International Convention on the Elimination of all Forms of Racial Discrimination (ICERD: 1969)
- Article 5(d) (v): the right to own property
- Article 5(d) (vi): the right to inherit
- Article 5(e) (iii): the right to housing

d. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW: 1981)
- Article 1: definition of discrimination
- Article 13: women's equal rights to bank loans, mortgages and other forms of financial credit
- Article 14(2)(h): rural women's rights to enjoy adequate living conditions, including in relation to housing
- Article 15: women's equal rights to conclude contracts and administer property
- Article 16 (1)(c): equal rights and responsibilities during, and at, dissolution of marriage
- Article 16(1)(h): equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property

e. Convention relating to the Status of Refugees (1954)
- Article 21: treatment regarding access to housing must be as favourable as possible

Resolutions
a. UN General Assembly
- Resolutions 41/146 (1986), 42/146 (1987), 43/181 (1988) and 46/163 (1991) on the Global Strategy for

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Shelter to the Year 2000.
- Resolutions 50/195 (1996), 52/130 (1998), 54/167 (2000) and 56/164 (2002) on the Protection of, and Assistance to, Internally Displaced Persons (IDPs)

b. Economic and Social Council (ECOSOC)
- Resolutions 1987/62 on the Realization of the Right to Adequate Housing

c. UN Commission on Human Rights
- Resolutions 2000/13, 2001/34, 2002/49, and 2003/22 on Women's Equal Ownership of, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing
- Resolution 2000/53, 2001/54, 2002/56 and 2003/51 on Internally Displaced Persons
- Resolution 1993/77 on Forced Evictions
- Resolutions 1986/36, 1987/22 and 1988/24, 2001/28, 2002/21 on the Right to Adequate Housing as a Component of the Right to an Adequate Standard of Living
- Resolutions 1994/8, 1994/14 on Promoting the Realization of the Right to Adequate Housing

d. UN Sub-Commission on the Promotion and Protection of Human Rights
- Resolution 2002/30 on the Right to Return of Refugees and Internally Displaced Persons
- Resolutions 1998/26 and 2002/7 on Housing and Property Restitution in the Context of Refugees and Other Displaced Persons
- Resolutions 1991/12, 1993/41, 1994/39, 1996/27 and

1998/9 on Forced Evictions
- Resolutions 1993/15, 1994/20, 1995/12 on the Right to Adequate Housing
- Resolutions 1991/26, 1992/26, 1993/36, 1994/38, 1995/27 and 1995/19 on Promoting the Realization of the Right to Adequate Housing.
- Resolutions 1997/19 and 1998/15 on Women and the Right to Land, Property and Adequate Housing.

e. UN Commission on Human Settlements
- Resolution 19/3 on Global Campaigns on Secure Tenure and Urban Governance, adopted 9 May 2003.
- Resolution 19/16 on Women's role and rights in human settlements development and slum upgrading, adopted 9 May 2003.
- Resolution 16/7 on the realization of the human right to adequate housing adopted 7 May 1997.
- Resolution 14/6 on the human right to adequate housing, adopted 5 May 1993.

Declarations and Recommendations
Habitat Agenda. 1996: Paragraphs 8, 11, 14, 15, 16, 17, 26, 27, 37, 38, 39, 40(b), 40(c), 40(d), 40(e), 40(h), 40(j), 40(l), 40(m), 40(n), 46, 60, 61, 93, 94, 95, 96, 97, 98.

Website addresses for international instruments appear at the end of the Reference section.

1.2 Reforming Systems, Management and the Law

1.2.1 Reforming systems and management

1.2.1.1 Creating flexible hierarchies of legal evidence and undertaking adjudication

Resolution of land claims in the post-conflict emergency phase will probably require flexible hierarchies of legal evidence based on a range of legal elements. The same holds true for land market transactions. 'Flexibility' means that the hierarchy must extend beyond conventional legal evidence held in the land register and cadastre or other formal documents. On the other hand, any rules regarding evidence must also probably integrate the fact that some documents have been tampered with because of the conflict.

In many cases, ordinary legal standards with regard to land records will have only limited import during the emergency phase and the immediate aftermath of a conflict. As already mentioned, land records may be missing, incomplete or out of date. They may also include only certain transfers, as some others took place outside the recording system. Some of the records may have been tampered with just before, during or immediately after the conflict. In general, it will not be possible to rely solely on the land records to determine who holds which property rights. To a certain extent and in certain respects, one can compare the situation with a process of adjudication.

Adjudication: Adjudication normally occurs when someone brings land rights onto a land register for the first time.

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Adjudication determines rights in a plot of land. Based on all kinds of information available (official documents, other written documents, witness reports, etc.), a right-holder is registered in the 'draft list'. This list is then put up for public inspection for a certain period (ranging from a few weeks to a few months). This enables right-holders whose rights are not shown, or whose rights are listed under someone else's name, to file objections. As early as possible in the emergency phase, staff must try to introduce adjudication in the technical process or administrative procedure. In the reconstruction phase, adjudication should be routine (Section 2.2.5 – *Entrenching due process in administrative procedures* – below includes a detailed explanation of adjudication and due process in the context of the reconstruction phase.)

Due process: To ensure adequate protection of land rights, due process mechanisms based on conventional adjudication approaches must become part of the existing technical processes and administrative procedures associated with land market transfers in post-conflict societies. Due process must also be introduced in any occasional or systematic data transfer from manual to digital systems, or when deeds systems are changed to title systems.

However, when introduced in the adjudication mechanism, due process must be so designed as to facilitate mass conversions, short of which it will freeze the entire land market for years. Tinkering of a purely technical nature will too often result in loss of land rights for ordinary people for three main reasons:
- There is no due process mechanism.
- The committee responsible for adjudication does not meet.
- The due process mechanism is not designed to deal with

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mass claims.

Types of evidence: Where land registration systems operate along conventional lines, they are likely to do so based on a rigid hierarchy of legal evidence as dictated by statute. However, in a post-conflict situation, such rigidity must give way to a more flexible approach. To start with, a flexible hierarchy must take in different types of legal evidence. An appraisal of the elements of every such type of evidence must determine its relative weight, taking into account the societal, legal and political situation before and during the conflict period. The types of legal evidence to be used include: possession lists, copies of cadastral plans, notarised contracts describing the transfer of real property, contracts on use of apartments, public housing records, building permits, permits of use, evidence of tax payments, utility bills and (oral) witness reports. For the sake of due process, any decision must rely on a combination of sources of evidence (including some secondary evidence), rather than single evidence.

In other words, alternative types of legal evidence, rather than just the land records, can play a crucial role when determining property rights. Not only can legal counter-evidence play a role alongside the land records, but also accepting land records at face value (until proven differently) can amount to negligence in certain cases or areas. Where land records are taken at face value, they may well benefit the group in power over other groups, especially those not currently in the area (e.g. refugees).

Rules of legal evidence must be developed which:
- As far as possible, do not discriminate between the different groups in the conflict.

- Allow for the likelihood of previously unregistered transfer documents.
- Use alternative documentation such as utility or tax bills, information from customary, parallel or informal structures.
- Accommodate oral witnessing.

For disputed cases where different individuals claim the same land rights, an appropriate hierarchy of legal evidence is in order. This is important when people belong to different sides in the conflict. In these circumstances, staff must take a critical look at the methodology of land records; they must pay particular attention to documents signed by individuals that are in the area at the time, and especially when power-of-attorney is used to transfer land rights away from absentee owners. Moreover, individuals will often demonstrate use of a property with evidence of utility or tax payments in connection with it; but this does not prove what type of right they held (owner, possessor or tenant).

Special protection: Protecting the rights of individuals who have left the area willingly or otherwise will most likely require some steps with regard to land market transfers. This may include offices for the lodgement of claims located in other areas or countries. Those individuals may also need assistance when faced with transfers, whether they object to a forthcoming registration of 'their' land rights in the name of someone else, or whether they need some time to object even after the registration has taken place. The latter case may result in some kind of qualified title. At the same time, these protective steps will make registration more difficult and stand in the way of a revival of the land market.

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Inheritance: Reviving the land market in a post-conflict situation often runs into complications related to individuals who have been killed or gone missing. Problems also frequently arise in connection with the inheritance of land, which post-conflict situations only exacerbate, and with the frequent recording of land rights in the name of a deceased person. There are six reasons for this:

- Discriminatory legislation.
- Legislation on intestate inheritance is often at variance with customary or religious rules.
- Bureaucratic procedures for processing a transfer upon inheritance can be too lengthy or costly or must take place in the capital city.
- Evasion of inheritance taxes.
- Unsuitability (or even illegality) of the subdivision of the property between heirs.
- A few heirs use the property, but more live elsewhere (e.g. large conurbations, abroad), and still retain their rights. Such circumstances make it difficult to register the correct situation and even harder to transfer the rights, especially where rules require all parties to be present to sign documents.

As mentioned earlier, in a post-conflict situation, both dispute resolution and land market transfers require trails of legal evidence as well as a flexible hierarchy thereof. This type of legal evidence is likely to suit a *deeds-based* registration system (preferably with a parcel-based [cadastral] index) better than a *title-based* one (which revolves around the notion the main records [land book] are not defeasible).

The approaches outlined above go a long way towards preventing a *de facto* victor's land register.

1.2.1.2 Creating an early management system for public land/properties

Post-conflict situations create opportunities for theft of land, housing or other property left behind by individuals who have had to leave the area, or of public land and buildings.

Post-conflict environments typically trigger construction booms. The resulting buildings can fail relevant rules and regulations on three major counts:

- Absence of the required building, or other, permits.
- Location outside the relevant spatial or land use plans.
- Location on land not owned by those undertaking the construction.

Moreover, buildings previously used by currently dysfunctional public bodies or enterprises may be invaded for the purposes of (temporary) housing or small-scale businesses. In some situations, criminal elements may take over buildings. It is likely that the (interim) administration will neither be aware of the exact location of the public land and buildings, nor that the properties are being invaded. Even when the administration becomes aware that this is happening, for instance when construction is taking place in road reserves, parks, or on sidewalks, squares or parking lots, it is often difficult to respond appropriately.

The most appropriate initial system for public property management involves:

- Collecting data on public property and keeping it on a simple database;
- Making sure that a basic legal framework is there to facilitate the protection of public property;
- Determining as soon as possible whether the construction

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or the occupation is illegal or in an illegal location;

- Notifying the builder or user of their infringement, with a request to stop construction and remove what is already there or vacate the building;
- If the builder or user do not comply, preparing a demolition or eviction order;
- If necessary, once the order has been filed, the appropriate authorities must physically remove the user or the construction. Usually this requires a (specialized) construction company, and the process may include (forcibly) removing the occupants. Those executing a demolition order may need the protection of security services. The peacekeeping forces may have to carry out eviction orders against criminal elements.

The local level is most appropriate for those types of land or property management functions. The monitoring and notification must take place at local level as soon as institutional capacity has been (re-) established. Depending on the socio-political make-up of the local authorities, they may have to shift the decision to file an eviction (or demolition) order to a higher level of government. The police or security services must back up the execution of eviction orders.

If action with regard to illegal construction or occupation is prompt, public and happens soon after the conflict, then the message to the public is clear, and this will prevent further illegal construction, occupation and invasion of public land and buildings. Short of prompt action, the possibility of dealing with these illegal developments will become more remote and instead authorities will have to regularize them at a later date.

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Where an invasion involves public buildings, any form of regularisation will come at an enormous cost to the authorities. Regarding the invasion of public land by ordinary people, blanket regularisation strategies have been implemented in the past and are increasingly used as a routine tool in urban development.

1.2.2 Personnel and equipment

1.2.2.1 Assessing the number of qualified personnel and their skill levels

Most activities related to the cadastre, land registration and land management are performed by persons with special skills and knowledge. The key areas of expertise are surveying, land law, planning, land economy, IT, valuation, land management and land administration. It will take an assessment of the pool of expertise and skills available to identify what kind of system can be quickly re-established, as well as the number, and areas of expertise, of international staff required.

Skills assessment will identify the numbers of people in each of the disciplines, as well as their levels of skills and knowledge and to what extent these skills are up to date with regard to global trends. All groups involved in the conflict must go through a similar assessment. The exercise must also produce disaggregated gender figures. Also in need of basic assessment is the amount of education or training available in these fields, including type and levels, in the country itself. At times, some types of education are not available in a country, but many individuals may have access to it in another one (or may actually be studying there). Some skills may only be found in one ethnic group that happens to have lost power or

is not acceptable to all sides in the emergency phase.

1.2.2.2 Assessing available equipment

Land survey requires specialized equipment. This may not be available in the country, either because it has been looted or because it was not a modern system in the first place, or because the amount of equipment is inadequate. Compared to modern implements, old-fashioned equipment requires more experts or other staff. The type of equipment needed will include:

- Theodolite, EDMs or total stations.
- GPS equipment may be considered as well.
- Special read-out and adjustment software, which requires a certain level of computer facilities.
- Computers to access and update the (low-level) database of land records.
- Computers with above-average specifications to handle the (digital) satellite imagery or orthophotos.
- GIS applications.
- Networks, servers.
- Generators and UPS.
- Radios for the transfer of data and the monitoring of transfers.

Staff must assess any available computer hardware and software, especially with regard to their appropriateness for the tasks.

1.2.2.3 Expanding the number and scope of international experts

As the emergency stage makes progress, the initial core group of international experts needs expanding. Recruitment must focus on consultants with experience in registry, surveying,

valuation, general land law, land policy development and IT. International experts must be able to provide the whole range required, from legal-administrative to survey-technical skills. Experts are also needed in other areas, including:

- setting up modern financial and project management systems;
- managing public awareness campaigns;
- contributing to reconciliation, conflict management and dispute resolution;
- understanding the human rights framework and gender issues.

At an early stage after the first 12 months, the focus must broaden to include land policy development and to set the project in the broader context of land administration and land management. This will require experts in land economy, land use planning, land valuation and sector expertise (urban development, agriculture, regularisation of informal settlements, finance, etc.), as well as political economy.

As the reconstruction phase is about to begin, some consultants that had been hired for the emergency phase may have to give way to others whose skill sets are more oriented to the medium and long terms. In general, the types of professionals involved in land-related issues are better tailored to the reconstruction than to the emergency phase.

1.2.3 Setting up an interim database

1.2.3.1 Setting up an interim, low-level database
At a very early point in the post-conflict period, a variety of functions will involve information about (administrative)

property rights. These functions include:
- Granting building permits
- Subsidies for the repair of damaged dwellings
- Monitoring land and dwelling invasion
- Temporary assignment of dwelling space for the needy.

The supply of such information will also help restore normality to the land market (at least for undisputed properties). Therefore adequate databases are in order.

Where the land records have been stolen, misplaced or are in disarray, and there is no well-rounded, up-to-date overview data up to just before the conflict, then the database need not be sophisticated. Where the complete records are only available on paper, loading them onto a database will help with rapid dissemination of information. A range of different administrative functions will also require a simple database with only the key data, which also help deliver services to clients. Such databases must use general spreadsheet software (Access or equivalent).

When setting up low-level databases, staff must take into account the quality of the data. As already mentioned, the quality may have suffered from the removal or theft of data sets, unrecorded contracts, parallel structures, discriminatory transactions and illegal or unfair processes and recordings that have occurred just before, during and immediately after the conflict.

In most cases, staff will have no alternative but to use the data, for all its limitations. It will be a rare situation where merging two or more data sets is feasible. Generally, this will involve the application of generic rules as to which set takes

precedence when data fail to match.

Three steps: When creating a low-level database, the first step is to supply offices/structures at municipal level with *read-only CDs* of the data in their area of responsibility. Computer equipment, including a printer and software, must be available as soon as possible. Two different methods are available to reduce opportunities for illegal alterations to the data: recording them on CDs through automated processes, or employing non-cadastral data entry personnel.

The second step in the creation of a low-level database is to set it up in *a format that allows updating*. This includes logging functions showing the time of change to the data and the authorized user making the changes. This format will allow the recording of routine land transactions. The amount of time and money it takes to create such a database will depend on how comprehensive the overview data is and on the extent of computerisation before the conflict. Staff will need to assess whether the creation of such a low-level database adds value in a post-conflict situation. If it does, then its format must be such that it can also serve as a building block for a modernised registry or cadastral system in the subsequent reconstruction phase.

Once the updateable format has come on stream, the third and final step in the creation of a low-level database is the development of *a flexible hierarchy of legal evidence* to be applied when processing transactions.

Recommendations: In this low-level database, staff must neither update nor change any land rights that are in dispute and under review by the land tribunal or courts. Once a

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dispute is resolved, staff must enter this information into the database. Moreover, staff must treat with additional caution any transactions that remove land rights from persons not present in the area. Any transactions which staff consider as suspicious must go through sporadic adjudication (*see* section 2.2.6.2 *below*) to ensure that due process takes place.

Ideally, all transfers in a post-conflict situation must include some form of due process mechanism. However, this approach would probably lead to a deadlock in the formal land market. For the same reason, it will not be possible to undertake adjudication of all properties when setting up the low-level database. This would imply a systematic adjudication process, which would take years to complete for a whole territory or country. Development of alternative mass dispute-resolution approaches would be needed.

1.2.3.2 Gender and the interim low-level database

Staff must also screen relevant laws and regulations for anything that makes it difficult for women to have land registered in their name or to hold occupancy rights. This includes inheritance and marital property laws. Even where laws are gender-neutral, tradition or practice may still favour men over women. Land and property that belongs to a family, and is considered the joint property of either spouses or a family, is still often only registered in the name of the husband or senior male. Upon the death of the husband or senior male, widows may find themselves excluded from the property as inheritance laws and custom may favour sons over daughters and brothers over widows. Upon divorce, similar problems may arise.

The low-level database cannot solve these problems.

However, the design of the database must be such that it does not contribute to gender discrimination. For instance, where there is co-ownership and co-possession by spouses, the records must not abide by the standard of reserving room for two persons per property (one and three or more should be the special cases). This should make it possible to obtain disaggregated data on male and female ownership at some point. Moreover, where this type of data is available in digital form, the data from the persons' register, which shows marital status, can be combined with the property data.

At a later point in time, and as part of the technical and administrative transfer procedure, the authorities must enact legal provisions to prevent spouses from selling family property without the permission of the other spouse. Such provisions must be introduced regardless of whether only one of the spouses owns the property prior to marriage, or whether they co-own it.

1.2.4 Critical functional and legal arrangements

1.2.4.1 Inter-relations and information flows between land institutions

At the beginning of the emergency phase, a single team led by international experts is likely to deal with issues such as existing land disputes, securing and reconstructing the land records, law, order and reconciliation in land, and any other issues that may arise. However, it is likely that over time, there will be a separation of functions within the team. For instance, management of claims and disputes may go to a separate agency staffed by international experts, or alternatively, and with appropriate capacity-building, to the

judiciary or a dedicated government department. Creation of a separate agency is likely for the registry/cadastre. This may begin only as a project, if no government agency already exists. This project must transform into an embryonic agency as soon as possible. Moreover, although allocation of building permits may be entrusted to the land-dispute agency, this function is better allocated to municipal authorities.

It is likely that the registry/cadastre and dispute resolution agencies will diverge over time during the emergency and reconstruction phases, as the technical and legal experts in each institution focus on the details of implementation rather than the overall picture. However, given the germane nature of the functions, special efforts to co-ordinate the different land agencies are required from the outset. Short of this, the agencies cannot share legal knowledge and interpretation, nor can they formalize land information flows between them. Given the pressure of emergency work, such co-ordination is unlikely to be considered an immediate priority, but quite wrongly so: the later it happens, the less efficient such inter-agency co-ordination will be in the short, medium and long terms.

In practice, co-ordination means that the land dispute agency shares any information and land records it produces with the separately established registry/cadastre agency, and preferably as cases are settled, or in any case at the end of its own life. Short of integrating disputed claims into the registry/cadastre, the security of tenure of the disputed land will be limited and even decrease over time. The agencies in charge of dispute resolution and of issuing building permits will also require land record information from the registry/cadastre at every stage of their own operations.

1.2.4.2 Improving land records

The low-level database described in section 1.2.3.1 is a good starting point for systematic land-record improvement. This effort includes administrative records (registry or cadastre), which must be further improved with any available piece of reliable information. The first step in this systematic effort must be the creation of the updateable version of the low-level database, i.e. one that can be updated. From that point onwards, systematic improvement can only happen in a piecemeal way, as new transactions occur at the relevant offices. This will generally come in the form of individuals looking to transact actual (or putative) property rights.

As described in section 1.2.1.1, when people wish to transact property rights, it is not possible to rely solely on the registry or cadastral records. Other types of legal evidence may also be required. Moreover, one must make sure that the property is not the subject of a claim at the land dispute agency or court. Best practice here is to attach a caveat, or written instruction, on the registry/cadastral records that a property is subject to a claim. This approach relies on the proper use of consistent and unified property identifiers, and it would benefit from computerisation.

There is an alternative way of ensuring that property transactions being dealt with by the dispute resolution agency do not go through. It would involve systematic checks for possible claims with the relevant courts or agencies *before* the registry/cadastre or courts record any transaction. But then this would prove too much of a burden not just on individual transactions but on the courts and the land dispute agency as well, even where only a few properties are actually subject to

a claim. For this and other reasons, the registry/cadastre must process any decision made by the courts or dispute resolution agencies as early as possible. Where properties (or land parcels) are not well defined or where rights holders wish to transfer rights to only parts of their property, research into survey records or cadastral maps is in order during the course of the transactions.

Short of this, the risk is that yet another party will become involved in the dealings over particular pieces of property. When the loser in the claims registry/cadastre procedure sells their 'right' to an unknown buyer and there is no way of checking that the claim has been resolved, there is a fair chance that the new buyer will become another claimant with a reasonable case.

Map reconstruction: Further improvement of land records will also require map reconstruction efforts. Collation and assessment of records (*as described in* Sections 1.1.4.2 *and* 1.1.6.1 *above*) must serve as an opportunity to develop a graphical overview based on the data (cadastral/index maps). By that time, staff must be well aware of the availability, currency and quality of the survey records.

Unless the maps are complete or very nearly so, land record improvement will likely require quality map reconstruction by area and by period. Such reconstruction can resort to aerial photographic material (*as described in* Section 1.1.4.4 *above*) as a foundation. The effort will require new or additional equipment. First to be undertaken is the day-to-day task of boundary determination, resolution of boundary conflicts and requests for subdivisions. The next step is to embark on a systematic, time- and resource-consuming project to create

high-quality maps. Just as with the descriptive records, the focus must be not just on official documents; it must extend to other types of evidence such as terrain features, (aerial) photos and even oral witnesses.

Property developments: Any subdivisions must be carried out responsibly to keep in check both illegal development of public land and informal development outside the planned urban areas. Whereas surveyors can refuse to undertake subdivision in such situations, in an emergency phase this could force those activities even more into the extra-legal sphere. Monitoring development requires good coordination with the authorities responsible for urban planning and the management of public land. At the same time, there must be new ways of accommodating genuine and pressing needs for land that can be developed, whilst preventing long-term problems through the loss of public land and random development on the urban fringe.

Staff and safeguards: Improving the records requires well-trained land office staff with appropriate professional ethics. The procedures must feature built-in safeguards to ensure quality. Staff must be able to retrace any alterations or changes to the land records, with logs showing the time and user on computerised records. Any changes to the records must be based on the correct documents, which in turn must be checked according to certain protocols. Both the underlying documents (or a copy thereof) and the protocol should be archived, including mentions of the date, time and the name(s) of processing officer(s). Some procedures will require a certain degree of expertise, and it is better for two individuals to sign the completed protocol before any change is finalised. Moreover, if one person creates the file, another

person should be responsible for checking it and another for filing it, wherever possible. However, staff must find the right balance between the time and resources required to run the system, and clients' need for expediency.

The private sector: Apart from government, the private sector often plays a major role in transactions involving property rights. Conveyancers or legal professionals (lawyers or notaries) often support transactions. Private/licensed surveyors perform subdivisions. Often when the government sector is under-resourced, private sector professionals may obtain access to large parts of the land records to collect, research or check information. Adequate safeguards must prevent the private sector from illegally altering the records, or removing them.

1.2.4.3 Translating existing laws and repealing discriminatory legislation

Translation of existing laws and the repeal of discriminatory legislation must be a continuous process. As mentioned earlier, both are required early in the emergency phase, but must continue in the later stage as well.

Staff must examine the entire legal framework over time to identify discriminatory laws. These should be repealed as early as possible under the new or interim administration. Translation of the legislation and comparison with international human rights conventions, with special regard to housing rights and security of tenure, are essential prerequisites before staff reach any conclusions. The comprehensive review must result in the recording of any infringement of the rights of the weaker groups in society; these include women, minorities and those who were

members of the 'wrong' group during the conflict. Staff must address instances of past injustice.

Monitoring for any discrimination is also in order when government-owned enterprises and assets are privatised, either prior to, during or after the conflict. When property is privatised and awarded to those who lease an apartment or are employed by an enterprise, the effects of earlier discriminatory rules in the allocation of dwellings or job opportunities (including mass redundancies) will have an influence over who benefits from privatisation.

The effects of earlier enforcement of discriminatory legislation, and of discriminatory implementation of neutral legislation, must be redressed to the greatest possible extent. Where victims are rare, the claims system can deal with reparation. However, both the person making the claim, and the person in possession may have a reasonable case to be the right holder. Some kind of compensation may be required (e.g. cash, government bonds, allocation right to unclaimed or reserve land or property). Specific restitution legislation will likely be required. Central Europe's transition countries and South Africa have some experience in this regard.

1.2.5 Building bridges from emergency to reconstruction

It is important to note that of the 20 or so key activities listed for the emergency phase above, the majority act as building blocks for the reconstruction phase. Only three in the whole list do not need to outlive the emergency phase, namely: (1) raising funds for this specific phase of the project; (2)

developing specific procedures within the UN for emergency operations; and (3) liasing with other agencies during the emergency phase. Therefore, treating land management as only an emergency issue is not recommended. Rather, activities in the emergency stage must ultimately become foundations for the reconstruction phase. This is because of the nature of conflict and land issues, which has four major implications. To start with, conflict is often endemic in society and land issues are a key factor in potential conflict over decades. Moreover, land issues and conflict typically take years to resolve, and there is no 'quick fix'. Thirdly, projects are only worth starting if they move on to the reconstruction phase and up until the point where a credible institution takes over their functions, otherwise the input is probably wasted. Finally, the land sector is politically so sensitive that short of appropriate resources, it is better not to engage with it at all.

2. THE RECONSTRUCTION PHASE

<u>2.1 Mapping out Strategies and Operations</u>

2.1.1 Developing a strategic action plan: 22 steps

With everything in a state of flux in an immediate post-conflict or post-disaster situation, the strategic action plan in the early phase of reconstruction requires 'soft' systems (i.e. centred on human behaviour) as opposed to the 'hard' (i.e. purely technical) systems favoured by those conventional approaches typically used in stable situations. The strategic action plan must include the following 22 steps:

- *Think before starting*. It is better to have a fair notion of what can be implemented, prior to setting goals and devising plans; therefore, staff must spend time devising a practical strategic action plan. In an environment defined by seemingly overwhelming numbers and varieties of demands, it is critical to identify priorities and what can be delivered in view of available (human and financial) resources, especially as handling land issues can prove expensive. Development of a work plan, along the lines suggested in the Appendix, must begin at a very early stage. The Strategic Action Plan will identify different critical elements, which it is then crucial to convert, in a balanced way, into specific activities in the work plan. The typical land administration work plan includes the following six areas of activity: financing, information systems, legislation, management, organization, and technology. There is a significant risk that the 'hard' activities will receive more attention than the 'soft' issues where quantitative indicators are included in the work

plan, whether these are activities in their own right, or components of one or more of the main categories. 'Soft' activities are not easy to describe in terms of deliverables and measurable indicators, and are even harder to monitor and evaluate. Nevertheless, the real impact on society, and the long-term sustainability of the project, are both dependent on the 'soft' activities.

- *Avoid functional gaps and overlaps*. Prior to the development of a strategic action plan, staff must carry out a rough review of UN and international agencies, government institutions and projects to assess which land-related functions they undertake, in order to ensure that gaps and overlaps remain limited. This exercise must also identify the extent of co-ordination required with the UN and other agencies as well as government and donors' projects. Staff must clearly identify the functions to be undertaken and the roles and responsibilities allocated to the project, to UN agencies (especially those in charge of governance functions in post-conflict societies) and to UNDP, as well as the methods of co-ordination.

- *Planning and financial management* is a key aspect of reconstruction projects, as these typically make heavy demands on resources. These activities should take place within the country, with knowledge transfers to local staff as early as possible.

- *An assessment of users' needs* from the point of view of the agencies involved and of ordinary citizens from all parties/groups. Staff will determine operational priorities on the basis of these assessments and of available resources.

- *Setting up and staffing offices*, drawing on the local and international staff that have previously worked in the emergency phase, as it gave them an occasion to develop a practical plan to employ individuals from all the groups involved in the conflict.

- *Deciding which land functions to prioritize* and which type of agency to set up. For instance, is a cadastral agency a priority, or must the registry records come first? Should the agency in charge of handling land disputes be separate from the registry office, or from government?

- *Reconstruction of cadastral records*. This aspect of the operational plan calls for specific supporting action, including (1) a scoping exercise to identify problems, (2) initial development of hierarchies of legal evidence to assess the value of the records, (3) starting discussions about the entrenchment of due process or adjudication mechanisms into the technical/administrative process, and (4) the technical options for record reconstruction.

- *Working out, as best as possible, the sequencing and timing* (phases) of activities, knowing that everything will take longer than expected, and that the legal aspects will likely experience the longest delays, whereas the technical aspects will be the easiest to implement.

- *The development of immediate plans for the improvement of mapping* (satellite imagery/ orthophotos).

- *Setting the strategic plan within a technical/legal policy framework* through key decisions with regard to certain

approaches, namely: privatisation, land consolidation, land delivery, title deeds or other approaches to secure tenure, titles or deeds, systematic or piecemeal approaches, unfinished pre-conflict legacies e.g. distribution of social ownership, pending court cases, type of cadastre (fiscal, legal, planning, technical), integration between registry and cadastre, and cadastral accuracy. Setting the strategic plan within a technical/legal policy framework involves further decisions regarding priorities, such as modernisation or an emphasis on post-conflict issues, and the link to reconciliation or holistic land policy development. This also includes identifying ways of mainstreaming UN-HABITAT principles into the plan, including decentralisation, good governance, gender, non-discrimination, etc.

- *Approaches for the development or restructuring of the institutional framework*, especially with regard to moving from a project approach to an institution-wide approach, placement of functions within government, decentralisation, allocation of some functions to the private sector, and running a UN-HABITAT programme in conjunction with the development of an institution.

- *Capacity building plans*, including general management, technical, legal, conflict management and language. The transfer of knowledge and skills is a key area, and requires both intensive training and hands-on experience.

- *Methodologies to bring about legal certainty* and address the legal ambiguity that is an integral part of post-conflict situations.

- *Enforcement options and approaches* to ensure that policies, laws and regulations are implemented over time.

- *Public and media campaigns* to inform the public about their land rights and responsibilities, and developments in these areas.

- *Identifying pilot projects and approaches for scaling-up.*

- *Identifying and meeting key stakeholders.* There will likely be a wide variety of stakeholders. Staff must identify the major stakeholders and meet them periodically to collect information about users' needs and to keep society informed about the project. This is especially important in post-conflict societies where lack of trust and of structured information is widespread.

- *Adopting, or developing, policy on affirmative action* or quotas with regard to minority groups, groups in conflict, and women.

- *Risk assessments* are needed on a routine basis because of the state of flux society is in and the penchant to alter the land records in this environment. In addition, such situations provide fresh opportunities for corruption and even criminal behaviour. The plan must consider this, as must the monitoring and evaluation functions.

- *The introduction of land policy development* at an appropriate time, as well as the development of a Stakeholders' Forum.

- *Monitoring and evaluation* of the land sector, both in

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terms of detailed activities and of the broader picture, including the project or agency and its linkages to, and role in, the land sector in a post-conflict environment.

- *An exit strategy* for the project must be developed from the outset to include phasing out of international staff, phasing in of local staff with appropriate training, mainstreaming of the project, as well as availability of adequate financial and human resources to carry out functions that will maintain peace in the medium to long term. The exit strategy must also be such that the records from the agency set up to handle land disputes can be integrated either from the outset, or when the agency merges into government.

2.1.2 Developing work plans, activities, outputs, indicators and deliverables

Often the objectives for the project or programme are set during a Logical Framework Analysis (LFA) exercise. This LFA forms the basis for the strategic action plan, which converts the objectives into prioritised, sequenced and phased actions. The strategic action plan in turn informs the overall work plan of the project or programme, which must include an overview of the estimated timing of each activity, milestones, and a plan for the project period.

The Appendix includes a list of activities forming a typical overall work plan. Based on this work plan, one can draw a number of conclusions:
- Staff must work out the *critical path of activities*. They must identify those activities that require completion

before they can start others.

- The *nature and timing of activities must be flexible*. Circumstances may change more rapidly than expected in post-conflict situations, and priorities must be revised accordingly over the course of a project or programme.

- It is crucial for the work plan to include many *meetings with local people* to collect and transfer information and, most importantly, to build trust within post-conflict society.

- *The technical activities* related to reconstruction or computerisation of the land records, boundary maps and other geographical data sets, must be clearly identified as sub-activities, for which measurable outcomes can be defined. Many comparable projects can provide examples of valid benchmarks and indicators.

- Wherever possible, staff must identify and quantify *measurable indicators*. However, they must leave out of the work plan those activities for which they cannot set measurable indicators. They must use output and outcome indicators to facilitate both process and product.

- There is a difference between *a work plan for a post-conflict country* and one for other countries in the region that otherwise are at a similar stage of development (like post-communist transition or post-dictatorship developing countries). Activities in post-conflict societies deal not just with modernisation, but more importantly with reconciliation and the restoration of law and order.

- A work plan is *a general summary, not a comprehensive list* of the detailed activities that staff must carry out.

- Staff must break the overall work plan down into *annual work plans*. This leaves open the possibility of changing priorities, integrating lessons learnt or adjusting to ongoing developments.

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2.1.3 Administration and management

2.1.3.1 Creating efficient and transparent administration and budgeting

An efficient administration with regard to all aspects of administrative, budgeting, planning and financial management is vital to the success of the operation and to the reputation of UN-HABITAT in this environment. This is because swift and decisive action is expected in a post-conflict environment, and also because of the high degree of activity of a number of international organisations. This means that expectations are high, and close monitoring is required even more as it does not take long for negative attitudes to develop. New rules and regulations from UN-HABITAT and UNON should specifically allow for emergency/reconstruction field operations, as inefficiency in this area can discourage donors. International agencies compete between them in this type of environment, and already in the past, slow administration has undermined the ability of UN-HABITAT to generate fresh funding and put itself in a better position to deliver on its mandate.

The land registry, and especially cadastral surveying and mapping, are *resource-consuming* activities that require expensive staff. These are also highly specialized operations. The planning and financial management of these kinds of projects can only take place in the country, rather than from Nairobi. Those in charge of in-country financial planning and management, especially in this environment, must work in close co-operation with the project manager who has the specialized knowledge and skills, and they must share

responsibility with her/him.

It is critical that the delivery of this type of project is as *transparent* as possible; this is to ensure that local staff and partners build capacities in such activities as planning and budgeting. This approach will enable the management team to assess the affordability of the design (including equipment); this aspect has to do with cost-recovery issues, which in turn have links with the financial sustainability of the institution in the longer term.

In fact, short of such an arrangement, it is impossible to gain an overview of the total budget, activities and expenditure of the operation, including budgets and activities of all donors – an overview which donors in this field consider as standard operating practice.

In these types of operations and because post-conflict society is in a state of flux, activities identified in a work plan may have to change over the course of a single year. Some mechanism must make it possible for staff to revise agreed activities and budgets in a structured way as time goes by, using the standard operating procedures for budgets and activities outlined above.

Procurement must be transparent and help build local knowledge, in order to avoid a situation at a later stage where the local institution would not know how to undertake this critical activity. In this environment, part of procurement has to do with the development of an asset register. Since the assets from the project will become part of the assets of the government institution being created, the UN system must not register them in a way that will make their transfer difficult

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from an administrative point of view.

Part of standard operating procedures for donors in post-conflict societies is to get the land institutions to the point where the management team have created and managed a structured and transparent budget that is linked to a Strategic Action Plan and programme activity lines. This makes monitoring easier and ensures sustainability in these types of operations. Short of reaching this objective before UN-HABITAT withdraws from a post-conflict operation, the land rights protected by such an institution will be jeopardised.

2.1.3.2 Setting up a Steering Committee for the project

A Steering Committee for the project must be set up as early as possible. It must bring together management responsible for the project (technical, local, UN-HABITAT), politicians under whose mandate the project falls (UN agencies, local) and donors involved in the project. The role of this Committee is likely to change over time as the project turns into a stand-alone institution or as reconstruction proceeds and government becomes fully operational. The role of the Committee must also change relative to UN-HABITAT's own role, as the agency moves away from operational activities and focuses on broader-picture monitoring and evaluation as well as land policy development. Whether the Steering Committee tries to behave like a management board for the embryonic institution, or the various political forces bring their respective agendas to Committee meetings, both situations will call for some diplomatic handling.

The Steering Committee will need a secretariat. It is also likely to have some responsibility for the management of certain resources (such as short-term consultancies). The

Steering Committee may also be used to manage a Stakeholders' Forum for land policy development, in which case its composition may have to include representatives of other stakeholders.

2.2 Coming on Stream

2.2.1 Involving the population

2.2.1.1 National reconciliation

Where conflict is land-related, ensuring sustainability in the land sector calls for nation/territory-wide reconciliation with regard to land needs. The bulk of the efforts involved take place at national/territory level, but the land sector has a crucial role to play. Some form of inclusive stakeholders' forum must be set up as soon as the time is ripe to undertake land policy development. Staff must make sure that the forum contributes directly to negotiations between groups where land is a core reason for the conflict.

2.2.1.2 A Stakeholders' Forum for land policy development by civil society

It is unlikely that land policy can be developed in the first 12 months of the post-conflict phase. However, given its central importance to the reconciliation process, such development must begin as soon as the country or territory is ready for it and under the form of a Stakeholders' Forum. The reason is that land management requires the presence of at least three factors: (1) information about the land, (2) clear policies on how it should be managed, and (3) the participation of everyone with an interest or stake in the land. Stakeholders are interest groups or dependent groups, i.e. categories of

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people or institutions who share a common interest in a piece of land, be it an individual plot, the territory of a community, or a natural conservation area in a region or country.

The Stakeholders' Forum must be inclusive and must not exclude certain stakeholders, otherwise it will not be possible for all the decision-makers involved in the conflict to reach consensus.

Stakeholders that must be involved include:
- The *different parties to the conflict*, including the peacekeepers.
- Representatives of *minority groups*.
- *The public sector*: central ministries and departments of Finance, Lands, Agriculture, Community Affairs, Health, Education, Forestry, Urban Planning, Transport, Justice, Local Governance, Housing, Environmental Affairs, Public Works, Mines, Planning, Central Statistics, International Co-operation; representatives of regional government and local authorities, both urban and rural, Deeds/Titles Registry or Record Office, Valuation Office, Surveys, Mapping, National Land Information System, government utilities, government research institutes.
- Specialized *land tribunals or agencies* dealing with land disputes or the privatisation of government-controlled land/socially-owned land.
- Embryonic *government institutions* dealing with land.
- *UN* agencies.
- *Government institutions* dealing with land at all levels of government.
- Representatives of *customary* authorities (formal or non-formal).
- Representatives of *informal settlements*.

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- Representatives of *religious institutions*, where they have a land management role.
- *The private sector*: utility companies, property developers (formal and informal), professional associations of surveyors, planners, lawyers/notaries, valuers; financial institutions, private sector research institutions.
- Representatives of *NGOs and CBOs*, including women's groups.
- *Donors and development partners*, bilateral and multilateral co-operation organisations.

The precise mix will vary across situations and countries as not only will departmental functions differ, but there will also be differences as to which functions are carried out by the public and private sectors (formal and informal), and these will change over time.

At national level, a Steering Committee must head the Stakeholders' Forum. The Committee must bring together representatives from government and key stakeholders' groups.

The role of the Stakeholders' Forum is to:
- *Contribute to any peace talks* between warring or conflicting parties where land is a major factor of conflict.
- *Develop land policy.*
- *Oversee the development of the land market* and land management institutions, as they change over time from emergency to reconstruction.
- Ensure that the *land issue is a core part of the reconciliation process*, and for this purpose involve the key politicians as stakeholders or keep them informed. This is a critical component of such a forum, given that

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power relations are often the greatest institutional problem in the land sector, and land management/administration systems fail to get off the ground more often because of institutional rather than *technical* problems.

- *Bring about a vision for the land management/administration system*, which should build ownership of the system across both the sectors and the groups involved in the conflict, and facilitate the sharing/exchange of experiences.

- *Maintain a client-oriented perspective*. The focus should be on the end-user (citizen) when designing policies and procedures and allocating responsibilities to different institutions.

- Identify, and advise government/UN on reducing *overlapping responsibilities* across government departments in relation to land functions, information flows or the technical processes associated with land. This should pave the way for law and order and a stable land market, on top of reducing gaps, duplication and institutional conflict.

- Address the *problems caused by centralisation and institutional fragmentation*. One of the solutions is to establish effective partnerships between different institutions, both vertical and horizontal.

- Address the problem of *land management conflicts and advise on solutions*. This must lead to the inclusion of a number of stakeholders who were previously excluded from such forums.

- *Create sustainable systems through capacity building* among local staff (e.g. training) as well as work incentive programmes to combat the 'low pay, low motivation' syndrome.

- Design any future changes in the land

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management/administration system in a *gender-sensitive way*.

- Design guidelines for *Users' Requirements Assessments*. The Stakeholders' Forum must undertake or commission an assessment of user requirements at a very early stage. Far from being a one-off exercise, this must be the first in a continuing string of user needs assessments.

2.2.1.3 Continuous large-scale public campaigns

The project office must develop an ongoing relationship with the press (including radio and television) and routinely provide reliable information about peoples' land rights and their options, where these rights have been/are being infringed. The project office must keep public relations departments in government, parties and political movements informed as a matter of routine. Staff must disseminate any new information becoming available as a matter of routine.

Staff must also continually disseminate information booklets/pamphlets about peoples' land, housing and property rights. Awareness campaigns must be a permanent feature of public information.

The project office must organize regular campaigns or media 'blitzes'. This involves posters, press kits, public announcements, briefing papers for officials and news conferences for the media. Wherever possible, these activities must highlight everything that can facilitate reconciliation in the community with regard to land.

2.2.2 Determining priorities and pilot areas

2.2.2.1 Setting priorities in the post-conflict framework

In post-conflict societies, the role of mechanisms for the resolution of land disputes is at least as critical as land record reconstruction or development. These two activities must be linked as early as possible.

It is likely that the territory or country has nothing like a modern land registry and cadastral system. When undertaking reconstruction of the registry and cadastre, it is important to remember that for the sake of sustainability, post-conflict issues remain the major priority, and one must not just focus on modernisation. Keeping this longer-term outlook in mind is often difficult for the following three main reasons:

- International advisers often bring with them approaches and business plans suitable only for societies that have not just experienced a conflict.
- Technical/legal experts often focus on practical details rather than the broader picture, as this is where project implementation takes place.
- One must distinguish between what is 'urgent' and what is 'important'. Although this is the reconstruction phase, the spirit of urgency that prevailed in the previous, emergency phase tends to linger on, especially as many of the same personnel are still in charge. As a result, 'important', 'soft' yet challenging tasks, such as land policy development linked to reconciliation, take second place behind technical implementation, no matter how unsustainable in view of the potential for renewed conflict. Compounding this risk is the way projects are set up, designed and evaluated, with their typical strong emphasis on

quantifiable deliverables. One must not lose sight of the broader picture, namely, reconciliation, conflict management and dispute resolution mechanisms with regard to land, appropriate land policy development, plausible hierarchies of legal evidence and the production of reliable sustainable land records.

Those in charge must repeatedly ask themselves, "How trustworthy is the information the handling of which we are now upgrading?" They must also make sure to build safeguards into the modernised registry/cadastre name, including with respect to the ability to trace any changes to the records (date, time and user attached to every change) and to cross-checks.

The more general objective of modernisation for staff to keep in mind is sustainable peace, law and order, and systems upgrading is only the means to this end, rather than an end in itself.

2.2.2.2 Setting up pilot projects

Many of the activities related to land registry/cadastre are quite complex to implement and require careful adaptation to the (pre-existing) specific circumstances of the country or territory, including available capacity. In many situations and even with a combination of international and local experts, laying out a work plan for implementation on a national/territory scale is impossible if the activity is not tested in a pilot project in the first place.

Therefore, the project office must test most types of activities in pilot projects to begin with. Such activities may include:
- Improved operating procedures

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- Management handbooks
- Customised procedures for basket cases
- In some situations, a re-assessment of certain basic assumptions
- A demonstration effect to convince stakeholders (and possibly donors) of the benefits of a particular activity
- Building capacity among local staff, including for management tasks
- Building training capacity among local staff prior to scaling up an activity
- Appointing local staff to lead pilot projects in order to assess local management abilities
- Monitoring the transfer of technical and management skills.

The selection of pilot areas is very important for cadastral work and property registration activities. The characteristics of the terrain and land use patterns have a large impact on cadastral work. Variations in the underlying tenure systems can be quite significant, because of customary, religious or other informal land-holding patterns. In post-conflict situations, the physical and social damage caused by the conflict, and its impact on different groups, are likely to vary widely across a single territory. Therefore, pilot projects must, as far as possible, reflect local circumstances but at the same time be capable of replication. Prior to replication in other areas, staff must thoroughly assess any conclusions drawn from a pilot project. Staff can use pilot projects in those areas that, for various reasons, require attention as a matter of priority.

2.2.3 Legislative approval and legal clarity

2.2.3.1 Legislative approval

If land issues are not at the core of the UN peacekeeping mission, then changes to, or the development of the necessary regulatory framework will likely be extremely difficult and time-consuming. From a political point of view, land is a very sensitive issue, even in societies that have not just undergone internal conflict. Politicians (whether they are local or UN representatives), and many donors along with them, will want to avoid the issue altogether if they can. Consequently, it will prove much easier to support technical reform rather than any legislative changes that may court political trouble.

New legislation is likely to be time-consuming as well as difficult to pass. In post-conflict situations, bills may need to go through several successive institutional steps for approval, such as:

- The local Assembly of Representatives;
- The local UN legal office, to ensure that the bill is not discriminatory;
- UN headquarters in New York for final approval, to make sure that the bill does not discriminate against other groups involved in the conflict.

Moving through these three institutional layers can take an inordinate amount of time. On top of this and during the legislative process, lawmakers may have edited the experts' original bill without referring back to those who will have to implement it. This can cause major problems when implementing the legislation once parliament passes it into law.

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For this reason, the regulatory framework in a post-conflict society is unlikely to be supportive of many of the activities that must be carried out in the reconstruction phase. Two additional factors will make the situation more complex: institutional confusion and competition. The allocation of functions and responsibilities within and at different levels of government, including the judiciary, is likely to be fraught with legal ambiguity and lack of clarity. And as they carry out land-related functions, government agencies, dedicated project units or think-tanks, parallel structures of conflicting groups, NGOs or the informal private sector are likely to be locked into competition, all jostling for space and opportunities.

2.2.3.2 Legal clarity

The high degree of complexity surrounding any changes to land registry and cadastral laws extends beyond legislative approval and reaches into implementation, where inadequate local capacity is likely in a post-conflict situation. On top of this, some international experts are likely to try to introduce legislation from abroad. This may result in contradictory rules or legislation so weak as to be open to a range of interpretations. This in turn will affect the ability of the courts to make clear judgements on the exact nature of land rights in specific situations. Land sector project managers must be aware of such risks and address them effectively. They must keep themselves permanently updated on the latest bills, laws and interpretations. They must hold frequent meetings with the powers that be - those who will lobby the bills through the legislative process, to keep them updated and to make sure that land remains at the top of the agenda. Land sector project managers must again guard against an exclusive focus on technical issues, the easier option in this environment – and

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keep their sights on the legal/political outputs, which admittedly are difficult to handle.

Staff must remain in close liaison with any agency set up to handle land disputes. Such an agency is likely to have its own land lawyers who can interpret the laws and the latest test cases. It is in the interests of such an agency to make this information available because, as they settle the disputes, the information should be recorded in the land registry/cadastre. Moreover, if and when this land dispute agency is at some point merged into the government, many of its records will form part of the registry/cadastre records. This agency should also reach agreement with the embryonic registry/cadastre about what forms of legal evidence will be accepted for transactions, and what hierarchies of legal evidence are being used, so that these can also become part of the registry/cadastre technical process. Coordination between the land dispute agency and the registry/cadastre will improve legal clarity; land market efficiency and security of tenure in the medium to long term.

2.2.4 Continuous assessment of land record validity

Most of the items under this section need to have been started in the emergency phase (*see especially* Sections 1.1.6.1 *Assessing the comprehensiveness of land records;* 1.2.1.1 *Creating flexible hierarchies of legal evidence and adjudication and* 1.2.4.2 *Improving land records*). However, it is likely that by the time the reconstruction phase begins, some of the steps will not have been completed, or only the initial building blocks will have been put in place.

Staff familiarity with the claims process will improve over time. They will gradually find out about the types of claims people can make and actually do make, the scale of those different types, and how the courts/tribunal(s) are settling those claims. This can be a valuable input into the development of the hierarchies of legal evidence and of the administrative procedures/technical processes for routine land transactions. This information may lead to:

- Changes to certain functions in the registry/cadastre;
- A return to normal operations in certain undisputed areas, once claims have been settled and the results recorded;
- Detailed sporadic adjudication of some properties that have already been transferred.

In addition to this, staff must continually *monitor transactions and transfers as they are processed*. Some discriminatory practices may still be going on, possibly to the detriment of absent or vulnerable groups. Staff must monitor all operations to protect under-represented groups and to prevent corruption and nepotism, especially if the economy is weak and the social situation unstable.

Liability and accountability must be developed. Typically three different institutions deal with the technical processes/administrative procedures behind secure tenure: the registry, the cadastral agency, notaries (public or private land lawyers), the courts or the private practitioners. Institutional responsibility for information must be clarified over time. The situation must be avoided where the different institutions involved in transactions rely on each other's data, and refer to each other in the process, but none of them is double-checking the data. If the institution undertaking the certification of contracts relies on the registry/cadastre data, and the

registry/cadastre relies on their certification, the system works in a closed circuit that will only perpetuate its own faults.

Where *data that has been removed or stolen is returned*, staff must be aware of three main types of potential problems:

- Returned data may have become partly outdated due to transactions that have taken place since the conflict, whether they emanate from the seller mentioned in currently available records or from someone else. Alternatively, the dispute resolution agency may have settled a claim in a way that is at odds with the records that were removed. Conflict management is in order, as inconsistent records may rekindle serious tensions.
- Depending on how the returned records were held, there may also be a risk that they have been illegally tampered with.
- The hierarchies of legal evidence in use may need some re-thinking, and may change across different areas.

In general, land records that have been removed lose much of their value within a few years, as transactions continue on the land market. Where these records are returned after a number of years, they must be treated as a secondary rather than a primary source of legal evidence.

2.2.5 Entrenching due process in administrative procedures

2.2.5.1 Due process for whom?
The land-related technical processes/administrative procedures that are used as a matter of routine in a stable situation are necessary, though not sufficient, in a post-

conflict situation. Technical and administrative procedures must include due process or adjudication mechanisms in order to protect the land rights of the following seven categories:

- Those who have been *forced to abandon* their property because of the conflict, especially if forced to move out of the country or territory. These people's rights must be protected against invasion, falsification of documents or use of bogus intermediaries or middlemen.
- Individuals whose land records may have been *illegally altered*.
- Individuals whose land records have been *lost or removed*.
- *IDPs, refugees and returnees*, some of whom may not be able, or willing, to abide by conventional rules.
- Individuals who have *transferred property in secret* because of discriminatory legislation.
- Individuals whose property transaction was started but *not completed*, either because of discriminatory procedures, or because of the conflict.
- Individuals caught up in *double sales*, where the same land has been sold more than once, because of a lack of information by the buyers or post-conflict conditions.

2.2.5.2 The need for due process

Beyond a broadening of the range of legal evidence used to assess the rights of individuals to property and land (*see* Section 1.2.1.1 *Flexible hierarchies of legal evidence and adjudication above*), sustainable reconstruction in the land sector calls for the development of due process or adjudication mechanisms.

Staff must assess the land records and the conditions in the country with regard to land disputes and their scale; the objective here is to ascertain the extent to which due process

mechanisms must be introduced into the administrative procedures/technical process. Every land registration may have to go through a process of adjudication. Any adjudication procedure must:

- Allow for *alternative legal evidence*, on top of any held in the registry/cadastre, such as unregistered or unverified sale documents, documents/permits issued by appropriate authorities, bills from utility companies (telephone, electricity, etc.);
- Check for any *outstanding claims*, especially by persons not residing in the area or the country;
- Give *formal notice* that the land is being registered or transferred (e.g. via bulletin boards, newspapers, websites);
- Be of a *sporadic* rather than systematic nature (*see* Section 2.2.6.2 *Adjudication below*).

2.2.6 Registration and adjudication

2.2.6.1 Registration

The registration of transfers must not be finalised for a certain period. This will allow individuals whose land rights have been illegally altered to claim against the 'soon-to-be-registered right' for a period of, say, three months. An excessively lengthy period would not allow proper operation of the land market, including with regard to mortgages. A balance must be found.

Adjudication is a common step in first registration or land titling, but it is not often associated with subsequent land dealings in a conventional system. Whenever a land registration system is introduced, it usually starts with 'first

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registration' or 'land titling'; these are fundamental to the initial compilation of the registers, and play a critical role when no real system of land registration exists. Where written documentation is very scarce, all existing relevant interests need careful stocktaking before they are entered in the register. During this process of adjudication, particulars of all rights and liabilities in a particular plot of land are ascertained and determined conclusively. In some countries, adjudication is used upon conversion from an 'old' to a 'new' system during cadastral reform.

Often the courts, or a special land tribunal, play an important role in finalising the results of the process. However, since adjudication tends to be slow and expensive, an administrative procedure can enable claimants who are not satisfied with the preliminary register to make objections before an 'adjudication committee' and prior to resorting to the courts.

2.2.6.2 Adjudication

There are two methods of adjudication: systematic and sporadic. Under *systematic* adjudication, an authority declares a certain area a 'registration district' and takes stock of all boundaries and rights, village by village, or neighbourhood by neighbourhood. This is a slow and initially very costly procedure for government. By contrast, *sporadic* adjudication – i.e. on an *ad hoc* basis – can be either mandatory or voluntary, and is more useful in a post-conflict situation where a registry/cadastre is available.

By its very nature, sporadic adjudication entails much less publicity, as it only deals with, say, a single property, rather than a whole village or neighbourhood as is the case with systematic adjudication. Individual property adjudication

increases the risk for holders of land rights. In some situations, boundaries must be sporadically adjudicated as well, which requires consultation of adjoining neighbours. The right itself needs corroborating evidence, which as far as possible the parties must supply themselves. Written evidence is preferred, but if unavailable, sworn statements by the land right holder, supported by local (or customary) officials, are usually accepted as well.

People traditionally enter a sporadic adjudication process voluntarily at the point when they are intending to buy, sell, inherit or donate property. Adjudication is mandatory for registration in certain cases, such as for example when a sales contract is involved. This is the right type of approach for a post-conflict situation, and it must resort to a broader range of documentation, including other than registry/cadastral documents (*see* Section 1.2.1.1 *Flexible hierarchies of legal evidence and adjudication above*).

2.2.6.3 Safeguards
Where possible, adjudication must include a public site inspection. The process must balance what is affordable against the protection of the land rights of those who are not present in the area. Lists of (proposed) transactions must be posted in several places, such as municipal offices, refugee camps and websites. Any sporadic adjudication process must make sure that no one has filed any claims on the property with a relevant court or a special land claims tribunal.

Registration of deeds provides another safeguard, since the procedure never quite rules out the potential for counter-claims. Another option is to start with qualified or provisional titles that can be challenged until they become full titles (e.g.

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after three to five years).

2.2.7 Adjudication and clarity: practical recommendations

2.2.7.1 Adjudication: practical recommendations

In short, adjudication is most effective in a post-conflict situation when:

- It is introduced *in the administrative procedures for selected land transfers*. Such selection must be based on a broad view of the land market, especially with regard to disputes and illegal transactions. In these cases, adjudication should be mandatory.
- Adjudication must be *sporadic instead of systematic*.
- It must be *publicly advertised* in a number of places, and include a site inspection whenever possible.
- It must use *registry/cadastre legal evidence as well as other evidence* of land rights.
- It is preferable to *maintain a deeds system*, rather than switch to a title system at such an early stage.

Technical experts typically argue in favour of systematic rather than sporadic adjudication. However, this is to overlook the fact that systematic adjudication is both too costly and too slow in an emergency, and probably in the reconstruction phase as well. Systematic adjudication is preferable only where the registry/cadastre hardly exists, or where the proprietary situation has changed extensively (through restitution, discrimination, privatisation or almost complete redevelopment after destruction in the conflict). Systematic adjudication must be considered when all claims have been settled and the system is fully able to cope with the day-to-day

demands of the land market. Up to that point, sporadic adjudication must be an option for anyone willing to transact land prior to the start of the systematic operation. In other words, instead of waiting until the systematic adjudication is completed, restitution must be part of a sporadic administrative procedure.

2.2.7.2 Clarity for users: practical recommendations

In the early days of the reconstruction phase, land management reform is an opportunity not just to entrench due process into administrative procedures, but also to streamline those procedures in a clear and sustainable way. To make the most of this opportunity, three practical recommendations are in order:

- *Set up well-adapted technical processes/administrative procedures that are transparent to the users and gender-sensitive.* Technical processes usually include tens, if not hundreds of steps, involving many levels of government and different agencies. The processes are usually not transparent to the user. Changes to the technical processes/administrative procedures must be used as opportunities to involve a range of stakeholders and develop a more straightforward and sustainable process. Best practice in this situation recommends that all the key agencies involved in land delivery or transfers (including inheritance) sit together with users' representatives, and especially women's NGOs, and re-think the technical process. The new process must be transparent to the public and user-friendly, on top of facilitating the completion of transactions at a decentralised level.

- *Link the development of legal certainty about land records to administrative procedures.* An improved standardised hierarchy of legal evidence must evolve once test cases

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have been decided. Public court and land tribunal decisions must also support the development of a more robust hierarchy of legal evidence. An administrative protocol must be developed for recurrent cases and include the following two components: (1) a form with a list of relevant types of legal evidence that must be assessed or verified; and (2) for common, routine cases, a decision diagram, based on a number of inter-related questions regarding the available legal evidence.

- *Clarify which institution and which person(s) within that institution are entitled to make formal decisions*. It is likely that in some unique cases, staff will be unable to prepare an administrative protocol. They should then resort to their experience and expertise as well as to the rationale behind the hierarchy of legal evidence. In all cases the decisions, which could be regarded as a form of sporadic adjudication, must be open for appeal to an appropriate court or tribunal. The best approach is to allow claimants access to 'administrative appeal' with a special adjudication committee or similar institution, in order to lower the costs of legal representation. The next and final step is an appeal with an appropriate court or tribunal.

2.2.8 Delivering services to users and the market

The land market will probably resume operations quickly after an emergency and, for the sake of law and order, the relevant framework must be as adequately structured as possible. Land offices must reopen to the public, who must have access to services as soon as some order has been

restored to the main records. Moreover, land office information is likely to be required early on for verification of the land rights of those seeking housing reconstruction grants towards repair of any damage to their dwellings.

Staff must provide information from the records wherever possible; they must also take into account the problems attached to incorrect information, because of the potential for fraud and alteration of records during the conflict. The legal status of the records must always be made public to those using the land registry information, who should be warned that:

- The information may be incomplete with regard to certain periods;
- Certain transactions may have been taking place outside the register;
- Other types of evidence, apart from the registry/cadastral evidence, must be used as well when dealing in land;
- Alternative appropriate hierarchies of legal evidence are in use.

Some form of adjudication procedure is in order when processing land transactions (purchase, sale, donation, inheritance) between different parties. When a claim on a property is pending before a land tribunal, the land records must identify it clearly. The public must be aware as early as possible of the fact that the institutions involved in land transactions (notaries, courts, registries, municipalities, survey offices or cadastral authorities) are accountable for (or guarantee) the information they make available to the public. It must be made clear who is verifying what information, and which institution is only taking responsibility for the storage of the information. In this reconstruction phase, institutions

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will likely share data that has not been verified or guaranteed, which introduces huge risks in the land market.

Double-checking information need not be overly complicated and bureaucratic, otherwise it will stifle land transactions and discourage the re-emergence of the land market, or force many transactions into the informal sector. A deeds system of land registration is better adapted to this situation. It allows all parties that are buying and selling land to reach a decision on the risk, without making it necessary for the government to guarantee the outcome. Buyers are sometimes in a better position to assess risk than the authorities are, as they can rely on local knowledge.

If a title system is in place, then the introduction of provisional or qualified titles allows those putative owners/holders of land who have lost their rights to make a case in court, prior to the final, indisputable registration of the land right in another person's name. This will reduce the risk to the public authorities or the individual.

2.2.9 Supply/purchase equipment

In addition to the initial material acquired in the emergency phase, project implementation will require additional equipment and software, as follows:

- *More computers*, including computers that are capable of handling software for the processing of spatial data images or geographic information systems.
- *A range of software*, such as operating systems, general office software, software to process and adjust survey data from total stations, as well as GPS data as it is processed

into GIS data, and spatial data image processing software. The software must be licensed in the name of a permanent entity in the country itself, rather than in the name of the project, a consulting company, a donor, or UN-HABITAT.

- *Servers, networks, generators and UPS*. The latter is important to prevent damage to the equipment from poor electricity systems.
- *Digital spatial data scanners* and plotters (in larger sizes, such as A2).
- A large amount of *survey equipment* to implement project activities and to support the land market, including at the very least GPS and total stations. Depending on circumstances, such as equipment availability, staff expertise and power supplies, there may be need for less sophisticated equipment.
- *General office equipment* for efficient operations, such as adequate and functioning telephones, fax machines, photocopiers.
- *Internet access* for both e-mails and the Web.
- *Vehicles*, since much of the activity of a survey office takes place in the field and will be restricted for lack of transportation.

Staff must record all the equipment on an asset register as soon as possible after procurement. The asset register must be in the name of a permanent entity in the country itself, rather than in the name of the project, a consulting company, a donor, or UN-HABITAT.

2.2.10 Land information, taxation and monitoring

2.2.10.1 Developing routine land information flows

Land records are only one element in the broader land administration system. Other government organizations dealing with land development, such as planning, construction and maintenance of roads and other trunk infrastructure, utilities, and housing, also use parcel-based overview data (cadastral data, both descriptive and geographic) for their own purposes and as a matter of routine.

Therefore, local offices must systematically share cadastral data with other institutions such as:

- *National and provincial departments* responsible for planning, roads, State land disposal, service delivery, housing, the environment, etc.
- *Local government*
- *The central cadastral office*, as a base for the relevant statistical analysis used in, for example, land policy development
- *The Statistics Bureau*, via the central office.

In addition to this, land information must flow both ways. This allows both the sharing of data and the identification of mistakes. Staff must, as early as possible, identify core data sets for each type of data, and keep the data as current and correct as possible. Different institutions may be responsible for different sets of data, and it does not matter as long as each is quite clear about its own and the others' attributions. In the medium to long term, a detailed analysis of all data sets will be in order, along with clear identification of the core collector for all types of data. At some point, the custodians

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and the users of the data must together outline a strategy to develop a national spatial data infrastructure (NSDI).

2.2.10.2 Introducing records-based land taxation

Land provides a tax base that is sound and relatively easy to identify. Governments in a post-conflict situation are likely to need revenue, and land tax can be an important source. Generally speaking, local governments are responsible for collecting land tax, and they keep for themselves a significant proportion of the revenues.

To raise land taxes, authorities need details of the owner or occupier of the property, where the property is, and its value. Cadastres originate in land/property taxation systems. Cadastral offices must transfer to tax authorities, data about who holds the rights, the size of the land parcel, where it is located and, in some countries, the value of the land. Short-term leases are usually not registered and tax authorities must look elsewhere for this type of data, and the same applies to information about unregistered properties.

Land information flows between cadastral offices and tax authorities are critical for two main reasons:

- In many countries with vast tracts of unregistered land, tax receipts serve as primary legal evidence of rights in land disputes, or when the land is adjudicated for first titling.
- If land tax is levied on someone who no longer owns the land, (s)he will complain. This will help to keep the registry/cadastre current, as it is will point out where land has not been registered.

2.2.10.3 Continuous monitoring of the land market

Maintaining analytical records that summarize land market

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activities can act as a pre-emptive defence against land grabbing and any victors' redistribution of land via the registry/cadastre. Such records must include both the formal and informal land markets. The objective is to collect rough statistics about what is happening in the land market as a measure of the credibility of the register/cadastre and to manage risk over time.

Such analytical records may involve:
- Sorting out the different types of transactions coming through the registry
- Monitoring transactions that are registered outside the formal structure. This could mean working with parallel structures or using local knowledge

Such continuous monitoring, if effective, will greatly enhance the credibility of the land institutions, as it will help downplay (and better manage) any problems they may experience, as well as any rumours and exaggerations about the reliability of the registry. This will, in turn, contribute to the reconciliation process, the restoration of law and order and an efficient land market. However, short of a clear land policy or strategy about how to deal with land disputes and other issues in this phase, such monitoring will not be effective.

2.2.11 Record reconstruction and gender issues

2.2.11.1 Continuing reconstruction of land records
The reconstruction of records consists of two phases. The first one, as described in connection with the emergency phase, combines (and where possible makes available in digital form) all available post-conflict data. This data may have only

limited value in certain areas, or for some types of properties.

In the national/territorial reconstruction phase, a number of functions – such as adjudication, due process, turning administrative procedures into routine, creation of hierarchies of legal evidence – will be the key factors behind land record reconstruction. This will be a sporadic process, with every land transfer contributing to reconstruction. Documentary evidence of land rights must use registry/cadastral data and include any other types of relevant documents. The relative weights of the various elements of proof will depend on the hierarchies of legal evidence used.

The design of the system must also enable it to keep all the *records available on-line*, to make it easier to retrace past transfers, claims or decisions. Monitoring of data on ethnicity or group land transfers may also be part of record reconstruction, but then only wherever practicable in a straightforward way that will not act as a drag on the system. It must be noted that inconsistencies in land records can develop for a number of reasons that are not always related to corruption or the illegal alteration of the records.

2.2.11.2 Including women's rights in land record reconstruction

Gender inequality with regard to the ownership and control of assets is generally recognised as a major contributing factor to low productivity, slow growth and increased female poverty. Therefore, improving the gender balance with regard to assets such as land can have a major impact on both economic growth and poverty alleviation. Restoring the balance in favour of women is of particular importance in post-conflict societies. Conflicts typically do not just leave many widows

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behind, but these women are also the sole bread-earners for their families and dependants. In many post-conflict situations, they lose the land and property rights held by their dead spouse, and often to his family. This can only push women deeper into poverty. In post-conflict situations, women's land rights are extremely vulnerable and the land administration system must give them protection, for the sake both of human rights and of economic development.

One of the first steps towards improving the gender balance and protecting those rights is to *enable land records to identify* women owners, co-owners or holders of land or property. Whenever staff set up a new digital database, the layout must include fields for the names of female owners, co-owners or holders of land. The standard case for designing the database, and any kind of relevant forms, must be that a right is in the name of two persons (two spouses). Absence of this information will make it more difficult to protect the land rights of female owners/holders. The technical process/administrative procedure must be sure to collect this information and to prevent land transfers (through inheritance, sale or donation) without female owners/holders' knowledge. Even where only one spouse is the owner of the land, the other spouse must be in a position to agree to the sale of the land or property, at least in cases where the family dwelling is involved. The introduction of such provisions can only happen through statutory law. For further gender balance redress in continuous land record reconstruction, (computerised) links to town hall state registry offices would allow for checks on individual marital status, provided this data is available in digital form.

<u>2.3 Focusing on the Long Term</u>

2.3.1 Adjusting institutions

2.3.1.1 Institutional strengthening in the medium to long term

Governments are likely to need creation, re-creation or re-structuring, including decentralisation, and medium- to long-term plans need to factor this in. Institutional strengthening is a key factor for sustainability. It will involve such aspects as:

- *Capacity building*: general management, technical, legal and accountancy functions;
- The development of *budgeting and planning* capacities;
- Building *trust* within government and with users;
- Managing *institutional change* over time: creation or merger of institutions, spinning off functions, decentralisation, involving the private sector, building institutions with new staff or staff from all groups;
- *Merging* independent agencies created in the immediate aftermath of the conflict;
- *Mainstreaming projects* into government department functions (*see below*);
- *Merging* parallel structures;
- Setting up *working relationships* with other government departments or independent government land commissions dealing with land disputes;
- Clear-cut and rational *assignment of land junctions* within government (*see below*).

2.3.1.2 Moving from project to institution building

Sustainability requires every project to be designed in such a way that the relevant activities can be mainstreamed into institutions as early as possible. Projects are launched in

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emergencies to deal with specific issues within a specific context. If they continue as projects into the reconstruction phase, they will suffer from the problems typically associated with projects undertaken during development. These problems include:

- An inability to scale up.
- The use of ad hoc procedures. In the land sector, this is very problematic, as routine procedure is one of the keys to delivering security of tenure.
- Project activities cannot be replicated, because the number of resources used are not available at scale, in terms of both number and skills of staff and the amount of money used by the project. This is a common problem in land projects.
- Higher staff wages compared to national pay scale.
- A project that cannot be mainstreamed is only viable because it is isolated from the main regulatory framework. For example, a project can have road widths and plot sizes that are at odds with rules and regulations, and these therefore will hamstring any attempt to scale up the project.
- Projects that are run in isolation from government departments are difficult to mainstream because their procedures with regard to staff recruitment, salaries, promotion, access to equipment, procurement, routine and process are not the same. Projects also often build capacity outside of government structures. Therefore, there cannot be any transfer of functions to a government that lacks the relevant capacity.

The Strategic Plan must include the methodologies that will enable it to move from project-based to programme/institution-based mode as early as possible.

In some situations, demonstration is the purpose of launching projects. A project is an opportunity either to develop new systems that are mainstreamed into government, or to adapt existing systems. If mainstreamed correctly, this type of project is easy to scale up. This approach can succeed with pilots in the land sector. In the medium to long term, donors favour approaches that build into the country, and especially the government's own systems, be they legal, governance, planning or financial management, etc.

2.3.2 Adjusting functional arrangements

2.3.2.1 Re-assigning/creating land functions
At some point, government land functions must move from the emergency to the reconstruction phase. Short of this, there will be no sustainable land administration. The exceptional circumstances of the emergency phase are likely to cause some confusion, what with functional duplication and gaps, competition over which agency/level will undertake the work, criminal activity, parallel structures, autonomous institutions outside government, lack of clarity on subsidiarity, and projects operating separately from, or inside, government departments. All this must be sorted out by increments, with clear allocation of land functions to specific institutions (including the private sector) or persons within the institutions.

Such re-assignment or creation of land functions will involve:
- *The creation of the necessary institutions* within government such as a land registry, surveyor general's office, agencies undertaking valuation, dispute resolution,

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allocation of public land, policy development etc., as well as mechanisms for co-ordination and co-operation between them.

- *The finalisation of government structures* with regard to national, provincial/state and local authorities, together with a broad policy direction regarding which functions are attributed to which authorities, and the relationships between those (subsidiarity).
- *The functions and records of those agencies* that were set up in the emergency phase as stand-alone operations outside of government must be merged into the appropriate government departments.
- *Streamlining projects* into departments must include staff, assets and their knowledge. This will also involve the modernisation of government procedures, in order to integrate the knowledge/expertise gathered by the project.
- *Assignment of land functions* to government must be closely related to effective capacities, making sure that there are no critical gaps in the technical process/administrative procedure path.
- *Allocating land functions* serially in terms of policy, law, regulations and administrative procedures, is the wrong approach. It is much better first to design an appropriate, effective land administration system, and then over time to link this information with policy, law and regulations. This will stamp out any notion that one is working from a clean slate. Instead, the design should be incremental and systematic, building on what is proved to be working.
- The allocation of tasks in modern government institutions is also likely to involve functions that are undertaken by *the private sector, including NGOs*.

To be able to do their work, officials and the private sector need proper training and resources. Capacity building for these purposes is a major element in the preparations for sustainable land management. Short of this, there will be no routine operations, and conflict over land will continue.

2.3.2.2 Scaling up from pilots

Owing to their complexity, many activities must first be undertaken as pilot projects (*see* Section 2.2.2.2 *above*). Pilots will provide lessons from which:

- Staff can develop *country or territory-wide approaches* with due regard for differences between areas;
- Staff can develop *handbooks and procedures* with a country or territory-wide scope;
- Instructors can derive the *materials and methods required to train* enough local staff to carry out the activities at scale;
- Staff can identify *anything that can prevent scaling up* to national level, and which will require the setting up of additional pilots in the first place;
- Evaluate the *human and financial resources* required to scale up to national/territory level.
- *Derive public campaign material* for distribution when scaling up to national level.

2.3.3 Local capacity building

2.3.3.1 Setting up an inter-ministerial land committee

Land is a crosscutting issue. Short of this basic resource, many specialised agencies cannot deliver on their mandates. An important part of restoring law and order in a country relates to the management of land use allocation. Where there

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is little structure and order, it is likely that line function/government departments will allocate land use rights outside usual procedures. The ministries of Forestry, Tourism, Local Government, Mining, etc. risk stirring up conflict over land in post-conflict societies whenever they award overlapping land use rights to the same parcel of land. It is critical to set up an inter-ministerial land committee to start to deal with these issues.

A land committee can also play four additional, related roles:

- It can keep line *ministries informed* of developments in other government departments.
- It can also play a *co-ordinating role*: land is often dealt with in separate segments where each agency attempts to maximize its output, regardless of the fact that a variety of agencies undertake land delivery and management/administration. Therefore, it is for an inter-ministerial committee to take an overall view of what is happening in government with regard to land outputs and the users, and to identify any gaps and duplication.
- The committee also has a major role to play in the *assessment and re-assignment of land junctions* within government and across agencies, as the country moves from the emergency to the development phase.
- It is for the committee to *develop land policy* both to address the conflict in the long term, and to pave the way for sustainable human settlement development through streamlined land delivery.

2.3.3.2 Switching from international to local capacity

Many, though not all, situations will require international expertise. Foreign experts must step in only where necessary and after assessment of local staff capacities. Their unique

contribution may lie in their technical or legal skills, or in their neutral presence that will prevent any abuse of the land administration system in the early stages. In land affairs, it can happen that international staff become entrenched and that projects seem nowhere close to an end. It is important to instil in the international staff that their time is limited. This is crucial to the transfer of knowledge and management responsibility to local staff.

The registry and surveyor general's offices and land law are extremely complex and difficult areas. Transfer of responsibility to local staff must not happen prior to adequate training and capacity building (*see* Section 2.3.3.4 *below*), and must take place by increments from the beginning. Any training must involve all the groups that were party to the conflict, and must not leave out any particular group.

2.3.3.3 Staff inclusion and capacity updating

Because of their skills, professional staff often leave a country in conflict and find work elsewhere. In general, professional skills in the land sector are not readily available, and conflict can only compound the shortage. Moreover, in some situations, the professionals who have been responsible for the registry and surveyor general's office emanate from only one of the groups in the conflict. In these cases, the other group/s have not received any training or held positions of responsibility. Given that land sector training takes years, this poses a special challenge.

Staff in exile must be identified, encouraged to return, and trained if possible. Improving the capacity (*see below*) of this category of people will improve sustainability.

2.3.3.4 Building capacity

Capacity building is of major importance from the very beginning of land management operations in post-conflict situations. The effort must focus on various types of capacities, namely: institutional, management, technical, legal and conflict management. Capacity building includes:

- *Knowledge transfer* from international to local staff throughout the project, which means the two categories must work together as much as possible. This is likely to require language training early on in the project, both for local and international staff.
- *Content training* in law, surveying, IT and management.
- Training of local staff in *financial, personal and strategic* processes and decision-making, including through hands-on involvement in these functions.
- *Study tours* for senior management and local specialist experts to find out how other countries deal with land management. This must include not only technically advanced countries, but also those in a similar situation or a few stages ahead of the post-conflict country at hand.
- Sustainable capacity building through development of in-country *education*. Curricula must match the degree of technical sophistication of the processes being developed. Academic convention keeps law and land surveying/geodesy education separate, whereas the land sector would benefit from broader-ranging, inter-disciplinary approaches. The technical and vocational levels call for specific curricula, since much of the routine work does not require proper academic training. Strengthening in-country education is as important as the more immediate, ad hoc, short-course training.
- *General management training* for the middle- and top-ranking officials in the land sector, both at central and

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municipal level.

- *Conflict management and dispute resolution training.* Staff in the land sector needs this training for two reasons. (1) Where conflict is associated with land, staff assists in its resolution whether it relates to land allocation, planning approvals or supply of information by other bodies. (2) Staff also need to resolve personal disputes with members of other groups (e.g. ethnic/religious) in the working environment. Such conflict training must initially focus on the skills to work through these situations. Moreover, training can also help change attitudes, so that people can become more objective and work for the good of the country, rather than just for their own group.

Any stage of the plan, from emergency through to reconstruction, provides opportunities to build capacity. It is also a sustainable deliverable in the sense that even if the conflict re-emerges, the human resource capacity will likely remain available to the country for future use.

2.3.4 Enforcement and other legal issues

2.3.4.1 Enforcement of legal transactions and dispute resolution decisions

Enforcement of decisions is critical for the credibility of the land institutions and for the sustainability of land management. The enforcement function:

- Must be carried out with an *understanding of options* at different phases;
- Can be carried out by *the military (including peacekeepers)* in the early response stages to prevent the

invasion of public and private land;

- Must view any attempt to *evict ordinary and poor* citizens as a solution of last resort, and therefore must be complemented with a temporary humanitarian shelter programme that meets the needs of both the vulnerable and the land/property owners;
- Must rely on operating *courts and police* where they have credibility, and where they do not, must consider impartial external processes and mechanisms;
- Must go hand in hand with provisions for the *enforcement of court/judicial orders and planning* approvals;
- Must *sanction corrupt officials* with (for example) suspension from work and pay if possible, or by bringing charges of trespass;
- Must rely on *capacity building at all levels*, with regard both to skills and attitudes, and on professional ethics, which must be introduced in the first place;
- Must integrate a persistent *information/public awareness* campaign to inform the users about what is legal and illegal, and what sanctions are applicable.

2.3.4.2 Regularising extra-legal housing developments

During conflict and its immediate aftermath (the emergency phase), the rule of law breaks down, abuse of land allocation and use rights is typically widespread, and private and public land/property is stolen or invaded. Such theft or invasion emanates from various segments of the population: ordinary citizens who find themselves in a desperate situation, elites looking for commercial opportunities to exploit, and criminals occasionally linked to organised-type operations. A key part of the reconstruction phase is to restore land and property management and land use management, which are central to law and order.

Such reconstruction may include:

- *A land commission* to deal with land disputes and the enforcement of related decisions;
- The *removal of criminal gangs* from public land and buildings;
- Requiring *elites who have stolen* public/private land to pay the value of the land/property to the government/private person whose rights have been infringed;
- *Restitution* of property to its original owner;
- *Compensation by the public authorities to the new owner* and the awarding of the property to the original owner;
- *Compensation awarded by the government to the original owner* and the awarding of the property to the new owner.

An additional part of the reconstruction phase is likely to include the *regularisation of developments that took place* in the emergency phase. These developments may include:

- *Commercial property* developed outside of the spatial plan;
- *Residential developments* that do not fit in with the existing spatial plan, or are outside any spatial plan;
- *Informal settlements* that had been demolished during the conflict, and to which claim is now being laid, but that did not fit in with the spatial plan, or were outside it;
- *Emergency buildings* constructed by the peacekeeping forces outside any spatial plan, or that do not fit in with the spatial plan.

Regularising illegal developments will require a variety of steps, which are likely to include:

- *A political decision* about the illegal developments in

general, and in particular about which developments are allowed to remain;

- Introduction of *new participatory planning laws*, enabling development of new spatial plans that take this situation into account;
- Introduction of *planning regulations*, instead of greenfield developments, that are consistent with regularisation, including new planning standards such as site sizes, etc.;
- Specific, adequate *training* for professionals;
- *Adjudication of occupancy claims and existing land rights*, but making sure that groups that have been forced out of the area, and women, do not lose their rights during this process. Adverse possession laws must be of special concern in this regard;
- Where necessary, agreements over *compensation* must be reached with private and public landowners that have lost land;
- *Cadastral and registry information* must reflect the new layouts and represent the new legal situation;
- Some form of *valuation* may be required before any land readjustment takes place, in particular where compensation schemes are implemented, and if claimants are to lose land for the provision of roads and services;
- *Intensive institutional strengthening* is in order within government, among all the stakeholders involved and the affected communities.

2.3.4.3 *De facto* vs. *dejure* and threats of a victors' registry

The *dejure* or legal situation only has a limited meaning in a post-conflict society. This is because: (1) Large-scale informality or sales outside of the register are likely to dominate. (2) *Dejure* rights may have limited legitimacy because of discriminatory laws and practices. As they face the

conflict between *dejure* and *de facto* evidence in the reconstruction phase, staff must be wary of the risks of formalising a victors' registry.

Against this background, using the general legislation regarding limitation/adverse possession to regularize informal land rights/claims would be unwise and risky because:
(1) Absentee land right holders may lose their rights very easily.
(2) There may be problems with the kind of evidence needed to show that *de facto* rights holders have exercised their rights during the required period. Secure evidence is difficult to provide in cases involving physical destruction of dwellings, large-scale population movements, removal of land records and biased individual recollections. These two factors clearly raise the threat of a victors' registry. Satellite imagery or aerial photography of the area can help assess adverse possession claims, provided the images were made immediately after the conflict.

Against this background, and in order to ward off any threats of a victor's registry, rules regarding limitation/lapse of time must abide by the following recommendations:
- Avoid limitation periods that start *before* the conflict.
- Suspend limitation for the duration of the conflict.
- Limitation must ideally start at some point in the post-conflict period.
- Wherever possible, special legislation must supplement limitation rules with regard to various associated issues, such as repealing discriminatory decisions, restitution, privatisation, etc.
- Limitation must be linked to the sporadic adjudication

procedures described above in Section 2.2.6.2.

2.3.5 The broader picture and the longer term

2.3.5.1 Regular broad-picture monitoring and evaluation

Staff must conduct an overview of the whole land sector as it relates to tenure security, either on a regular basis or at critical times of change. With the peace so fragile in many post-conflict societies, one thing is of paramount importance; assessing the extent to which the project is contributing to a sustainable peace process, or whether it fails to go beyond fixing technical problems and does so in an unsustainable way because larger events will take over in due course. Five distinct factors militate in favour of conducting overviews, or 'broad picture', evaluations of the land sector as a whole:

- The land sector is characterised by *agencies and institutions that operate separately* and in isolation from each other, such as the registry, the cadastre, the courts, each operating within their own framework. Projects are usually linked to these separate agencies, and therefore this functional fragmentation tends to shape and constrain monitoring and evaluation. Duplication and gaps may ensue, the potential for which overviews can reduce.
- *Large-scale institutional change is a feature of post-conflict societies*. Therefore, the need arises to assess where the land sector, and the registry/cadastre, fit into society at large, and whether they meet user requirements. Short of broad-picture monitoring and overviews, no such assessment can take place. It must include the technical/legal aspects, the larger political/economic framework, as well as the needs of the users in a post-conflict society.

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- Usually, when registries and cadastres are modernised and even in a post-conflict situation, *staff focus on the technical and legal details* of their tasks. This situation makes it easy to overlook critical issues relating to human rights and sustainability, such as: social justice, reconciliation, the needs of the poor, women's land rights and land redistribution. Further issues include whether the systems serve a majority or only the middle class, and the accessibility and affordability of the system to the bulk of the population.

- Only an overview evaluation will make it possible to assess whether *UN-HABITAT principles* are being mainstreamed (e.g. gender, decentralisation). This also makes it possible to assess the effect of sustainable land management on a society and its future.

- Such an assessment paves the way for *better risk assessment*: a major factor for project success in this type of environment. Better risk assessment is critical to ensure that all parties trust the registry/ cadastre, rather than perceiving it as a victors' registry because it is entrenching discrimination of one group against another. A broader assessment also has a role in the detection of corruption, and especially large-scale corruption or corruption linked to criminal activities.

2.3.5.2 Effective and sustainable land management

Land management is the art, or science, of making informed decisions about the allocation, use and development of the Earth's natural and built resources. Land management includes resource and information management, administration arrangements and policy. It extends from fundamental policy-making by politicians and governments to routine, day-to-day operational decisions by land

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administrators such as surveyors, valuers and registrars. Land management is both the science and the art that is concerned with technology, the people who use it, and the organisational and administrative structures that support them.

Land management is a complex undertaking in itself, and even more so in a post-conflict society. Robust land management is dependent on political will and a determination to build effective systems – including technical and governance – over long periods. As a rule of thumb, it takes about 25 years to build such a system.

3. FINAL RECOMMENDATIONS

Final recommendations focus on the two critical aspects of this report: land administration in post-conflict situations, and the central role UN-HABITAT can and must play in those circumstances.

3.1 Land Administration in Post-conflict Situations:

- *Early availability of some basic services* relating to land transactions is vital in the post-conflict period.
- *Monitoring and regulating use of absentee right-holder' properties* must start as soon as possible, in order to avoid fresh conflicts and pre-empt high expectations that can lead to evictions further down the road.
- *Monitor and prevent invasion* of public land and properties and illegal constructions as much as possible, in order to prevent the development of unsustainable urban (fringe) areas and evictions or demolition further down the road.
- Land issues do not seem to be a top priority in the short term, but their *long-term effects are significant* and costly. The land sector must feature high and from the very start on the post-conflict agenda. Admittedly, this is not easy to do, as the authorities typically face many urgent issues in a post-conflict situation.
- *The restoration and modernisation of land records* must not be viewed as ends in themselves in a post-conflict situation. Instead, they are means to the same ends, namely reconciliation, the development of appropriate land policy, an effective and efficient land market and the

bringing about of land records the majority of the population feel they can trust.

- *Instead of being undertaken in isolation*, operations related to land records must be co-ordinated with other areas of the land management/administration system.

3.2 UN-HABITAT's Role in Post-conflict Land Administration

This should:

- *Contribute to the immediate post-conflict (UN) administration*, in keeping with its mandate regarding land and shelter.
- *In the emergency phase, identify any needs and requirements* coming under its mandate, develop appropriate projects, attract donors' interest, assist in project design and project management, as well as monitor, assess and manage risk.
- *In the reconstruction phase, focus mainly on planning and financial management* – until a stand-alone public land institution is in place that can undertake its own project management and implement a strategic action plan.
- *Ensure that the land issue is placed high up enough on the authorities' agenda*, especially with regard to any legislation that needs to be passed.
- *Undertake broad-picture monitoring and evaluation* of the land sector projects/donors and land functions, in order to improve co-ordination between projects and with the (UN) administration.
- *Ensure that stakeholders are involved* in the process and that the project is not just product-focused.
- *Help open up the debate* on a broader land policy

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framework to encompass issues such as gender, equity, decentralisation, etc.

- Assist in the development of *enforcement mechanisms*.

APPENDIX: WORK PLAN

The following is a typical work plan drawn from the Kosovo Cadastral Support Programme, which saw the development of a central cadastral institution linked to 30 municipal offices throughout the Kosovo region. This work plan is illustrative of the range of activities over a 3 year programme that need to be scheduled with a critical path, and detailed with specific tasks, and is provided here as a sample guideline.

Activity

1	Steering Committee meetings
6	Cadastre Reference Group meetings
12	Executive Office Reports
19	Work plans and programmes
27	Public Information
37	Capacity and organization for cadastral activities
38	Kosovo Cadastral Agency
63	Development of systems for finance etc. at Municipal Cadastral Offices (MCO)
66	Strategies
67	IT strategy (development and implementation)
68	GIS strategy (development and implementation)
69	Model Strategy
70	Training
71	Training of Trainers (Computers-Registry Office (RO) Database (DB))
72	Training of MCO and KCA staff (Computers-RO-DB)

73	Training of trainers for surveying/equipment
74	Training of MCOs staff surveying/equipment
75	Training of trainers Interim DB
76	Training of MCO staff Interim DB
77	Training of trainers Orthophotos and scanned plans
78	Training of MCO staff
79	Carry out training at MCOs
80	Modernising Cadastre Archives
81	Specify etc. equipment
82	Municipal Cadastral Offices
83	Computers delivered to MCO
84	RO-DB possible to use at MCO
85	Interim DB possible to use at MCO
86	Surveying Equipment delivered to MCO
87	MCO Surveying possible
88	Control points established and updated
89	Cadastral procedures in use at MCO (developed)
90	Orthophotos and scanned plans in use at MCO
91	Connected Plans and Textual data in use at MCO
92	Management and administrative procedures in use (developed)
93	Study tours and Seminars
97	Homogenous reference network
98	1st order network for Kosovo
102	2nd and 3rd order network for 3 Municipalities
108	Transformation Data
111	Connection to EUREF
112	Orthophotos
113	Aerial photography mission with GPS for priority 1 area
114	Delivery of aerial photos and Quality(Q) control
115	Measurement of pass points
116	Orthophoto production

117   Delivery of orthophotos and Q control
118   TQ specifications etc.
119   Aerial photography mission with INS for priority 2 and 3 areas
120   Delivery of aerial photos and Q control
121   Measurements of pass points
122   Orthophoto production
123   Delivery of orthophotos and Q control
124   Reconstructed cadastral information in digital form
125   Textual Cadastre
126   Evaluate and modify existing system and data
127   Prepare RO-DB
128   Manual for RO-DB and Interim DB
129   Pilot MCOs - Interim DB (update data)
130   MCOs - Interim DB (update data)
131   Cadastral Plans etc.
132   Scanning of Cadastral Plans etc.
133   Vectorising some Cadastral Plans (Pilot)
134   Transformation of first Cadastral Plan to Orthophoto
135   First scanned Cadastral Plan transformed to Orthophoto
136   Pilot MCOs - Orthophoto and scanned plans, vectorising and updating
137   Selected (All) MCOs - Orthophoto and scanned plans, vectorising and updating
138   Connection between Cadastral Plans and Textual data
139   Pilot connection
140   Model
141   Guidelines (Manual)
142   Operational connection
143   Development of cadastral procedures at MCO
144   Develop central back-up
145   Develop DB for buildings and dwellings

146   Demands and wishes from users
147   Collecting demands and wishes
148   Cooperation with users and relevant projects etc.
149   Model for the future cadastral and land information
         system
150   Collecting user demands and wishes
151   Pilot Study
152   Deepened Pilot Study
153   Objective and demand Study
154   Modelling of the system and the maintenance of the
         system as well as the procedures
155   Develop cadastral and land information system and
         procedures
156   Real Property Valuation
157   Implementation, start-up
158   Legal framework
159   Inventory and analyses of present laws and regulations
160   Inventory etc. 2
161   Proposals for regulations
162   Proposals for instructions etc.
163   Preparation of public information
164   Coordination with Housing and Property
         Directorate/Housing and Property Claims Commission
165   Advice for MCOs
166   Training system

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