



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

Jaap Zevenbergen (ITC) & Tony Burns (Land Equity)
14 april 2010



Introduction

- Recent increase in attention to land issues after conflict
 - First Response and Early Recovery clusters
 - Working group 'Housing, Land and Property Rights' (HLP)
 - Pinheiro-principles (international law on restitution)
- Land administration usually weak before/during conflict
 - Post-conflict era: pressure cooker, window of opportunity
 - Dispute resolution critical
 - Conventional titling too slow to cope
 - If neglected can rekindle conflict



Land and Conflict

A complex relationship

- These days conflicts more within than between countries
- Land can be (part of) cause of conflict:
 - historical grievances
 - uncertainty of land rights → increase tensions → conflict
 - low land governance, esp. lack of dispute resolution
 - politicization of land issues
- Conflicts about land/resources can be between groups, between individuals, between public/communal and private land
- Weak LA and dispute resolution institutions weakened further



Land tenure issues

- Issues on access to land
 - during conflict land taken, forced transactions, manipulation of records
 - at end of conflict a new group might repeat this
 - position of those who left the area (protected by Pinheiro)
 - secondary occupation (emergency/temporary, self justice/land grabbing...)



Land tenure issues



- Emergency access to land for camps (IDPs, troops), resettlement
 - hard to identify landlord: payment brings out claimants
 - how to plan ahead (camps often become permanent)
 - re-planning often needed - damage, urbanization, continued occupation of 'camp'



HLP (housing, land and property rights)


- Land (rights) sometimes included in peace treaty
- Displaced want to claim or reclaim access to HLP
 - tension within and across communities in area of origin, current displacement area, or upon return or resettlement
 - when registering or profiling IDPs include a few HLP questions (where did you live, what tenure, any doc's with you) (principle 15-6)




PINHEIRO PRINCIPLES


- United Nations Principles on Housing and Property Restitution for Refugees and Displace Persons (COHRE 2005)
 - protect against arbitrary and unlawful deprivation of HLP
 - retain the right to have rights restored or compensated
 - include some references to land administration issues
 - (re)establish MPC and registers (principle 15-1)
 - (re)allocated rights should have tenure security (15-2)
 - include customary tenure (if any) (15-3)
 - protect, return a/o copy land records (15-4)
 - supply relevant evidence to support claims (15-5)
 - don't recognize duress/forced transfers (15-8)

 FIG 2010 7 | 9



Effects of conflict on Land Administration

- Staff killed, moved away or 'not trusted'
 - calls for quick training and investment in long-term training
- Land records lost, damaged, tampered, incomplete
 - what was their impact even before (e.g. for poor)
 - possible parallel structures ('realities')
 - several avenues used in uncertain times (reg., dispute res.)
 - salvaging, digitizing, indexing etc. usually first step
 - also pay attention to those not 'covered'
 - buy-in from relevant agencies (not always easy)
 - need to accept more types of / hierarchy of evidence
 - not solve all at once → start with '*low hanging fruit*'

 FIG 2010 8 | 9



Importance of comprehensive overview

- Comprehensive overview helps prevent isolated, ill-informed intervention that can have long-term repercussions
- Gather base information (laws, policies, institutional arrangements, records, tenure types, etc.)
- Look for (partial) studies – agencies, donors, consultants, academics
- Special care investigating customary and informal tenures
- Avoid 'nostalgic' view of customary tenure
- Copying (western) land administration systems is a poor starting point



Response for/from Land Administration

- Be realistic in first step(s)
 - Adopt a step-by-step approach
 - Reaching maximum population vrs legal/technical optimisation
- Do not try to tackle all Land Administration goals at once
 - set up a public claims register a/o use participatory mapping process for first step(s)
 - undisputed or with local knowledge can transact
 - allow and record (informal) transactions to take place
 - try to settle similar cases in one go
 - don't hold everything up for the complicated cases
 - allow sporadic titling at own cost
 - use pro poor tools (e.g. STDM)



Capacity needs after conflict

- Identify (former) staff that is around
- Use them to train new staff (and handle very difficult cases)
- Early on supply simple materials (paper, cabinets, desks (pc))
- Don't forget the private sector experts
- Start long-term training of youths as well
- Give some knowledge to humanitarians
 - do no harm ("quick guide")
- Give more knowledge to land literate responders ("guidelines")
- Open up land professionals' mind for the specifics of post-conflict need for innovative tools and integrated approaches