TOOLKIT AND GUIDANCE FOR PREVENTING AND MANAGING LAND AND NATURAL RESOURCES CONFLICT

Land and Conflict

with funding and support from the European Union

The United Nations
Interagency Framework Team for Preventive Action

About the United Nations Interagency Framework Team for Preventive Action

The United Nations Interagency Framework Team for Preventive Action (the Framework Team or FT) is an internal United Nations (UN) support mechanism that assists UN Resident Coordinators (RCs) and UN Country Teams (UNCTs) in developing conflict prevention strategies and programmes. The FT works closely with UN departments and UN agencies, funds and programmes (UN AFPs) to improve programme effectiveness through better interagency collaboration within Headquarters, and between Headquarters and the field.

The framework team coordinates the partnership between the United Nations (UN) and the European Union (EU) entitled for Preventing and Managing Land and Natural Resources Conflict' on behalf of the partner agencies: the UN Department of Economic and Social Affairs (UNDESA), the UN Development Programme (UNDP), the UN Environment Programme (UNEP), the UN Human Settlements Programme (UN-HABITAT), the UN Department of Political Affairs (DPA), and the Peacebuilding Support Office (PBSO).

About this Guidance Note

This Guidance Note has been prepared by UN-HABITAT on behalf of the Framework Team and in collaboration with the Standing Committee of the project, consisting of the EU, UNDESA, UNDP, UNEP, UN-HABITAT, DPA and PBSO. It was submitted for peer review to participating UN departments and UN AFPs.

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Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict

The management of land and natural resources is one of the most critical challenges facing developing countries today. The exploitation of high-value natural resources, including oil, gas, minerals and timber has often been cited as a key factor in triggering, escalating or sustaining violent conflicts around the globe. Furthermore, increasing competition over diminishing renewable resources, such as land and water, are on the rise. This is being further aggravated by environmental degradation, population growth and climate change. The mismanagement of land and natural resources is contributing to new conflicts and obstructing the peaceful resolution of existing ones.

To improve capacity for land and natural resource management (NRM) and conflict prevention, the EU partnered with the UN Framework Team in late 2008. The aim of this partnership was to develop and implement a strategic multi-agency project focused on building the capacity of national stakeholders, the UN system, and the EU to prevent land and natural resources from contributing to violent conflict. Six UN agencies, programmes or departments have been involved, including UNDESA, UNDP, UNEP, UN-HABITAT, DPA and PBSO. The partnership is also designed to enhance policy development and programme coordination between key actors at the level of country offices.

The first outcome of this project is an inventory of existing tools and capacity within the UN system and a set of four Guidance Notes on addressing NRM and conflict prevention. These Guidance Notes cover: (i) Land and Conflict (ii) Extractive Industries and Conflict (iii) Renewable Resources and Conflict, (iv) Strengthening Capacity for Conflict-Sensitive Natural Resource Management.

Based on the Guidance Notes, the second outcome of the project is to deliver a series of training modules for UN and EU staff in country offices, as well as local partners, to enhance the knowledge and skills needed to understand, anticipate, prevent, and mitigate potential conflicts over land and natural resources. Participants will acquire the skills to formulate and operationalize preventive measures in relation to NRM and conflict.

In countries where specific NRM and conflict challenges are identified, the project will aim to provide focused technical assistance in the development of conflict prevention strategies. This could include the deployment of staff and other experts to assist the UN Country Team (UNCT), including the Resident Coordinator (RC) or Peace and Development Advisor, in analysing options and designing programmes. Where needed, dedicated follow-up measures will also be undertaken on an inter-agency basis, in partnership with the EU.

For more information, please contact the Framework Team Secretariat at: framework.team@undp.org or Mr. Szilard Fricska from UN-Habitat at Szilard.Fricska@unhabitat.org.

ACRONYMS

ADR	Alternative Dispute Resolution
AFP	Agency, Funds and Programmes (of the United Nations)
ASM	Artisanal and Small-scale Mining
CBNRM	Community-Based Natural Resource Management
CSOs	Civil Society Organizations
CSPs	Country Strategy Papers
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
FDI	Foreign Direct Investment
FLEGT	Forest Law Enforcement, Governance and Trade
GDP	Gross Domestic Product
GEF	Global Environment Facility
GBV	Gender-Based Violence
HLP	Housing, Land and Property rights
IUU	Illegal, Unreported and Unregulated
EI/EIs	Extractive Industry/Extractive Industries
EITI	Extractive Industries Transparency Initiative
EU	European Union
FT/Framework Team	Interagency Framework Team for Preventive Action
ICCM	International Council on Mining and Metals
ICZM	Integrated coastal zone management
IDPs	Internally Displaced Persons
IWRM	Integrated Water Resource Management
MFP	Multi-Stakeholder Forestry Programme
NGO	Non-Governmental Organization

NRM	Natural Resource Management
PCNA	Post-Conflict Needs Assessment
PES	Payment for Ecosystem Services
PPPs	Public-Private Partnerships
RC	Resident Coordinator
SFM	Sustainable Forest Management
SMEs	Small to Medium Enterprises
UN	United Nations
UNCT	United Nations Country Team
UNDAF	United Nations Development Assistance Framework
UNDESA	UN Department of Economic and Social Affairs
UNDP	United Nations Development Program
UNDPA	United Nations Department of Political Affairs
UNEP	United Nations Environment Programme
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNPBSO	United Nations Peacebuilding Support Office
VPs	Voluntary Principles on Security and Human Rights
WCD	World Commission on Dams

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EXECUTIVE SUMMARY

Natural resources and conflict

Conflict arises when two or more groups believe their interests are incompatible. Conflict is not in itself a negative phenomenon. Non-violent conflict can be an essential component of social change and development, and is a necessary component of human interaction. Non-violent resolution of conflict is possible when individuals and groups have trust in their governing structures, society and institutions to manage incompatible interests.

Conflict becomes problematic when societal mechanisms and institutions for managing and resolving conflict break down, giving way to violence. Societies with weak institutions, fragile political systems and divisive social relations can be drawn into cycles of conflict and violence. Preventing this negative spiral and ensuring the peaceful resolution of disputes is a core interest of the international community. The challenge for UN, EU and other international actors is to promote positive social transformation, while mitigating the risks and potential impacts of violent and damaging conflict.

Environmental factors are rarely, if ever, the sole cause of violent conflict. However, the exploitation of natural resources and related environmental stresses can be implicated in all phases of the conflict cycle, from contributing to the outbreak and perpetuation of violence to undermining prospects for peace. This Guidance Note accordingly focuses on the role of natural resources in triggering, escalating or sustaining violent conflict. Its aim is to provide practical guidance on the role that the UN and EU can play in early warning and assessment, structural conflict prevention (long-term measures) and direct conflict prevention (short-term measures). It is meant to provide a combination of strategic advice and operational guidance, as well as to unite existing tools and guidance under a single framework.

Land and conflict

The role of land and natural resources in conflict is attracting increased international attention due to the changing nature of armed conflict and as a result of a variety of longer-term, global trends. This Guidance Note provides policy and programmatic guidance to UN and EU officials confronted with land-related grievances and conflicts.

Land and natural resource issues are almost never the sole cause of conflict. Land conflicts commonly become violent when linked to wider processes of political exclusion, social discrimination, economic marginalization, and a perception that peaceful action is no longer a viable strategy for change.

Land issues readily lend themselves to conflict. Land is an important economic asset and source of livelihoods; it is also closely linked to community identity, history and culture. Communities, therefore, can readily mobilize around land issues, making land a central object of conflict. Tensions over land may also be closely related to, or manipulated by, political interests.

Addressing land grievances and conflicts is fundamental to creating sustainable peace. International assistance should prioritize the early and sustained engagement in land issues as part of a broader conflict prevention strategy. Such early attention can reduce the human, economic, social, environmental costs of conflict.

Land, conflict and international assistance: A framework for analysis and action

Land conflicts tend to be dynamic: the relationship between land and conflict often changes over time. Violent conflict may co-exist with peace-making

efforts and can even contribute to the creation of new grievances after a peace agreement.

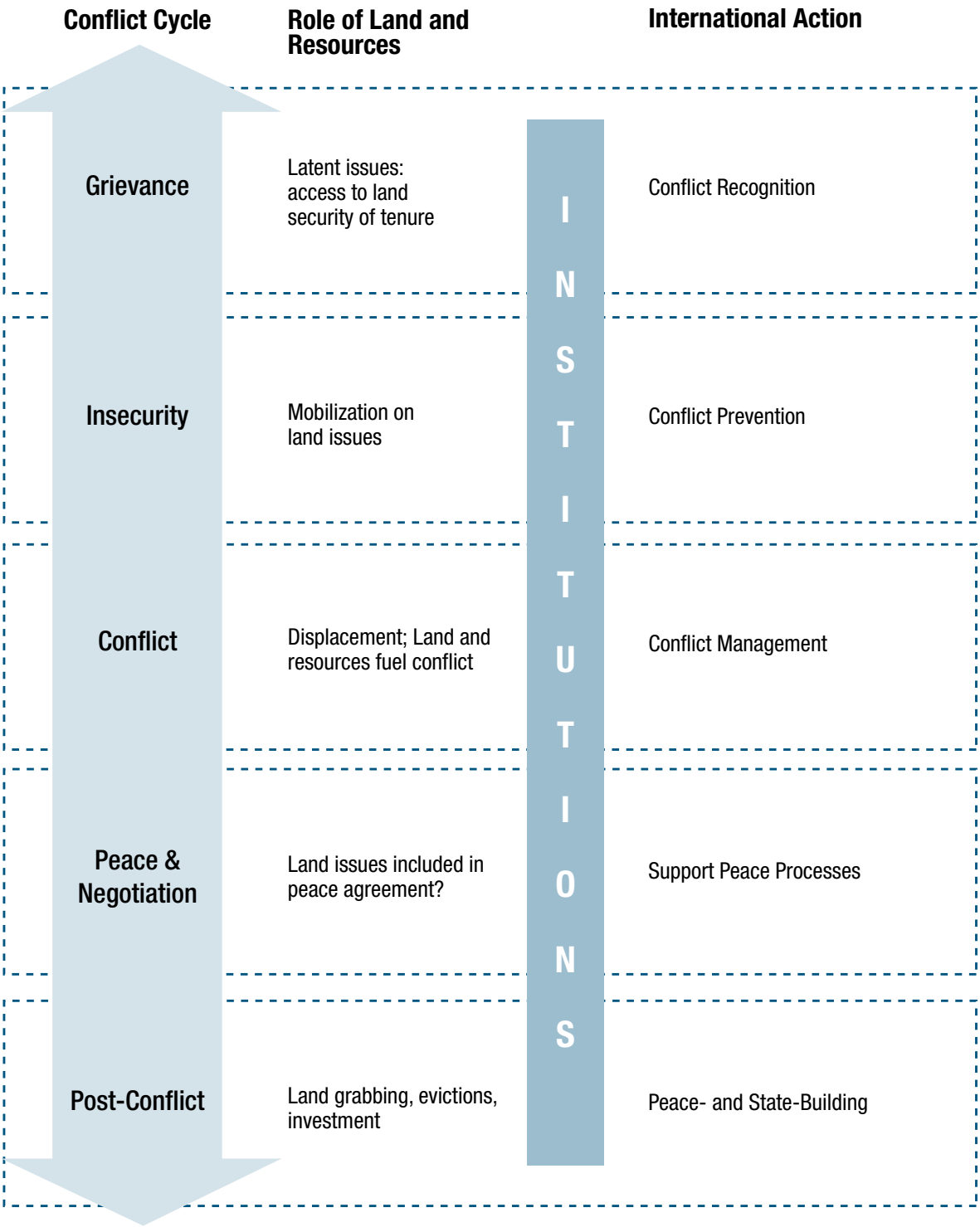
Similarly, international support to manage land-related conflict must be flexible. In conflict contexts, for example, conflict management strategies should be complemented by negotiation, state-building and on-going conflict prevention strategies.

The Guidance Note presents a simple framework to understand the relationship between land, conflict and international action at different stages of conflict (see Figure 1), and includes broad strategies to guide international support at different stages of the conflict cycle:

Addressing land issues in the conflict cycle:

- Even during periods of relative stability, latent **grievances** may exist, often related to access to land or insecurity of tenure. Even in the absence of open conflict, many statutory land institutions in developing countries are weak, often serving only the needs of the elite. The authority of traditional institutions, where they exist, may be weak or perceived to be self-serving; in many cases, informal institutions may emerge to meet the land needs of local populations. Fundamental reforms may be required. At this stage, however, there may be a reluctance to recognize and address the potential for latent land-related grievances to become violent. International experience shows that this can be a costly mistake.
- In periods of **insecurity**, land related disputes can turn increasingly violent and may result in some population displacement. Land grievances may be linked to broader security, livelihood, political and identity issues. At this stage, leadership, land institutions and the quality of land governance will have a significant impact on whether disputes are transformed into violent conflict. International assistance should focus on monitoring and rapidly addressing land-related conflicts within a broader strategy of conflict prevention. Fundamental land reforms may also be tabled to address the structural causes of conflict.
- Situations of open **conflict** are characterized by large-scale population displacements. Abandoned land is occupied, sometimes out of necessity or in good faith, at other times as part of an orchestrated plan to change the ethnic composition of territory. Natural resources are often used to fund conflict, introducing new economic and political incentives that may change the rationale for conflict. State and customary institutions will further weaken or collapse. International support should focus on providing humanitarian assistance, and should also include efforts to monitor and protect housing, land and property rights within an overall strategy to regulate and manage land-related crises.
- Land issues may be included in **peace negotiations and agreements** and UN peace missions. Often, the focus of negotiators is on the broader issues of disarmament, elections and constitution-making. The implementation mechanisms related to land issues are often left rather vague. As a result, experience suggests, land-related clauses may go unimplemented. Where they are established, UN peace missions have tended to treat land issues unevenly, with many housing, land and property issues left unaddressed. This has often proved to be a mistake.
- The immediate **post-conflict** period is often characterized by evictions and a surge in land-related conflicts as scores are settled, and as loyalty is rewarded with irregular land allocations. Competition between land institutions, poor coordination among development partners, and a lack of accurate and timely land-related information create a confusing and fluid institutional environment. A comprehensive and systematic approach to land grievances and conflicts can contribute to broader objectives of economic growth, poverty reduction, rule of law and good governance.

Figure 1: Land, conflict and international action[1]



A critical gap: Systematic approaches to land grievances and conflicts

While international understanding of the relationship between land and conflict is improving, a critical gap remains in implementing systematic approaches to land grievances and land conflicts.

A systematic approach includes three basic components: (i) understanding and addressing both immediate land-related conflicts as well as underlying grievances; (ii) developing and implementing a comprehensive institution- and capacity-building strategy; (iii) monitoring, evaluating and learning from system results.

A systematic approach to land grievances and conflicts can contribute to the following results: enhanced attention to immediate disputes as well as the underlying structural causes of conflict; improved coordination amongst diverse actors engaged in dispute resolution – traditional leaders, local governments, courts, police and security forces, and national political leaders; increased likelihood that small disputes can be brought to a conclusion before they escalate into more serious conflicts; greater contribution to good governance, rule of law and the achievement of a wide range of social, economic and peacebuilding objectives.

Common land challenges and potential responses

The Guidance Note offers specific guidance to common land-related challenges that often require urgent attention in conflict contexts:

- The need to provide **humanitarian assistance** often requires access to land for camps, livelihoods, roads, schools, clinics, etc. Without understanding the underlying land rights, humanitarian action may: risk compromising its principles of neutrality; undermine the effectiveness of response programmes; and, in the worst cases, exacerbate tensions and endanger the lives of communities or field personnel. Clarifying local land rights and livelihood strategies, developing a land inventory, and providing settlement planning support are some of the practical measures that can be taken to ensure land rights are protected.
- **Displacement** often results in land being abandoned and occupied by others. Unravelling the history of secondary occupation may require: the use of satellite information; the acceptance of alternative forms of evidence, including oral testimony; third-party dispute resolution support; information and legal aid programmes, etc.
- Access to land and security of tenure are critical to facilitating the **return of displaced populations**. Return should be undertaken based on the full range of durable solutions: return to place of origin, local integration and relocation to a third location as and where appropriate. Support for return should also ensure that the needs of the 'receiving' community are also met.
- **Restitution** of land rights is internationally recognized as the preferred option for restoring land rights after conflict. In the case of historical land-related grievances or protracted conflicts involving multiple waves of displacement, great care must be taken to avoid legitimizing past injustices or creating new injustices. Recent practice suggests that restitution is most effectively applied in contexts in which there is: sufficient land to accommodate increased demands; safety and security for populations; national coverage by a reliable land records systems, limited overlapping rights and claims, and sufficient technical and financial resources to address restitution issues comprehensively.
- There may be a need to undertake more fundamental **land reform** to address the structural causes of conflict, such as unequal access to land or land concentration. Whether 'market assisted' or 'government-led,' land reform requires sustained political consensus, financial commitment and measures to mitigate the risks associated with such reforms.

- Governments and development partners must **reconcile economic growth with security of tenure** priorities. Reviewing previous concessions, linking security of tenure to investment promotion, and wealth-sharing agreements are some practical measures to be considered.
- Securing land rights in **informal settlements** can be achieved through: anti-eviction declarations and laws; providing short-term lease rights without compromising the government's long-term development rights; mitigating the risk of gentrification through group tenures; and through various land-sharing and land readjustment programmes.
- Legal reforms to protect **women's land and property rights** must be complemented by other initiatives including: information and awareness campaigns; legal aid; monitoring and addressing disinheritance; and, promoting the joint-registering of land rights.
- The mobile livelihoods of **pastoralists** require access to territory, not individual parcels. Promoting 'open border' models of overlapping land rights, strengthening traditional dispute resolution mechanisms, and shared management of 'common resource pools' such as forests and grazing land water points can all contribute to peaceful co-existence.
- **Policy, legal and institutional reforms** should be implemented in an incremental, conflict-sensitive and coordinated approach. There may be a need to rescind discriminatory law, develop ad hoc policies and laws to address specific challenges e.g. population returns, informal settlements, concessions, etc. prior to more fundamental reforms such as the development of a comprehensive land policy or deciding on the future land administration system.

Strategies to support a systematic approach to land grievances and disputes

Several crosscutting strategies can enhance the development of support for a systematic approach to land grievances and conflicts. These include: regular **assessments** and **conflict analysis** at different stages of conflict to understand the impact of conflict on land tenure and institutions; strengthening **coordination** – within government, among development partners, and between development partners and the government – to ensure coherent and sustained support to the land sector; and, finally, the development of strategies and actions to **manage the political economy risks** associated with the implementation of land sector reforms in conflict contexts.

Photo: UNEP, Sudan

1 INTRODUCTION

The role of land and natural resources in conflict is attracting increased international attention. The changing nature of violent conflict, combined with long-term demographic, economic and environmental trends present significant practical challenges for global peace and security. This Guidance Note provides policy and programmatic guidance to UN and EU officials confronted with land related grievances and conflicts.

In the past 60 years, the nature of violent conflict has changed considerably. Where once wars were fought between the organized armies of states, contemporary conflicts tend to be internal contests between governments and armed opposition groups. As Wiley has noted, since 2000 48 percent of internal conflicts have taken place in Africa.[2] Moreover, 55 of the 70 conflicts underway in 2009 are located in developing agrarian economies.[3] These factors have combined to focus international attention (though not always the resources) on the need to understand and address the land- and natural resource-related bases of conflict in Africa.

The changing character of violent conflict manifests in other ways as well. Civilians now represent some 80 percent of conflict-related casualties, often resulting in a dramatic increase in women-headed households, many of whom face challenges accessing or inheriting land. External financing of armed conflict – common during the Cold War period – has tended to be replaced by the illicit export of high-value natural resources such as diamonds, timber, coltan. The duration of armed conflict has also expanded, with many intra-state conflicts continuing for decades, such as those in Afghanistan, Colombia, Sudan, for example. These protracted conflicts result in multiple waves of population displacements and return, sometimes affecting neighbouring countries who themselves have limited capacity – but a clear obligation under international law – to accommodate them. Violations of housing, land and property rights (HLP), as well as international calls to restore HLP rights through restitution, are increasingly common. Displacement-induced urbanization is a common tactic in modern conflict, serving to consolidate territorial control while simultaneously straining state and international resources to cope with a huge influx of Internally Displaced Persons (IDPs).

A variety of global trends have also led to a heightened awareness of land issues at the international level. Population growth is placing rising demands on arable land, water and other natural resources; similarly, environmental degradation, exacerbated by climate change, intensifies perceived 'land scarcity'. Furthermore, the globalization of economies has generated a surge in investments related to land and other natural resources in many parts of the globe, notably in Africa; land markets are expanding and land values are rising. Consequently, people and their livelihood systems are brought into increased contact and competition: competition between users and land-uses increasingly results in confrontation and, at times, in violent conflict.

1.1 Land and conflict: A complicated relationship

Land and conflict are often inextricably linked. Where there is conflict, land and natural resources issues are often found among the root causes or as major contributing factors. A recent UNEP report

highlighted the fact that natural resources have played a role in at least 40 percent of all intrastate conflicts.[4] Moreover, as Wiley has noted, land issues have played a significant role in all but three of the more than 30 intra-state conflicts that have taken place in Africa since 1990.[5]

Despite this reality, governments and the international community have in the past shied away from developing systematic and effective strategies to address land grievances and conflicts. Land is seen as too politically sensitive or too technically complicated to lend itself to meaningful resolution: as experience has demonstrated, this is a mistake. Recent studies have shown that conflicts associated with natural resources are twice as likely to relapse into conflict within the first five years after the end of hostilities.[6] Clearly, there is a critical need to ensure that land and natural resource-related issues are addressed at all stages of conflict.

It is important to recognize that violent conflict over land is not inevitable. Nor are conflicts unmanageable. Practical steps can be taken to: prevent grievances from turning into violent conflict; mitigate the short- and long-term negative impacts when conflicts do occur; and, to harness the potential of land issues to contribute to broader peace-building objectives. If effectively managed, conflicts can contribute to societal transformation and perhaps even feed into the creation of a new social contract between government and its citizens.

A better understanding of the relationship between land and conflict is beginning to emerge. There are signs that governments and the international community are more willing to address land issues as a component of preventing or resolving broader conflicts. But the understanding and the engagement, however, remain uneven.[7] In some quarters, there may be a concern that any intervention in the land sector may destabilize countries or regions, and exacerbate conflict. Elsewhere, there may be confusion or even competition regarding the most appropriate approach. In addition, some local actors may have a vested interest in presenting land issues as too complicated for outsider engagement.

This Guidance Note argues for a more focused, systemic and institutional approach to addressing land grievances and conflicts. Such an approach includes three basic components: (i) understanding and addressing immediate land-related conflicts as well as underlying grievances; (ii) developing and implementing a comprehensive institution- and capacity building strategy; (iii) monitoring, evaluating and learning from system results.

Without a solid conceptual and programmatic approach to land issues, structural causes of conflict will not be adequately understood and addressed. The potential risk is that peace-building interventions will be poorly designed, producing a less than desirable result. Without careful analysis and planning, efforts to promote peace may inadvertently exacerbate tensions or, in the worst-case scenario, contribute to new, or renewed, conflict.

1.2 About this Guidance Note

This Guidance Note provides a framework for understanding and addressing land and natural resource-related grievances and conflicts through a holistic, systematic approach. While the main emphasis is on violent conflict, the Guidance Note may also be useful in a variety of other situations characterized by significant land-related grievances, but which are not currently or openly violent.

The Guidance Note has been developed for the following target audiences:

- Senior officials of the EU and UN, whether based in country offices, regional offices or headquarter posts. The Guidance Note aims to facilitate early, systematic and sustained support to address land grievances and conflicts.

- National and local governments confronted by potential, on-going or post-conflict environments in which land issues must be addressed. The Guidance Note intends to provide a broad framework for action and specific guidance for addressing common land-related challenges based on international experience.
- Staff from non-governmental organisations (NGOs), civil society organisations, professional disciplines and others interested in the relationship between land and conflict.

The Guidance Note takes an inter-disciplinary approach to land and conflict. It connects two professional disciplines that have a limited history of working together: land professionals and conflict resolution experts. By looking at land conflict issues from various perspectives – natural resources, pastoralists and informal settlements – the Guidance Note also aims to provide a more holistic, multi-disciplinary introduction to the range of land issues that may arise in conflict contexts. The Guidance Note also seeks to inform humanitarian action with development experience in order to maximize the potential for initial interventions to support longer-term processes of institutional reform.[8] The complicated nature of land and resource issues has generated a tremendous amount of global experience in relatively 'stable' development contexts. This experience must be brought to bear in the design and implementation of land and resource-related interventions in conflict contexts.

Finally, this Guidance Note draws on an ongoing programme of work by UN-HABITAT and members of the Housing, Land and Property Working Group, to improve international capacity to address land-related conflicts.[9]

The Guidance Note is structured as follows: following this introduction, Section Two begins by introducing some fundamental land concepts to establish a common understanding of some important ideas used throughout the paper. Readers are encouraged to familiarize themselves with this section and refer back to the concepts to clarify issues that may arise.

Section Three presents a framework for understanding the relationship between land, conflict and international action. It describes broad strategies to guide international support to countries in different stages of land-related conflict.

Section Four describes the need for, and elements of, a strategic, systematic approach to land grievances and conflicts. It emphasizes the need to address land conflicts as well as their structural causes through a comprehensive and systems approach.

Section Five examines specific land-related challenges that commonly arise in conflict contexts. Practical measures that can address these issues are also presented. These measures should be seen not as a blueprint, but rather as a range of potential activities that must be adapted to specific conflict and country contexts.

Section Six describes some useful tools and strategies to support a systemic and holistic approach to land conflicts. Finally, Section seven highlights additional resources, tools and organisations that may offer further guidance.

2 LAND AND NATURAL RESOURCE TENURE – SOME KEY CONCEPTS

Land is a term in everyday use. This does not mean, however, that there is a shared understanding of common land concepts. Part of the reason for this lies in the fact that land intersects with many different professional disciplines: economics, law, agriculture, surveying, politics, etc. Each discipline brings its own perspective concerning how the term 'land' is understood. In addition, there is no universal source of law regarding land; some aspects of land are understood quite differently depending on the legal tradition – common law, civil law, Dutch Roman, Islamic, etc. Finally, land relations have been the subject of considerable political and ideological debate. For example, references to "property" were deliberately omitted from both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Relations (ICESCR).

The purpose of this section is not to provide definitive answers to these age-old debates. Its purpose, rather, is to introduce some important land concepts, and explain how they are used in this Guidance Note. Concepts discussed include: land; natural resources; land tenure; property; housing, land and property rights; continuum of tenure; legal pluralism; and, security of tenure. Readers are encouraged to refer back to this section to clarify issues that may arise in later sections of this Guidance Note.

2.1 Land and natural resources

Land, in its broadest terms, includes "the surface of the earth, the materials beneath, the air above and all things fixed to the soil."[10] Land, therefore, includes houses, buildings and other improvements to the land, and it includes both rural and urban areas. **Natural resources** are defined as the "actual or potential sources of wealth that occur in a natural state, such as timber, water, fertile land, wildlife, minerals, metals, stones, and hydrocarbons."[11] In this Guidance Note, the concept of 'land' may be used in a way that also includes natural resources.

While technically precise, these definitions do not explain why land and resource issues tend to be so central to conflict. Land has a variety of characteristics that lend themselves to conflict; land, for example, is a valuable **asset**. National economies require land as an input for development. For many households, access to land is central to food security and is a source of cash income. In addition, land may be the only significant household asset to be passed down to future generations. Land is also an important **safety net** for poor households. During an economic downturn, households can fall back on subsistence farming to sustain themselves. In extreme circumstances, land can even be sold to ensure family survival.

Land, however, is much more than an economic input or asset. It is also a source of **identity**. In many societies: land and identity are inextricably linked. The history, culture and ancestors of communities are tied up in land. Without land, a community may lose its distinctive identity. At the household level, access to land confirms membership in a community. Without access to land, the physical security of households may be at risk. In many societies, women-headed households may be particularly vulnerable without land, lacking an important livelihood asset as well as the security of a community.

Due to its economic, social and emotional importance, land is also an important source of **power**. Perceived threats to security, livelihoods or

identity can mobilize communities to engage in violent conflict. At the same time, these sensitivities can be manipulated to serve the agendas of political or military leaders. Therefore, understanding the complicated roles that land plays in society is fundamental to comprehending its role in conflict.

2.2 Land and natural resource tenure

In technical terms, land tenure is "the relationship… among people… with respect to land and other resources."[12] In simple terms, land tenure systems determine "who can use what resource of the land for how long, and under what conditions."[13] As with land and natural resources, land tenure is often used in a way that includes natural resources tenure.

Understanding the land tenure system in a country can provide critical insights into why land conflicts occur, and how they may be addressed. Recognizing that land tenure is an institution, that is, a set of "rules invented by societies to regulate behaviour" is an important first step in understanding the relationship between land and conflict.[14] As will be discussed below, the 'rules' of land tenure vary from country to country, and even within countries. Disagreements regarding these 'rules' are often at the heart of conflict.

Land tenure is often categorized into four types:[15]

i. **Private**: Rights are assigned to a private party that may be an individual, a married couple, a group, a corporate body (commercial enterprise or non-profit organisation).

ii. **Communal**: A right of commons may exist whereby each member of the community may use the land and resources of the community. Grazing cattle on a common pasture is one example. Non-community members, however, may be excluded.

iii. **Open access**: Specific rights are not assigned to any individual or group and no one can be excluded. Rangelands and forests may be under open-access tenure.

iv. **State**: Rights are assigned to a public sector entity. State land is divided into State Public Land, which can be used for public purposes, and State Private Land, which may be leased to earn an income. As will be discussed below, identifying state land can be difficult and highly controversial.

2.3 Land tenure, land rights and property rights

Land tenure and property rights are often used interchangeably. There are, however, important distinctions. Conceptually, land tenure is more fundamental. As the rules regulating people's relationship to land, the rules of tenure define "how property [and other] rights to land are to be allocated within society."[16]

There are many types of rights in land. These include rights to: occupy, enjoy and use land and resources; cultivate and use land productively; restrict or exclude others from land; transfer, sell, purchase, grant or loan; inherit and bequeath; develop or improve; rent or sublet; and, benefit from improved land values or rental income.[17] For simplicity's sake, these rights are usually summarized as use rights, control rights, or transfer rights.[18] It is important to recognize, however, that the system of land tenure does not simply confer rights – restrictions and responsibilities are also included.

Some types of land rights represent negotiated agreements regarding access and use rights. For example, the transit rights of pastoralist communities are often negotiated on an annual basis prior to the migration season. Other examples include: access to water points and grazing, and rights to collect medicinal plants.

This latter set of land rights points to some of the limits of a strict property rights perspective. While some forms of land rights may be property rights, land rights are in fact broader than property rights. They include a wider variety of relationships people can have to land. Property rights, for example,

tend to emphasize a right over a physical object (e.g. house), while land rights may also include, for example, the mobility rights of pastoralists. Property rights also tend to emphasize a greater exclusivity of use and control, are generally more precisely defined (surveyed and registered), and are more commonly recognized and protected by statutory law. Land tenure, by contrast, reflects the often overlapping nature of uses and the less precisely defined nature of some rights.

2.4 Housing, land and property rights (HLP)

Special mention should be made at this point concerning the concept of HLP, a term frequently used by humanitarian actors in conflict contexts.

The origins of the concept lie in international and human rights law and the right to adequate housing.[19] Finding the concept of "property rights is too exclusive, ideologically loaded and linked to specific political and economic trends," the concept of housing, land and property was created to ensure that "all residential sectors are included in legal analyses and in the development of plans, policies and institutions addressing the legal and physical conditions in which people in all societies live. Working with HLP rights also ensures that the terminology used in one country to describe the rights possessed by everyone, e.g. 'housing rights,' are treated as the human rights equivalent of terms such as 'property rights' or 'land rights' and vice versa."[20]

From a human rights perspective, the concept of HLP is designed to ensure that tenants, cooperative dwellers, informal sector dwellers without secure tenure, women, vulnerable groups, nomads, indigenous peoples, and others are not excluded from protection.

A broader approach to HLP rights recognizes a more complete understanding of the three inter-related sets of rights: housing rights, land rights and property rights. The full spectrum of HLP rights, therefore, would be derived from the broad range of tenure that exists. In this way, the concept of HLP can ensure that all of the housing, land and property rights are understood, respected, protected and fulfilled in times of insecurity and conflict.

2.5 Land tenure system: statutory, customary and other forms of tenure

The full range of land and natural resource tenures that exist in a given country is often referred to as the land tenure system.[21] In many countries in the global South, it is common to find land relations regulated under statutory, customary, informal and religious forms of tenure. These are briefly introduced below and summarized in Table 1; it should, however, be noted that the specific rights recognized will vary from country to country.[22]

Common forms of **statutory tenure** include freehold, leasehold, public and private rental, and cooperatives and condominiums. Freehold rights are the strongest form of statutory right, possessing the most complete set of use, control and transfer rights, including the *dominium* right.[23] Effectively, freehold rights are limited only by zoning laws, subdivision restrictions, or other covenants. With leasehold rights, land is vested in either the state or in a freehold, right-holder. Statutory forms of tenure are regulated by state policies, laws and institutions, such as national and local governments and courts. Most statutory tenure regimes include provision for adverse possession or prescription, such as state recognition of land rights after uncontested occupation for a set period of time. In some countries, intermediate forms of tenure – or effectively registered short-term leases - are also recognized (e.g. with temporary occupation certificates). Rights in land are normally registered in land administration systems.

Customary tenures are common in many countries of the global South. In these countries, statutory law is often referred to as 'received law' – laws imported during colonial periods. Customary

tenures include many forms of community land rights, pastoralist mobility rights, and resource access and use rights. Land and natural resource rights are vested in a community, ethnic group or family. Decisions regarding allocation, use and transfer are the responsibility of traditional authorities such as chiefs, sometimes with the guidance of elders. Disputes are regulated through negotiation, mediation or arbitration. Women's land rights are often embedded in family and community land rights.

Religious forms of tenure are a distinct form of tenure and are regulated by religious institutions; for example, four principle categories exist for land under Islamic law: (i) *waqf*, or endowment or trust land; (ii) *mulk*, full individual ownership; (iii) *miri*, state land; (iv) *musha/mustarak*, which is collective or tribal ownership.[24] Women's inheritance, for example, is prescribed under Shari'a, with women entitled to a one-third share compared to their male relations.

Examples of **informal/non-formal tenure** include: squatting, unauthorized sub-divisions on legally owned land, and various forms of unofficial rental arrangements. Informal tenures arise in parallel to, or in the absence of, statutory systems, and are common in situations in which the state system is not able to meet the needs of society with respect to rights allocation and transfers. Informal systems often adopt elements of different systems, -such as statutory and customary - into new rules and procedures. For example, a transaction on customary land may involve a written agreement, witnessed by the traditional chief and signed by the local government official, yet the process may have no formal legal standing under statutory law.

A final form of tenure is also critical to understanding the land-conflict relationship: **'conflict tenure'**.[25] A variation of informal tenure, conflict tenures arise during periods of insecurity and conflict; they represent new arrangements to regulate access to and use of land. Conflict tenures may be based on customary or other forms of tenure, but their sources of authority are often based on coercion. Conflict tenures may have highly localized rules and may evolve over time; they may or may not endure following the formal cessation of conflict.

Regardless of the tenure regime, land rights come with different degrees of legitimacy.[26] Statutory land rights tend to enjoy legal legitimacy. In some countries, customary land rights also enjoy statutory recognition (e.g. Ghana, Uganda). In other countries, customary rights may not be recognized in law, but will enjoy widespread social legitimacy. Finally, there are some forms of land rights that are without legal or social legitimacy, such as conflict tenures or illegally grabbed land.

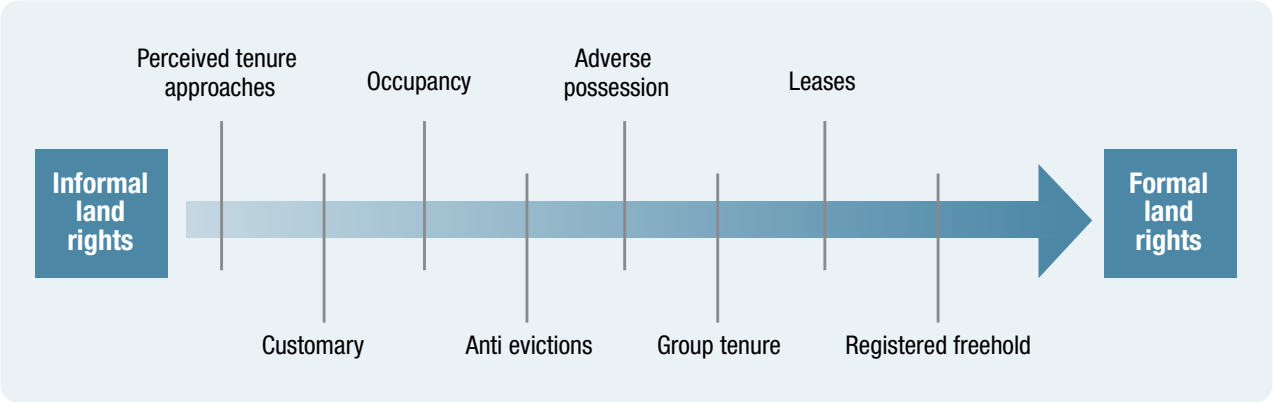
2.6 Continuum of land rights and security of tenure

In any country, multiple types of land rights will co-exist, often governed by different rules and institutions. The sum total of land rights can be represented graphically as a "**continuum of land rights**" (see Figure 2). Uncovering the range of land rights in any country will also uncover the power relationships within society. While the range of land rights will vary from country to country, the concept of the continuum is useful to help understand the types of tenure that exist in a country, as well as their relative security.

Land tenure tends to reflect the power distribution within society: those with more power and influence tend to have stronger forms of land tenure, such as registered freehold tenure; the more marginalized members of society on the other hand tend to have weaker forms of tenure, such as non-recognized customary tenure or informal tenures. Thus, agricultural, mining or forestry concessions will often be recognized and protected by statutory law, while customary and informal land rights may not be recognized.

Security of tenure is often described as "the degree of confidence that land users will not be arbitrarily

Figure 2: Continuum of land tenure



Source: UN-HABITAT (2008), p. 8.

deprived of the rights they enjoy over land and the economic benefits that flow from it."[27] The relative 'security' enjoyed by any form of tenure at any particular time and place normally depends on three variables: (i) clarity and recognition of the land right; (ii) the reasonableness of the duration of the right for the use to which it will be put; and (iii) the effectiveness of the protection against arbitrary curtailment of land rights, and the effectiveness of enforcement against loss of these rights.[28]

Each type of land right in a country will have a different degree of security, but the relative security provided by any form of tenure provides may change, particularly in times of insecurity or conflict. Perceptions of increased insecurity of tenure – for whatever reason – can contribute to the outbreak of armed conflict. During armed conflict – particularly in countries with strong customary traditions – 'legal' forms of tenure can lose force in favour of customary, religious, informal or even new, conflict-specific forms of tenure.

In post-conflict contexts, a particular challenge is to determine what 'duration' of the land right will offer sufficient 'security' to investors. While it is common to assume that freehold rights must be conferred, this is not necessarily true, or appropriate. Return on investment can be secured with leases of a reasonable length.

2.7 Legal pluralism and 'forum shopping'

In many countries, there may be an unclear relationship between different tenure types and institutions. Traditional authorities may regulate land according to customary law. Local government officials may regulate land access and use through statutory land administration laws. Informal land developers often operate in peri-urban areas. This situation of multiple co-existing rules and institutions is often described as **legal pluralism**. While this may seem confusing to outsiders, during times of peace there is often a discernable hierarchy of institutions.

In times of conflict, however, the land tenure system can become much more fluid.[29] New forms of tenure emerge; institutions lose and gain legitimacy. In a post-conflict context, the hierarchy of institutions may become unclear. People seeking access to land, or people who have land-related grievances, may not know which institution to turn to in order to meet their land-related needs. Specifically related to disputes, individuals may engage in 'forum shopping': going from one institution to another seeking redress. While this may limit the enforceability of any individual decision, forum shopping can also serve as a useful mechanism for channelling disputes into non-violent paths.[30]

Eventually a more stable institutional hierarchy to address land issues and resolve land-related grievances must be established. Often, this clarity is only achieved later in a post-conflict context. Socio-economic elites may benefit from the lack of clarity and absence of enforcement to further their own land-related interests.

In conclusion, several key messages emerge from this section:

To conclude, several key messages emerge from this section:

- A land tenure perspective focuses conflict analysis on the critical issue of people's relationship to land; the presence of land and resources alone cannot cause conflict;
- Understanding land tenure is critical to understanding power relationships within society, the potential sources of conflict and the possible impacts of interventions oriented towards increasing security of land and property rights;
- Armed conflict often affect both land tenure and institutions, and can even introduce new rules and relationships; and,
- Uncertainty regarding land rights tends to benefit the more powerful groups in society, often at the expense of more vulnerable populations;

Table 1: Tenure types and their characteristics

TENURE TYPE	CHARACTERISTICS	ADVANTAGES	LIMITATIONS
Freehold	'Ownership' in perpetuity. Provides maximum range of rights. Freehold rights are often held by political and economic elites.	High-levels of security with freedom to use, dispose, inherit and use as collateral for loan. Maximizes commercial value and enables holder to capture value-increases.	Expensive to obtain. Requires high technical standards, strong government capacity to administer, and clear incentives to register transactions. Risk of gentrification if applied piecemeal.
Registered leasehold	Ownership for a specified period (usually up to 99 years). Rights are registered making them accessible to only the relatively wealthy.	Almost as secure as freehold, however, time-bound. Should be sufficient to facilitate investment.	Requires legal framework and costs of access generally high.
Rental (public or private)	A short-term lease. Two main forms: (i) Public: occupation of state-owned land or house; (ii) Private.	Both forms have good security, however, a legally enforceable contract more important for private rental. Large component of residual caseload in camps or without housing tend to be renters/tenants.	Public short-term lease can be limited in supply and poorly located. Often public housing occupied in aftermath of conflict and sometimes illegally privatized.

Table 1… *Continued*

TENURE TYPE	CHARACTERISTICS	ADVANTAGES	LIMITATIONS
Cooperative	Ownership vested in cooperative or group of which residents are co-owners. Variation is condominium (includes both private space – apartments – and jointly owned public space).	Good security of tenure. Can contribute to group cohesion, improved security, accessing infrastructure and services, group credit, etc.	Legal framework required; restrictions may reduce incentive to invest; double registration required – land and association. Condominium legislation required.
Customary/ traditional/ religious	Customary tenure predominant form of tenure in most rural areas of the global South and indigenous communities. Ownership vested in family, community, group or tribe. Land managed by leaders on behalf of community. Pastoralist use rights often regulated by customary practice. Variation is religious tenure.	Wide social acceptance and practice in certain parts of the world. Simple to administer. Readily adaptable to changing circumstances, including conflict. Strong enforcement. Mobility rights depend on the institutions regulating access and use of land and resources. Institutions may be more resilient after conflict.	Customary institutions may break down during conflict and lose legitimacy. Rising land values and commercialization of land may put pressure on customary tenure and institutions. Accountability of traditional authorities may be weak or may become weak. Women's land rights often secured through male relations.
Intermediate tenure	Short-term leases – two to 10 years (e.g. certificates, temporary occupation permits, etc.). Longer versions sometimes registered.	Useful short-term measure to provide stability and security of tenure, while protecting long-term public interest and options for change of land-use. Useful to stabilize urban areas.	May be perceived as inferior land rights by communities. Government may be liable for compensation in event of relocation, limiting appeal from government perspective.
Informal tenure	Squatting, unauthorized sub-divisions, unofficial rental, etc.	Often a response to failure of public land allocation; may operate with elements from 'formal' system (e.g. contracts).	Risk of eviction; exposure to corrupt practices; hazardous location; inadequate shelter.
Conflict Tenure	Emerge during conflict; often based on coercive relationships; exploitative share-cropping arrangements	Extreme coping strategy; may enable households to survive in the short-term.	Long-term risk of land rights being usurped by occupants. May create future grievances. May involve unsustainable land and resource practices.

Source: Adapted from UN-HABITAT (2008), p. 9-10..

3 LAND, CONFLICT AND INTERNATIONAL ACTION: A FRAMEWORK

It is now widely accepted that land and natural resource issues can contribute to the outbreak of violent conflict, contribute to perpetuating or prolonging conflict and, if left unaddressed, undermine peace-building efforts and even lead to renewed conflict. The precise relationship between land and conflict, however, will vary from context to context, and will change over time.

This section presents a framework to describe the relationship between land, conflict and international action. The framework is based on the 'conflict cycle,' a model that breaks down the concept of conflict into different stages.[31] The section begins with a short introduction to the framework's four main elements: conflict, the role of land and resources, institutions, and international action. Each stage of the conflict cycle is then presented in more detail.

3.1 Introduction to the framework[32]

Figure 3 presents a framework for understanding the dynamics of land-related conflicts to help guide international support to countries grappling with land related grievances or conflict. The framework depicts five important stages in the conflict cycle:

- **Grievance**: the existence of fundamental land or natural resource-related issues or claims by one part of society against another;
- **Insecurity**: when one or more groups perceives their interests or community to be under threat;
- **Conflict**: the transformation of grievance into violent conflict and the evolution of that conflict over time;
- **Negotiation and Peace-making**: attempts to transform the conflict from one characterised by violence to a non-violent path and resolution;
- **Post-conflict**: generally refers to "the period after which major hostilities have ended and international assistance can begin to flow at scale". [33]

Against each stage of conflict, the second column, "Land and Resources," describes the potential role that land and natural resources can play in conflict. The third column, "Institutions" highlights the important role of statutory, customary and other institutions at different stages of conflict. Finally, the fourth column, "International Action" outlines broad strategies and some specific interventions that can contribute to the prevention, management or transformation of land-related conflict.

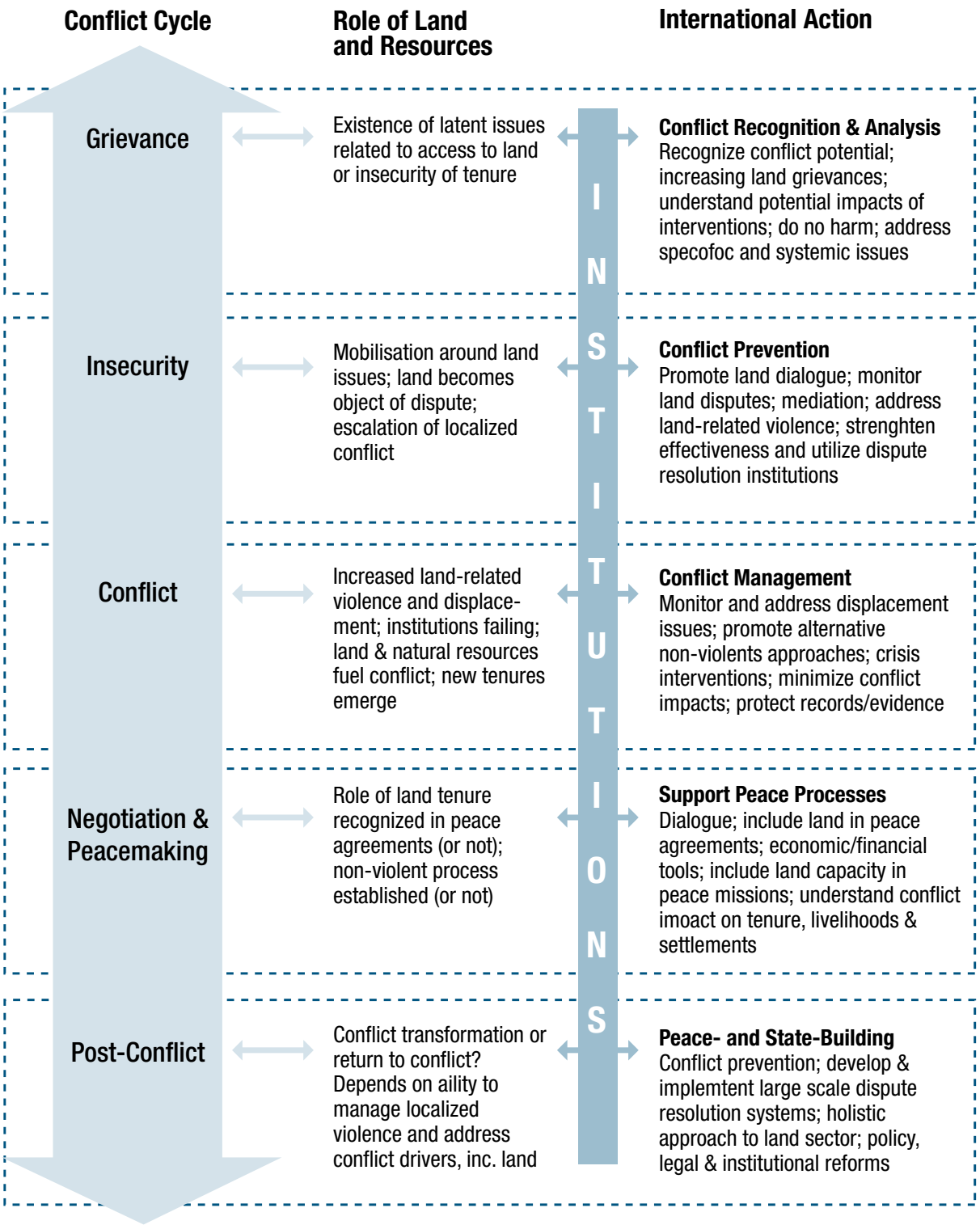
The relationships between conflict, land, institutions and international assistance are defined by the horizontal rows in Figure 3. These dynamics are presented in Section 3.2. This introduction, however, concludes by reviewing each component of the framework below.

3.1.1 The dynamic nature of conflict

Conflict is "a dispute or incompatibility caused by the actual or perceived opposition of needs, values and interests."[35] For the purposes of this Guidance Note, the term "conflict" is understood to mean violent conflict. That said, even in contexts not characterized by open conflict, there may be aspects of structural violence, such as political discrimination, exclusion from economic development, etc., that can set the stage for more direct violence. Thus, black and white notions of 'violence' and 'peace' may be misleading.

While the framework's presentation may suggest that conflict is linear and static, this is not the case. Rather, conflict is dynamic and unpredictable; it rarely unfolds neatly with a defined beginning, middle and end. Aspects of the different stages of

Figure 3: Land, conflict and international action[34]



conflict are often present concurrently: violent conflict may co-exist with peace-making efforts, as well as with the creation of new layers of grievances. Even the 'post-conflict' stage may be characterized by high levels of violence, with forced evictions and the 'settling of scores' between individuals and communities. The post-conflict period itself can have different distinct phases, and responses have to be calibrated accordingly. The conflict situation may be very different in different parts of a country. Some areas may enjoy stability, while others are engulfed in conflict. And this may change over time.

Therefore, conflict can vary by: form (direct violence or structural violence); intensity (low-intensity to full-scale civil or international war); location (confined to specific geographic areas or may be widespread); actors (some groups may be involved in combat, while others are displaced by it); and, over time (particularly in the case of protracted conflicts).

The value of the conflict cycle is its ability to simplify the complicated reality of armed conflict; this facilitates the development of an appropriate menu of responses to target the various conflict dynamics that may be present at any given time. In such an environment, continuous conflict analysis, including a political economy perspective, is vital (for more information regarding conflict analysis, please see Section Six 'Conflict Analysis').

3.1.2 The complicated role of land in conflict

As mentioned earlier, land is almost never the sole cause of conflict, but can be a contributing factor. Moreover, the role that land plays in conflict changes over time.

While it may appear that land and resources cause conflict, the reality is much more complicated. Land is usually one factor among many drivers of conflict. Conflicts are driven by physical threats, including direct violence such as armed attacks for example, as well as by perceived threats to livelihoods and well-being, threats to group identity, and a perception that institutions, policies and laws of the state are discriminatory – otherwise known as structural violence.

It is more accurate to say, therefore, that land and resources contribute to conflict. Thus, while land is an important entry point for addressing violent conflict, it should be seen as part of a more comprehensive approach that may include constitutional and legal reform, multi-party elections, security sector reforms, etc.

The role of land in conflict also changes over time. Legitimate land-related grievances can evolve over the course of a conflict into a complicated system of political and economic incentives that affect the conflict in different ways (see Figure 4 below). The original grievance may remain, but addressing the conflict requires tackling structural and proximate causes, as well as the incentive structures that may emerge during conflict.

3.1.3 Land institutions and governance play a critical role in conflict and peace-building

A central argument of the paper is that an institutional approach is the only sustainable approach to systematically addressing land-related conflicts. Such an approach recognises the important work done by other organisations, including NGOs, civil society, the private sector and professional groups; however, this paper seeks to emphasize the notion that strong, coordinated institutions can help ensure that land grievances are addressed, that land disputes are regulated, that land conflicts are avoided, and that the post-conflict period can result in a durable peace.

For the purposes of this paper, institutions include the statutory, customary, religious and other informal organisations, rules or procedures that regulate access to, control over, or transfer of, land and related resources. Important institutions in a conflict context include: national and local government; the judiciary; land administration institutions (statutory, customary and religious); traditional and religious authorities; as well as the mechanisms for dispute resolution within society. These institutions may vary in levels of legitimacy, and require careful, critical assessment to develop an appropriate capacity-development strategy that takes

into account their strengths as well as their potential shortcomings (please see Table 2 in Section 4.3) for an overview of the relative strengths and potential weaknesses of institutions important for addressing land disputes).

Land governance refers to how these institutions interact with each other, as well as the result of their interaction. Land governance "concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed."[36] Thus, a focus on institutions must also address the outcome of their interaction as part of a larger system, as well as how they function independently.

Conflict will affect institutions differently depending on the country context. However, in general, experience suggests that traditional or customary institutions may be more resilient to the impact of conflict.[37] This may be particularly true in a post-conflict environment when state structures have collapsed and people have few other alternative avenues for meeting their security, governance and livelihood needs. Where they exist, then, customary institutions may be the first point of reference for addressing land disputes. This is not to argue, however, that traditional institutions function effectively, accountably or equitably. Even in more stable, non-conflict environments, traditional institutions may require targeted support within a larger capacity-development strategy.

3.1.4 International action can play an important role

Past experience and research indicate that the absence of international aid and security assistance can increase the likelihood of conflict. Findings also suggest that the overall volume of aid does not necessarily increase the likelihood of the peaceful resolution of disputes.[38] However, under certain conditions, well-designed and implemented international support can be effective in moving contending parties towards more peaceful relationships.

The role of international assistance will vary according to the stage of the conflict cycle. In early stages, various forms of 'development' approaches will predominate. Conflict prevention and conflict management are strategies that are frequently used during situations of rising insecurity. In the event of conflict, development approaches may be complemented by humanitarian assistance. In the aftermath of a peace agreement, a wide range of post-conflict strategies may be deployed (see Figure 4 below). In the case of protracted conflict, international assistance may take the form of large-scale peace-building or state-building interventions, often under UN auspices.

It is important to recognize that these various assistance strategies are not exclusive, but complementary. At any stage of the conflict cycle, it may be necessary to simultaneously: support measures to quickly address outbreaks of violence; facilitate parties' engagement in dialogue to prevent new conflicts; and, strengthen institutions at all levels to systematically address and resolve underlying causes of past, current or future disputes.

Moreover, the recommendations made under each strategy are meant to serve as a range of possible interventions that may prove useful; this list is neither exhaustive, nor a blueprint. Conflicts are highly context-specific and any intervention should be developed and implemented accordingly. Coordination of these initiatives is often challenging (see Section 6.3 Coordination).

International assistance in conflict environments requires actors to be aware of, and to actively manage, several important contradictions and dilemmas.[39] Humanitarian assistance, for example, may not be perceived as 'neutral' by all parties; assistance may inadvertently favour one side over another, or may be captured by one party to the conflict and contribute to perpetuating conflict. The identification of 'legitimate' parties with whom to negotiate peace is complicated. Tensions between the values of development partners and the specific historical and cultural experience of conflict-affected societies can also create challenges, for example, with respect to women's land and property

rights. It is also necessary to manage expectations regarding what can and cannot be achieved through international assistance; while conflicts do represent a historic opportunity for positive change, the degree of change realized will be determined primarily by national factors, not by international actors.

Having introduced the different components of the framework, each stage of the conflict cycle is discussed in more detail below.

3.2 Land, conflict and international action at different stages of the conflict cycle

This section describes how land issues, institutions and international assistance strategies interact at different stages of the conflict cycle presented in Figure 3. The aim is to develop a broad understanding and offer strategic guidance on how to implement these strategies. More detailed discussion of specific land-related challenges that arise in conflict contexts is presented in Section 5 below.

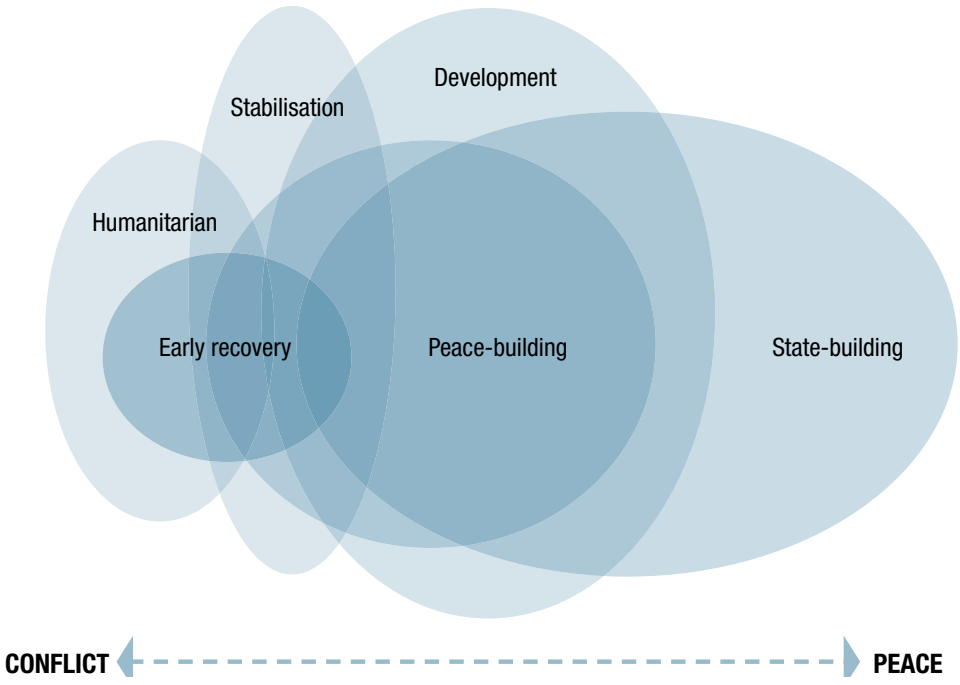
Stage 1: Grievance

Whether or not violent conflict has broken out, grievances are common in many societies. A grievance is an issue, concern or claim - perceived or actual - held by one party against another party.[40] Grievances may be either latent or manifest. The former are complaints that exist, but have not yet been raised or strongly vocalized by an affected party. Manifest grievances are those that are highly visible and articulated, with parties engaging in overt action to defend or achieve their goals or interests.

Land conflicts generally involved diverse parties. They may include: members of households, families, clans or ethnic groups; governments and their agencies; or other actors such as investors or corporations.

Grievances that lead to violent conflict are usually related to an existing or perceived increase in physical insecurity, threats to livelihoods, political exclusion, institutional discrimination, economic marginalization or loss of community identity. As discussed in Section Two above, land

Figure 4: Post-conflict strategies



Source: Alhawary in Bailey and Pavenello (2009)

has many characteristics that can contribute to grievances. When these characteristics converge they can lead to group mobilization and increase the potential for conflict.

Whether or not violent conflict has broken out, latent land-related grievances are commonly found in many societies. Land grievances can be broadly divided into two categories: (i) those related to access, use and control of land and resources; and (ii) those that relate to security of tenure.

Denial of access may be physical i.e. through the use fences or barriers, or the threat of force, or due to discriminatory policies, laws or practices. It may also be the result of history and past relationships between the involved parties, including colonization, discriminatory land allocation or civil war); alternatively, denial of access may be due to a recent policy change, such as the granting of agricultural, forestry or mining concessions. Populations may be denied physical access to the land itself, or to the revenues that accrue from investments in land and related resources.

Examples of common access-related grievances include:

- Evictions or displacements that have forced communities to move from locations they traditionally inhabit, whether rural or urban (e.g. Sudan, Colombia, Cambodia, Rwanda);
- Unequal distribution of land within a society, landlessness or land concentration among the elite (e.g. Afghanistan, Cambodia, El Salvador, Guatemala, Kenya, Nepal, Pakistan, South Africa etc);
- Contested access to, and use of, fertile land, water or grazing areas, for example, between pastoralist communities, or between pastoralists and agrarian communities, or between agricultural communities (e.g. Afghanistan, Niger, Somalia, Sudan, etc.);
- Denial of access to land with social, cultural or religious significance or indigenous land claims (e.g. Latin America, the Balkans, or aboriginal land claims in Australia, Canada and New Zealand); or,
- Exclusive control of high-value natural resources (minerals, oil, gas, etc.) or unequal redistribution of the benefits accruing from their extraction (e.g. Angola, Liberia, Sudan, Cambodia, etc);

Regardless of the form that denial of access takes, there is generally either the perception or reality that specific individuals, organisations, companies, classes or members of an ethnic group are benefiting at the expense of another.

Access issues, however, do not necessarily lead to conflict. Significant grievances may exist, yet there is no conflict.[41] For example, there are many societies with highly unequal access to land or high rates of landlessness, yet these tensions do not *automatically* translate into conflict. However, the bridge from access-related grievances to overt conflict, in the right circumstances can develop rapidly. It usually involves growing tensions between parties, polarization of issues, and one or more 'trigger events' that sharpens and escalates the conflict from one of unvoiced grievances, antagonism and words, to mobilisation and direct action. Proximate factors such as, for example, the availability of small arms, can also contribute to the transformation of a dispute into a violent conflict.

A second type of grievance concerns changing perceptions or realities regarding security of tenure. While access issues are often based on the perceived or real injustices of past events, security of tenure issues focus on current changes and trends, or concerns about the future. Security of tenure issues are frequently associated with change that is perceived to affect the supply and demand for land, established patterns of land-use or competition between uses. Some common factors contributing to perceptions of increased insecurity of tenure include:

- Population growth – of people or livestock - that bring communities into increased competition for land or related resources;

- Environmental degradation and climate change that increases people's perceptions of land scarcity;
- Rapid urbanization that results in the conversion of peri-urban or agricultural land to urban uses;
- Expansion of land markets, the individualization of land rights held under customary systems and the increased commodification of land;
- Non-transparent investment in, or capture and control of, land and resources, such as large-scale agricultural, mining or oil and gas investments that are perceived to affect a community's land rights without offering an equitable share in the revenue stream or compensation;
- New laws, policies or programmes that are perceived to impact land rights of either elites or communities (for example, agrarian reform, privatization, land titling, etc.);

Latent or manifest conflicts resulting from inequitable access or insecure land tenure can be either effectively managed or exacerbated by land administration and conflict resolution institutions. Well-functioning institutions can provide effective, efficient, timely and non-violent ways to address and resolve land disputes; ineffective institutions – due to absence, inefficiencies, high costs, delays or corruption – can foster conflict escalation.

In many pre-conflict situations, the institutions that are meant to ensure equitable access to land and security of tenure may be unable to meet the challenges or extent of land-related grievances. The capacity of traditional authorities may be weak due to an erosion of their authority by the state, or due to their own self-interested behaviour.

Statutory systems are also often weak. As the International Federation of Surveyors has noted, "most developing countries have less than 30 percent cadastral coverage. This means that over 70 percent of the land in many countries is generally outside of the land register."[42] In fact, only around 25-30 countries in the entire world have complete, up-to-date cadastral coverage. Court systems may not be accessible, may involve time-consuming and expensive processes that put them out of the reach of all but the wealthy.

Where traditional and statutory institutions prove inadequate, informal institutions may emerge to facilitate land access, land transactions and the resolution of land-related disputes. The procedures used may enjoy some degree of local legitimacy, but their reach may be limited to specific types of cases or to specific locations. They may also be overturned by statutory systems.

International assistance can play an important role by helping to address land-related grievances before they become violent. At the stage of latent grievance, the main challenge is often to simply acknowledge the potential for violent conflict. However, in some cases, the government and the international community may be reluctant to acknowledge either the existence of land grievances or their potential to escalate and become violent conflicts. In other cases, there may be a tacit acceptance of the potential for land-related violence, but a reluctance to focus too much direct attention and resources on contentious issues for political reasons, including the fear that such attention may actually inflame tensions and contribute to more overt conflict.

Neither denial nor indirect measures can be a substitute for the development of a comprehensive strategy to address legitimate grievances. The first step in the development of such a strategy is to undertake a rigorous conflict analysis. Such an analysis should enable government and international actors to better understand potential drivers of conflict, potential conflict triggers and potential measures to mitigate the risk of conflict (please see Section 6.2 Conflict Analysis for a more in-depth discussion).

Within an overall strategy to recognize, understand and address land-related grievances, international assistance can usefully focus on the following activities:

- Supporting research that seeks to understand land tenure and institutions and, where applicable, the relationship between statutory and customary laws and practice;
- Identifying and reforming (or repealing) potentially discriminatory policies, laws and programmes related to land and natural resources;
- Initiating a land policy process to establish a consensus on the future of land relations and uses, or developing ad hoc policies to address specific contentious issues;
- Identifying and addressing the needs of specific vulnerable groups including internally displaced persons, refugees, women and indigenous groups;
- Strengthening land administration systems, both statutory and customary, with respect to the allocation, management and transfers of land and property;
- Assessing and strengthening the capacity of dispute resolution institutions (statutory and customary) to address land-related issues at both the household and community level;
- Strengthening third-party dispute resolution mechanisms to complement the role of the judiciary;
- Helping identify and assisting governments with the management of drivers of change, such as factors which increase the perceived or real insecurity of tenure; and,
- Developing regional strategies for conflict prevention.

Stage 2: Insecurity

If the potential for grievances to turn violent is not recognized, properly understood, and adequately addressed, land-related grievances can contribute to increased insecurity.

In a period of insecurity, land-related disputes often increase. Disputes commonly seen as occurring between individuals are increasingly characterized as disputes between communities. Some disputes escalate to violence. However, these often tend to be (or are perceived by the government and other actors to be) localized issues or incidents rather than widespread occurrences. Some population displacement may occur, whether due to direct threats or the perceived risk of insecurity. Land and property may be abandoned or left in the care of relatives or friends. Some people may seek to enhance their security by accessing small arms. Leaders begin to mobilize people around land issues, highlighting real or perceived grievances related to access to land and resources or threats to security of tenure. Land grievances and identity issues may increasingly become intertwined. These issues can also become politicized through outside factors, such as the external supply of arms or the presence of foreign-armed groups.

Land institutions may be struggling to cope with the increased pressure of land-related disputes. Traditional authorities may find it difficult to regulate and manage inter-group conflicts. Courts often have a limited presence outside urban areas, but may nevertheless see an increase in land-related cases, develop a backlog of cases and be unable to settle enough cases to make a difference or in a manner that is widely seen to be acceptable or fair; furthermore, the judicial system may not have control over the whole territory. Local government officials may increasingly be called upon to mediate or arbitrate disputes, but in the case of inter-community disputes or conflicts, officials may lack the support of higher authorities. Decisions regarding land allocation and use are increasingly seen as political and may erode perceptions of larger portions of society about the legitimacy of the government. In this way, a failure of land governance can contribute to a failure of governance more generally.[43]

In such circumstances, extra-parliamentary processes and protests may increasingly be used; without a satisfactory government response such processes may also begin to lose their credibility as effective procedures to achieve desired change. Informal actors and even armed groups may take

CASE STUDY 1: The conflict prevention toolbox

Political/Diplomatic Tools: Mediation, good offices, political assistance, fact-finding/observer missions, dispute resolution mechanisms, crisis management systems, public diplomacy/pressure, threat or use of diplomatic sanctions.

Legal/Constitutional Tools: Constitutional reform, formal power-sharing mechanisms, human rights monitoring, police, judiciary, or corrections reforms.

Economic/Social Tools: Conflict sensitive development assistance, inter-group dialogue, restrictions on illicit financial flows, conditional incentives/inducements, threat or use of economic sanctions.

Military/Security Tools: Security guarantees, confidence-building measures, security sector reform, military observer missions, arms embargos, preventative military/police deployment, threat of force

Source: Woocher, Lawrence, 'Preventing Violent Conflict: Assessing Progress, Meeting Challenges', United States Institute of Peace Special Report 231, Washington, 2009, p. 12.

advantage of the receding reach of the state to assert their own authority and rules.

As each of the elements above come into play, there is an increase in societal polarization and an increased risk that one or more groups may begin to advocate or actively engage in gradually escalating violence.

Ultimately, leaders can play a pivotal role in determining whether grievances become violent. Research has shown that political inequalities between groups tend to motivate leaders to seek change through the use of force, while socio-economic inequalities tend to motivate followers to demand change.[44] Leaders often have tremendous influence over their constituencies and can channel disputes into violent or non-violent paths. In some situations, legitimate grievances are manipulated for more narrow political, economic or personal agendas. In others, violence may escalate to the point that it goes beyond the capacity of individual leaders to manage.

In a context of rising insecurity, there is often a growing recognition of the potential for land grievances to become violent. At this stage, land dispute management efforts should focus on addressing land-related grievances as part of a comprehensive conflict prevention strategy (see Case Study 1 below). If little has been done to understand and address the underlying issues, the measures described in Stage 1 Grievance, should be incorporated into an overall strategy.

As part of an overall conflict prevention strategy, a variety of options should be explored concurrently to maximize the opportunities to channel disputes into non-violent paths and to strengthen the negotiation position of external actors. Specific land-related interventions can include:

- Promoting broad-based or issue-specific consultations on land issues. This could include the development of a new land policy or simply initiating a process to review a specific contentious issue, such as the procedures for granting concessions or existing wealth-sharing agreements;
- Establishing or strengthening monitoring mechanisms to identify, document and address land conflicts quickly. The data collected through such mechanisms can also be useful for monitoring trends, analyzing types of conflicts and the outcomes of any interventions; documenting land conflicts can also contribute to the restoration of land and property rights in the future.
- Strengthening the effectiveness of land-dispute resolution institutions at all levels, including traditional authorities, local and national governments, the judiciary, etc.;

- Encouraging the use of third-party mediation and/or arbitration mechanisms for specific disputes that cannot be addressed by traditional authorities, local governments or the judiciary;
- Developing public awareness campaigns, where disputes and tensions arise due to lack of public knowledge regarding existing laws and rights;
- Using development projects to build confidence and reinforce local agreements such as, for example, the joint management of a new water access point;
- Using, where necessary and appropriate, political or economic sanctions and the monitoring of financial flows, particularly from natural resources exports; and,
- Elaborating conflict risk mitigation measures, including securing existing land records.

Stage 3: Conflict

If grievances escalate to violent conflict, the impact on people, land relations and institutions can be devastating. People may be displaced from their homes, fleeing to neighbouring counties or countries; internally displaced persons will often end up in camps or in urban areas looking for security, livelihoods, and services. Young men and women may be recruited into combat; gender-based violence is likely to increase, and there will be a growing expectation that violent solutions to disputes are acceptable.

In terms of land relations, abandoned land may be occupied by others, or even allocated to members of an occupying community. Housing, land and property may be destroyed in combat, often creating a shortage of housing stock; government buildings may also be destroyed or occupied by displaced populations. In such a context, short-term survival needs may lead to unsustainable land and natural resource use, and grievances may be transformed during the conflict (see Case Study 2 below).

During conflict, looting and 'asset stripping' of natural resources are common. The revenue streams from the clandestine export of such resources are often used to fund the conflict. Over time, these revenue streams may create perverse incentives that can actually perpetuate the conflict. The impact of these dynamics on land issues are not insignificant: new forms of land relations may emerge – so-called 'conflict tenures' – that are enforced by the threat or actual use of force, and are usually disadvantageous to weaker segments of society.

Institutions are likely to break down. Traditional institutions, which rely on discussion and consensus, may not be able to cope with or manage conflict. Local governments and courts may become (even more) corrupt, coerced into making politically expedient decisions or they may cease to function altogether. Traditional authorities, local government officials and members of the judiciary may be killed or may use their positions to protect or advance their own interests: illegal land allocations, transfers and sales are common in conflict contexts. Land records may be altered or tampered with. New laws may be hurriedly enacted to support the claims of the stronger party to the conflict. Alternative forms of governance may emerge as a reaction to the institutional crisis, as was the case with the Shari'a Courts in Somalia and the Taliban in Afghanistan.[45] As statutory institutions collapse, international and national non-governmental and civil society organisations may gain in influence, delivering goods and services in place of the government. Coordination challenges therefore are likely to emerge.

In the context of conflict, international support tends to focus on the provision of humanitarian relief and conflict management. The main emphasis is on meeting basic needs and minimizing the negative impacts of conflict on the civilian population. Specific land-related interventions may include:

- Monitoring and addressing displacement through the provision of emergency shelter and the establishment of camps;
- Provision of humanitarian assistance to meet basic nutrition, water and sanitation, health, education and psycho-social needs; often camps are established to accommodate displaced persons and refugees;

- Monitoring destroyed or abandoned land and secondary occupations, including through satellite imagery;
- Recording land and property claims, as well as evidence of land rights;
- Initiating on-going crisis management efforts to channel specific land-related conflicts into non-violent mechanisms (third party mediation, dialogue processes, etc.)
- Strengthening regional approaches to conflict prevention and management; and,
- High-level negotiations and interventions to try to channel the conflict into a peace-process.

Stage 4: Negotiation and peace-making

On the ground, the land tenure environment is often very chaotic. Land-related violence often takes on a more tactical and sometimes more aggressive character as parties seek to rapidly consolidate territory and resources ahead of an expected agreement. There may be a scramble to occupy and secure abandoned housing and property in order to strengthen potential post-conflict claims. Communities in rural areas will seek to consolidate and secure their territory, often putting them in conflict with neighbouring communities. The net result is additional waves of population displacements and a new series of grievances that must be untangled in the post-conflict period.

CASE STUDY 2: The political economy of natural resources in conflict

The role of natural resources in conflict has sparked considerable debate in academic circles.

On the one hand, researchers such as Collier and Hoeffler (2002) argue that civil wars today are caused not by grievances - such as inequality or oppression - but by greed i.e. the pursuit of economic incentives by insurgents or state actors. Others, such as Ballentine and Sherman (2003) and Douma (2003) argue that 'greed' and 'grievance' interact in different ways to contribute to conflict and to shape the duration, intensity and character of the conflict.

Reviewing six civil wars, Ballentine and Sherman find that (i) few contemporary conflicts can be adequately described as pure 'resource wars' or as conflicts caused by rent-seeking; (ii) that economic factors combine with political factors and ethnicity in a variety of ways. Some of their country findings are summarized below. **Kosovo** and **Nepal** are both resource poor, therefore, resources alone cannot explain the causes or dynamics of these conflicts. In Kosovo, regional security issues and ethnicity played important roles, while in Nepal, the accumulated grievances of extreme landlessness and a bonded labour system combined to fuel resentment against the political elite. In **Colombia** and **Angola** opposition movements were originally caught in an ideological battle for state control. After the end of the Cold War and the loss of external funding support, the protagonists used natural resources to fund the war. The exploitation of oil, gems, and narcotics, however, has significantly shaped how both conflicts have evolved. Even in **Sierra Leone** and the **Democratic Republic of Congo**, where natural resources have been at the centre of conflicts, the agendas of the opposition have been shaped by the desire for both political and economic power. Grievances related to political misrule, corruption and institutional decay created opportunities to mobilize populations against the state in both cases.

The analysis by Ballentine and Sherman, Douma and others suggests that there is a need to look at both 'greed' and 'grievance' in explaining the causes and dynamics of conflict over time.

Sources: Collier, Paul and Anke Hoeffler, 'On the Incidence of Civil War in Africa', Journal of Conflict Resolution, vol. 46 no. 1, February 2002, pp. 13-28; Ballentine, Karen and Jake Sherman, Jake, *The Political Economy of Armed Conflict: Beyond Greed and Grievance*, International Peace Academy, Lynne Rienner, Boulder, 2003.

From an institutional perspective, the peace process is characterized by significant competition, as stakeholders manoeuvre to better position themselves for the post-conflict environment. Traditional authorities, local government officials, national government officials, and the judiciary will all assert their mandates. Local government officials may seek to undermine the social legitimacy of traditional authorities, while national governments will attempt to develop and secure support for a new post-conflict vision. Elements of the international assistance community will seek to understand and align their own agendas with appropriate champions. The focus of NGOs and civil society may shift to advocacy based on their conflict experience or institutional agendas. For individuals trying to rebuild their lives, information is either scant, politically motivated, or simply too overwhelming to understand and use. The rapid pace of change may dissuade individuals from investing in processes that might be quickly superseded.

In this chaotic environment, international assistance is often focused on securing the peace. Land issues may be included in the agenda, but they are but one item on a long list of issues that often includes: power-sharing, new constitutions, elections, DDR and security sector reforms, etc.

The tendency in many peace negotiations is to deal with land issues at the level of principle and general process. The main short-comings of most peace processes, from a land perspective, are (i) the failure to use land issues to support the peace negotiations; and (ii) to prepare for the day-after peace agreements are signed. The result, in many cases, is a significant lag between the finalization of the peace and the beginning of implementation. Given the volatility of land issues, this can be a mistake.

International assistance can support the following types of interventions at this stage of conflict:

- Providing on-going support for conflict prevention, conflict monitoring, crisis response and conflict regulation to ensure that negotiations are not derailed by spoilers;
- Researching and promoting a better understanding of the impact of the conflict on land tenure and institutions, increasing awareness of how disputes are or could be managed, and disseminating information on how the conflict has affected land-based livelihoods and human settlement patterns;
- Providing technical support on land issues to the parties to the conflict, mediators/negotiators, armed groups and development partners in order to forge a common understanding of the relationship between land and conflict, and the role of land in the post-peace environment;
- Supporting dialogue on land issues amongst the general population and civil society groups as a means to generate potential solutions that may support the negotiation process, combined with specific dialogues concerning the land issues of women, youth, and indigenous groups;
- Supporting negotiations with the appropriate threat or use of political or resource-based sanctions, as well as the financial tracking of revenue from natural resources;
- Conducting institutional and capacity assessments in-line with the proposed future institutional environment for land and land dispute resolution;
- Identifying national and international experts on land tenure in the particular country, in preparation for potential interventions; and,
- Ensuring, as necessary, that land capacity is specifically included in peace operations and missions from the earliest stages, with a robust staff and budget.

Stage 5: Post-Conflict

The post-conflict period is often described as the period "when the main hostilities have ceased to the point that international aid can begin."[46] The notion of "post-conflict," however, is problematic. While a peace agreement may have been signed, the post-

conflict period is often anything but peaceful. Some parts of the country may still be in open conflict. In others, there may be sporadic resurgence of violence as past grievances and scores are settled. Depending on the country, transitions from post-conflict to development can often take ten years or more (such as those in Cambodia, Guatemala, Southern Sudan).

The post-conflict period is often characterized by significant land-related challenges. There is often an acute housing shortage due to destruction caused during the course of the conflict, but also, in urban areas, due to new demands for housing by Internally Displaced Persons (IDPs), returnees and the international assistance community. Public buildings, including schools and government offices, must be evacuated and rehabilitated. Land and property claims multiply and people often attempt to secure or restore their rights. At the same time, land grabbing and illegal allocations may increase, as loyalty in combat is rewarded in the only readily available currency: land. Landmine contamination can limit access to agricultural land, forests and settlements. With the end of civil war, old alliances may end and internal competition may manifest itself through competition for land and resources. Where administrative and ethnic borders overlap, there can be new tensions and even conflict as groups seek to expand their borders, control valuable resource areas or simply consolidate their populations in order to be able to make stronger claims for state resources in the future.

In post-conflict settings, the institutional environment has also been transformed. Statutory institutions may have collapsed; government offices may have been destroyed or may be inhabited by IDPs and returnees. Government officials and technical staff such as surveyors and planners may have been killed, displaced by the conflict or may have taken up residence in another country. Land records may be damaged, destroyed, tampered with or simply stolen (as was the case in Kosovo and Timor-Leste). At the same time, land that has been 'grabbed' or stolen may be entered into the registry in order to strengthen the legal claims of ownership; this is often described as the creation of a 'victor's registry.' The incoming government is often motivated by the desire to 'modernise' land administration, surveying and planning in ways that are not consistent with current capacities, and may not be sustainable over the long-term; these ambitions are often fuelled by the international assistance community. The new government will also be eager to re-start the economy, often through the allocation of new resource-based concessions and the promotion of investment in urban and peri-urban areas. There may be limited consultation, however, with customary rights holders who reside on or use the land on a seasonal basis. The government or the UN may also establish new land institutions in the post-conflict context: land commissions and property claims commissions are two common such entities.

Where they exist, customary institutions are the major resource that people turn to in the aftermath of conflict. These systems vary from country to country, and across regions within a country. Customary institutions, however, may also have been badly affected by conflict; in the absence of effective alternatives, however, customary institutions often prove more resilient than statutory institutions (such as those in Afghanistan, Timor-Leste, Mozambique, Liberia and South Sudan, for example). Customary systems do not rely heavily upon material infrastructure, and can therefore reassert themselves rapidly. Traditional institutions, however, may have suffered significant damage to their most important asset: social legitimacy. Traditional leaders may have diminished authority, particularly in the eyes of the youth and ex-combatants who may not have grown up in an environment of respect for elders and for consultative dispute resolution.

However, informal institutions that emerge during the conflict tend to continue to function. Often, they transform themselves into fledgling private sector land developers, using their knowledge and connections to both customary and statutory institutions to facilitate land transactions. People may also turn to UN and NGOs - particularly those that have been involved in the country during the conflict - for guidance and assistance

to address land claims and issues. Mediation and arbitration may take place on an ad hoc basis, often with little connection to government institutions, making the sustainability of such agreements unclear. Arrangements based on mediation may be vulnerable to annulment through the declarations or actions of the government, unless they are granted temporary or permanent legal validity.

The result is often an extremely fluid institutional environment, characterized by unclear mandates, roles and responsibilities. People may be confused about where or to whom they should turn in order to definitively address their land-related issues. Or, if they are not satisfied with their claim in one institutional system, they may simply take their claim from one system to another until they get a judgment in their favour; this situation is known as 'forum shopping' and, while often criticized, it should be recognized as serving a useful safety valve in the immediate post-conflict period, by helping to keep land disputes from being transformed into violent conflict.[47] In some ways, this fluid environment is preferred – and is allowed to continue – by the powerful and the elite as it provides greater flexibility for them to consolidate their political and economic power.[48] The post-conflict inequality with regards to access to land can solidify over time, becoming highly resistant to reform as the initial post-conflict phase passes.

In this fluid environment, the challenge for international assistance is to properly calibrate its support to the institutional realities and political economy of the post-conflict era. The process, however, is anything but linear or clear. In general, a phased approach seems to be a pragmatic strategy: addressing urgent needs immediately, while setting the stage for more significant institutional reforms in the mid-term and long-term. Possible interventions may include:

- Continuing activities related to conflict prevention, conflict regulation and management, and continued negotiation and mediation regarding specific issues;
- Ensuring land issues are included in the post-conflict needs assessment and other needs assessments (see Section 6.1)
- Identifying and addressing specific urgent issues, for example, review of concessions, informal settlements, land allocation procedures, etc.;
- Developing and implementing a land dispute resolution system that includes, traditional authorities, local government, line ministries responsible for land and resources, the judiciary, as well as specialized post-conflict institutions such as land commissions and land and property restitution mechanisms (see Section 4);
- Developing an overall strategic framework for the land sector (5 years), including all relevant line ministries and dispute resolution institutions, as well as a short-term work programme (6 months to 2 years);
- Development and implementation specific institution-building strategies for traditional authorities, line ministries, local government, the judiciary and civil society;
- Begin work on longer-term land policy and more comprehensive legal and institutional reforms.

In conclusion, Section Three has presented an overview of the relationship between land, conflict and international assistance at different stages of the conflict cycle. It has focused on the interaction between people, institutions and conflict, demonstrating that at each stage of the conflict cycle there are actions that can be undertaken that can contribute to the prevention, management and resolution of land-related disputes. The following sections present an overall strategy for a systematic approach to land dispute resolutions, provide some guidance to address specific land-related challenges and identify some tools and strategies that can be effective within an overall strategic approach.

4 A SYSTEMATIC APPROACH TO ADDRESSING LAND GRIEVANCES AND CONFLICTS

The absence of a systematic approach to land grievances and conflicts has been a major gap related to international assistance in countries affected by armed conflict. This section provides a brief overview of the nature and value-added of a systematic approach. It begins by recalling some of the lessons-learned from a lack of a systematic approach, drawing upon experiences from previous UN peace missions. It then describes what a systematic approach entails, including examples of more systematic approaches drawn from recent experience.

4.1 Lessons-learned from UN peacekeeping and peace operations

It can be argued that the closest the international community comes to a systematic approach to addressing land grievances and conflict occurs in the aftermath of conflict when UN peace operations are established. Examples of such operations include the UN Mission in Kosovo (UNMIK), the UN Transitional Administration in East Timor (UNTAET), and the UN Mission in Sudan (UNMIS). Where such missions have been established, land grievances and conflicts are often framed as housing, land and property rights issues (see Section 2 for discussion). While it is beyond the scope of this Guidance Note to review these experiences, they do provide some valuable lessons and insights for developing a more systematic approach to land grievances and conflicts.

In reviewing 17 current UN Peace Operations, Leckie observes that "none were designed to ensure systematic attention to HLP issues and have the human and financial resources in place to effectively address HLP concerns in a comprehensive manner. While *some* past UN missions… developed capacities for addressing *some* HLP challenges, most such missions either did not address these issues at all, or did so in an ad hoc, partial and short-term manner."[49] In Cambodia, for example, in one of the earliest of the post-Cold War peace operations, the repatriation of some 360,000 refugees was a critical concern, yet no provision was made to address land and property issues.[50] In Afghanistan, despite recognition of widespread landlessness, land issues were only belatedly and incompletely addressed.[51] Similarly, in El Salvador and Guatemala, unequal access to land was recognized and even included in peace agreements, yet implementation of land reform provisions was never realized (see Case Study 6 in Section 5.5 below). Even in Timor-Leste, regarded as "one of the most comprehensive attempts at addressing a wide spectrum of housing rights concerns… many of these efforts were thwarted."[52] In Kosovo, UNMIK was successful in promoting the restitution of residential property rights, however, issues such as commercial properties, state-owned enterprises and the reconstruction of destroyed IDP/refugee houses were either belatedly or never addressed.[53]

In explaining the reasons for an incomplete approach, Leckie notes the following:

- Lack of understanding of the issues by the UN administration involved;
- The reluctance of local political actors with vested interests in housing or land to support such initiatives;
- The perception by the UN that the HLP rights challenges facing them are simply too large to address;
- The complexities, scale, and historical nature of the problems;

- The financial costs associated with systematically addressing these problems;
- The perception that addressing these rights could potentially reignite the recently ended conflict; and,
- The lack of major donor support for encompassing reforms.

While some of the above reasons may have some validity, experience has also shown that a failure to address land grievances and conflicts systematically has its own negative consequences. In Cambodia, for example, the vast majority of around 360,000 returning refugees were quickly transformed into IDPs, without access to land.[54] In Timor-Leste, the failure to address the acute housing shortage led to a surge in violent conflict after the peace agreement.[55] Nepal, Guatemala and El Salvador illustrate how the failure to address the structural land-related causes of conflict can have a negative impact on post-conflict recovery.

Photo: UNEP, Lebanon

There are signs, however, that this critical gap in international support to conflict-affected countries is being recognized. As the UN Secretary-General noted in his 2008 Report on the Rule of Law:

"While the need is great and immediate… [o] ur engagement on these issues has been ad hoc, and our capacities insufficient and fragmented. Efforts by the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Human Settlements Programme (UN-HABITAT) to capture lessons and good practices provide a foundation on which to develop a systematic, comprehensive and strategic approach to and capacities on housing, land and property."[56]

The sections below discuss some of the elements of, and experience with, more strategic and systematic approaches to land-related grievances and conflicts.

4.2 A systematic approach to land grievances and conflicts

A system is a "collection of interrelated parts, which work independently and jointly to achieve a common objective."[57] A land dispute resolution system is "an integrated and coordinated arrangement of institutional capacities, resources, people and procedures, which assists parties in dispute or conflict to address and resolve their land-related issues and claims."[58]

Different types of dispute resolution systems may exist in any one given context. Some systems may be anchored in a single organisation, addressing recurrent issues. Others may be networks of social leaders, either organised as formal panels, certified third party mediators or arbitrators, or networks of informal leaders or elders within society.

A third type of system – and perhaps most appropriate for addressing land issues in conflict contexts – is a networked system. A networked system is a collection of informally or formally coordinated institutions or organisations addressing land issues. This system may include government agencies, traditional authorities, non-governmental and civil society organisations, private companies,

UN entities, or some combination of these organisations. It is most appropriate for contexts in which organisations have overlapping jurisdictions and where cooperation and coordination are required. It can be particularly useful in countries addressing legal and institutional pluralism (see Section Two), and as part of a broader conflict prevention strategy.

Ultimately, the strength of a system for land grievances and dispute resolution is its overall capacity to channel disputes into a variety of mechanisms that collectively reduce the risk of land disputes becoming violent. This would include the following elements:

- A coordinated approach to land grievances, land disputes and land conflicts, bringing together all actors within a system to work towards a common objective;
- A predictable, transparent and credible process, which results in outcomes that are widely seen to be fair, effective and lasting; and,
- A holistic approach to the full range of land grievances and conflicts, including the structural factors that contribute to conflict.

A more systematic approach, therefore, can contribute to the following results:

- Cost effective and efficient conflict prevention and management: monitoring land conflict trends; increased likelihood that small disputes can be brought to a conclusion before they escalate; early and effective crisis management when conflict does occur; and will yield insights from individual disputes that highlight the need for deeper institutional reforms;
- Facilitating the return and reintegration of IDPs, refugees, soldiers and youth;
- Supporting land-based livelihoods such as agriculture, pastoralism, artisanal mining, timber harvesting, fishing, etc.;
- Facilitating investment in rural and urban areas, whether in housing, infrastructure or resource sectors;
- Promoting more sustainable land-use and management;
- Contributes to enhanced political, social and economic stability and security at all levels;
- Enhances accountability within the system and promotes good governance and rule of law more generally.

4.3 Developing and implementing a systematic approach

A systematic approach can be developed at any stage of the conflict cycle, but may be more commonly implemented in a post-conflict environment. The process described below is based on a post-conflict context, but can be adapted to other phases of the conflict cycle.

There are generally four phases to the development of a land grievance and conflict resolution system: (i) defining the scope and goals of the system; (ii) system design or strengthening; (iii) implementation; and (iv) monitoring and learning. These four phases are briefly introduced below.

In the first phase, the objectives include:

- Understanding how institutions function and interact as part of a system (see Section 6.1);
- Undertaking a conflict analysis, including elements of a political economy analysis (see Section 6.2 and 6.4);
- Carrying out research with local institutions on critical policy challenges, for example, customary law, land markets, urbanization, livelihoods, dispute resolution, etc.
- Developing or strengthening a land sector coordination mechanism (see Section 6.3);
- Understanding the full range of land grievances and disputes; and,

Table 2: Overview of some common land dispute resolution institutions

INSTITUTION	POTENTIAL STRENGTHS	POTENTIAL WEAKNESSES
Traditional authorities	• Accessibility because of their low-cost, flexible schedules and procedures, use of local language, etc.; • Consensus-oriented approach; • Informal and formal leaders can serve as conciliators, mediators, negotiators or arbitrators; and • Strong social legitimacy means process and outcomes have ownership.	• Formal institutions may not recognize traditional authorities, or may interfere in their functioning; • Traditional institutions may break down and traditional leaders lose legitimacy; • May have limited capacity to resolve inter-community disputes or disputes with the state; • May be inaccessible to some parties because of gender, class, caste or other biases; and, • Decisions not recorded/ communicated to formal system, may not be durable.
Civil society & NGOs	•Perceived impartiality; • Staff may be more mobile to travel to disputes; • Often have some mediation/Alternative Dispute Resolution capacity, and focus on building interest-based agreements; • May facilitate greater participation; and, • Focus on capacity-building within the community, and broadening culture of peace.	• Programmes may not have support from government or courts; • May not have sufficient convening power or capacity to address inter-community disputes; issues related to high-value natural resources or structural inequalities; • Approach may vary between organisations; and, • Decisions may not be binding.
Local government	•Proximity to the people and local knowledge; • Control over administrative procedures may make them more responsive; • Technical capacity – e.g. surveying; and, • Access to land records.	• Capacity may be reduced due to conflict; knowledge may be out of date; • Legitimacy may be weakened due to in-conflict practice related to illegal land allocation or fraud; and, • Officials may seek to consolidate their power at the expense of traditional institutions/courts.
National government ministries	• Have the mandate for legal, policy and institutional reform required for structural reforms; and, • Have convening power for inter-community or administrative boundary disputes.	• Responsibilities often fragmented between different agencies; reluctance to share information; often competition between agencies; poor coordination; and, • May have weak capacity or may have reduced legitimacy due to conflict.

Table 2... *Continued*

INSTITUTION	POTENTIAL STRENGTHS	POTENTIAL STRENGTHS
Courts	• Process, rules and decisions have legal legitimacy; • Decisions may be impartial, based on merits of the case; • Structured to reach down to local level within a hierarchy; • Specialized technical expertise; and, • Access to land records.	• Limited participation by parties in decision-making; • Often inaccessible, remote, and expensive, with technical and language barriers; • Often over-loaded with land disputes; • Adversarial approach results in win-lose outcomes, which may damage relationships, not be sustainable or provoke future conflict; • Decisions may not be enforced due to lack of capacity, skills or links to enforcement officials; • May be perceived to be corrupt, lack legitimacy or be biased toward elites, etc.; and, • Narrow definition of evidence.
Political leaders	• May have influence over parties to disputes because of social relationships; • May be able to address complicated or protracted disputes; and, • May be able to secure resources to help reach or implement agreements.	• May be perceived as biased or as an interested party to a dispute; • May not be able to stay engaged over the long-term on any individual dispute; and, • May take on the role of arbitrator, but lack enforcement mechanisms.
Land and Property Commissions	• Neutrality may be higher in the case where there is no other agreed-upon neutral party; • Can operate at scale through flexible procedures, flexible approach to evidence; and, • Can deal with issues systematically.	• May replace overall institution-building strategy, undermining long-term government or NGO capacity to address disputes; • Mandate may be relatively narrow relative to the scale of land-related challenges or may be time-bound to address only specific disputes; and, • May be under-funded, lack technical capacity.

- Defining the scope of the system and the types of conflicts to be addressed.

Some of the common institutions and their potential strengths and weaknesses are summarized in Table 2 below. Once the institutional assessment and grievance/dispute typology have been developed, an agreement should be reached regarding the issues to be addressed by the system.

In the second phase of the process, the objective is to design the approach, building on existing institutional strengths and addressing gaps that may exist. Some components of such a system may include:

- Understanding how institutions function and interact as part of a system (see Section 6.1);
- Undertaking a conflict analysis, including elements of a political economy analysis (see Section 6.2 and 6.4);
- Carrying out research with local institutions on critical policy challenges, for example, customary law, land markets, urbanization, livelihoods, dispute resolution, etc.
- Developing or strengthening a land sector coordination mechanism (see Section 6.3);
- Understanding the full range of land grievances and disputes; and,
- Defining the scope of the system and the types of conflicts to be addressed.

Some of the common institutions and their potential strengths and weaknesses are summarized in Table 2 below. Once the institutional assessment and grievance/dispute typology have been developed, an agreement should be reached regarding the issues to be addressed by the system.

In the second phase of the process, the objective is to design the approach, building on existing institutional strengths and addressing gaps that may exist. Some components of such a system may include:

- An on-going two-way information and communication strategy, bringing information into the policy and decision-making arena and communicating developments outward;
- Capacity-building strategies for different institutional components of the system;
- Crisis intervention procedures, to regulate and address land conflicts that may arise;
- A conflict-specific dispute resolution institution (e.g. Land and Property Commission, Land Tribunal, etc.). This in turn may require: a multi-channel transparent claims intake and registration system; an eligibility assessment process; an investigation process; third-party dispute resolution services; dispute tracking and monitoring; a compliance/enforcement mechanism; a learning component, etc;
- Third party facilitator, fact-finder, mediation and arbitration service providers (NGOs, private sector, civil society;
- Advice, advocacy and capacity-building to support weaker parties to enable them to participate effectively in the dispute resolution system;
- Coordinated policy, law reform and land administration reform; and,
- An overall work-plan to guide the implementation process;

In the third phase of the process, the objective is to initiate implementation of elements of the systemic approach. Different elements of the grievance and dispute resolution system can be developed on a pilot basis. For example, traditional systems may already be operational, but require targeted capacity-development. New elements, such as land and property commissions, might be added to make the overall system more effective.

The final phase focuses on evaluating and learning from system results. Once the dispute resolution system is operational, attention

should shift to quality control, institutional learning and on-going evaluation. Third party monitoring, through a local university, for example, can both enhance accountability of the system as well as the mainstreaming of reforms within national institutions.

4.4 International experience with systematic approaches

International experience with systems approaches has been variable, as discussed above.[59] Examples of systematic approaches include Liberia, Democratic Republic of Congo and Timor-Leste.

In Liberia, the Land Commission is supporting the development of a comprehensive approach to land disputes. This is particularly challenging in a context: where insecurity of tenure is high; where the legal and institutional framework is unclear; where the land administration system is weak; and where dispute resolution is carried out on an ad hoc basis by, inter alia, the Ministry of Justice, the Ministry of Lands, Mines and Energy, the Ministry of Internal Affairs, traditional chiefs - often in coordination with local government officials - and NGOs and community-based organisations that mediate land disputes. In response, the Land Commission established a Land Disputes Task Force, undertook an inventory of disputes, organisations and approaches to dispute resolution, and initiated the clarification of the institutional framework. Other activities include the coordination of early warning systems (see Section 6.1) and targeted capacity-building support to different stakeholders based on the comparative advantage of different organisations. Long-term efforts to address structural sources of conflict are also being initiated through legal and policy reforms.

In the Democratic Republic of Congo, UN-HABITAT is supporting the Ministry of Land Affairs at the national level to develop a develop a comprehensive land policy and to establish a coordination mechanism for the land sector, including those related to natural resources, urban issues, decentralization, customary law and family law. At the provincial level, this approach is expressed through a combination of activities that includes: land sector coordination groups in North Kivu and Ituri; establishing land mediation centres in a context in which there is limited or no national Government presence; the systematic intake, processing and resolution of disputes, including through mobile teams; and, the development of a typology of disputes and a hierarchy of locally legitimate and statutory evidence. With World Wide Fund for Nature (WWF), work is also underway to promote more sustainable management of protected areas, including around Virunga National Park.[60]

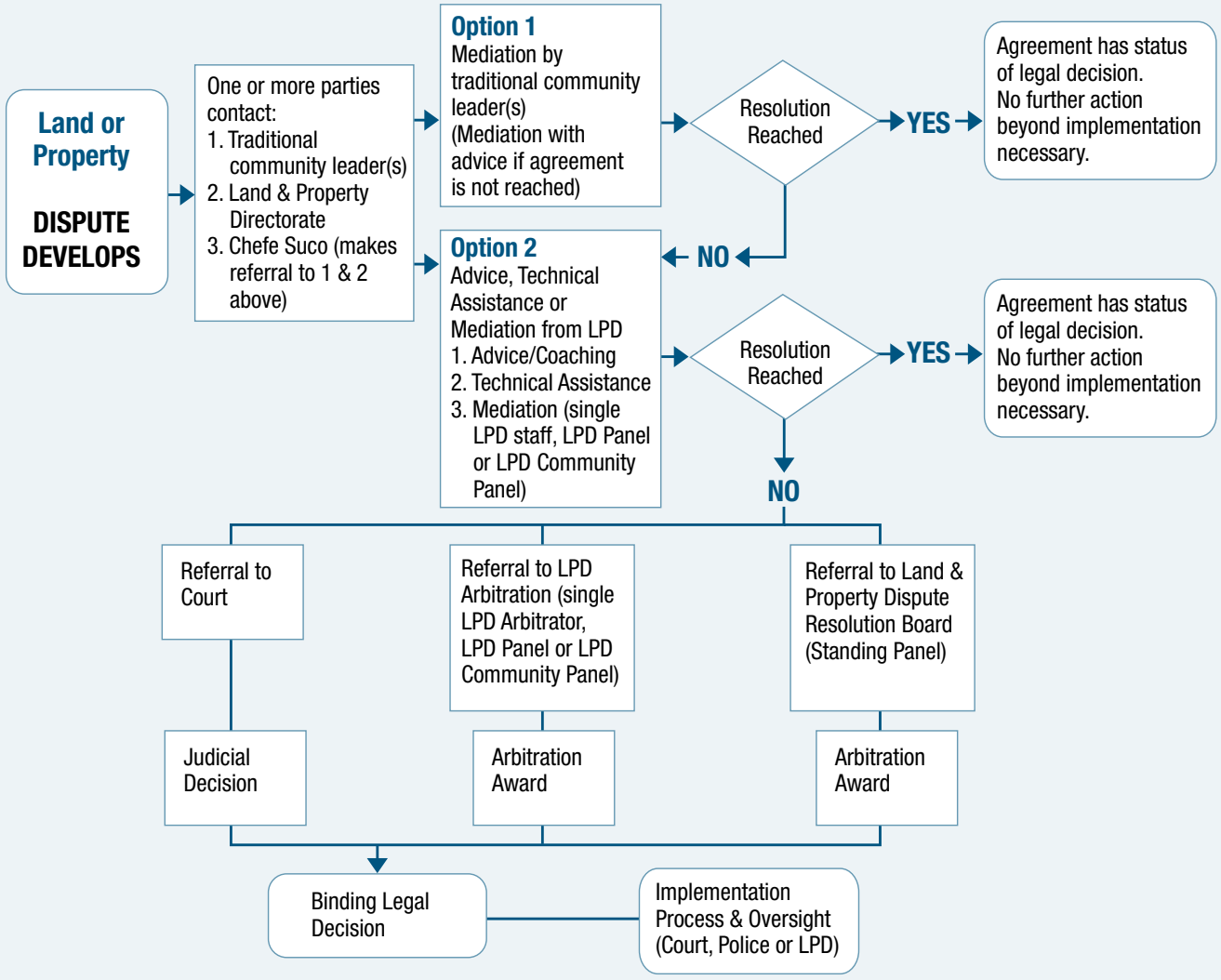
In Timor-Leste, as Case Study 3 illustrates, a sample system was developed by the Land and Property Directorate of Timor-Leste. It shows the institutional entities involved in receiving complaints or grievances, referral mechanisms, multiple paths for reaching voluntary agreements through mediation, and an optional, and yet to be implemented, arbitration component. If parties are not satisfied with the result of traditional dispute resolution processes, they can take their case to the Land and Property Directorate for mediation assistance. If they are not satisfied there, they are also free to take their dispute to court.

In conclusion, Section Four has highlighted the need for a broader systems approach to addressing land disputes and grievances, one that goes beyond the immediate disputes to contribute also to addressing the more structural causes of conflict within society. Section Four discusses some specific land challenges commonly encountered in conflict countries.

CASE STUDY 3: Timor-Leste: land and property dispute resolution system[61]

E. Timor's Land and Property Dispute Resolution System

Designed for the Land and Property Directorate (LPD)



5 ADDRESSING SPECIFIC LAND CHALLENGES

Violent conflict can create a number of specific land-related challenges. While the previous section has argued for a more systematic approach to land conflicts, this section explores some common land-related challenges such a systematic approach may face, as well as a range of interventions to address them.[62]

5.1 Access to land and humanitarian programmes

Humanitarian actors require access to land for a wide range of emergency programmes, including: temporary shelter, IDP and refugee camps, livelihoods, roads, critical infrastructure, and basic services like schools and clinics. Humanitarian works also required land for accommodation, offices and warehouses. In addition, mine removal organisations are increasingly conscious of the need to secure the land rights of the poor to land that has been cleared.

Humanitarian actors will often seek advice from government officials regarding 'available' land. Official information, however, is often not current and available land is actually claimed by one group or another, sometimes under customary law, other times as private land that has not been registered. In either case, humanitarian actors may find their work delayed, themselves embroiled in a local dispute, and possibly with their staff in danger.

The establishment of camps may present specific challenges. While the establishment of camps is not the preferred solution, they are often the quickest and easiest way to provide the logistical support to meet humanitarian needs. IDP and refugee camps often require large areas of land to meet the needs of both the camp population as well as the support staff. An area outside the immediate perimeter of the camp may become rapidly deforested or otherwise exploited by the camp population, which may collect firewood, edible wild foods (including wildlife), and may prepare land for cultivation.

Over time, 'temporary' camps will often become permanent, as markets, services and more permanent houses are built, and as people intermarry with the local population. The camp may eventually resemble a village or town, and this expansion will place further demands on local land. Because of their supposed temporary nature, humanitarians may not be permitted to provide anything beyond basic amenities and settlement planning is often discouraged. In some cases, IDP and refugee populations are officially confined to camps on the orders of national or local authorities (on the basis that their presence is temporary and they should rely upon external assistance for food and other essentials), but such orders are difficult to enforce. Tensions can increase between IDPs and refugees, the local host community and Government officials. Violence can also erupt, as was the case in Timor-Leste, for example, in 2007.[63]

Humanitarian de-mining is another specialized area that is increasingly facing land-related challenges. Cleared land may be grabbed by powerful individuals or, if the beneficiaries are not named, may be allocated to wealthy individuals. Mine clearance organisations are increasingly conscious of the need to link mine clearance to measures to ensure security of tenure for the poor.

For many humanitarian programmes, it is understandable that issues of land rights may be initially a secondary concern. That is not to say, however, that land rights issues are not present, nor that they will remain invisible for long.

Key roles the UN and EU can play include:

- Establish a national inventory of public land (as was done in Burundi in 2003 with support from UNHCR),[65] ensuring that national information is locally verified;
- Consult local populations, traditional leaders, local government officials to clarify the underlying land rights and livelihoods before deciding whether, and where, to locate a camp, infrastructure, services, etc.;
- Provide minimal settlements planning support in the event that temporary camps become permanent, as has occurred in Jordan and Syria as a result of the protracted displacement of the Palestinian refugees;
- Ensure that humanitarian programming does not undermine the land rights of another community, and that both displaced persons and host communities benefit equitably from humanitarian assistance;
- Where land belonging to others is required or used for camps, the original owners should be swiftly and fairly compensated, and assisted to find land elsewhere;
- Identifying occupancy and other land rights, linking de-mining to security of tenure for vulnerable groups and monitoring beneficiaries of cleared land are some measures that may be taken to mainstream a pro-poor focus in humanitarian de-mining efforts; and,
- Provide mediation and dispute resolution support in cases of rising land-related or host-community tensions.

5.2 Land and identity documents

As populations flee from conflict, they often leave behind or lose their land or identity documents, or may be the victims of theft. In many cases, displaced persons may never have own land or identity documents in the first place. Regardless of the circumstances, the lack of official documentation can pose a significant barrier to return, prolonging IDPs/returnees time in camps or spontaneous settlements.

Other displaced persons may be tenants (agricultural or residential) with unregistered land rights. During conflict, tenants may be evicted. In post-conflict contexts, the provision of housing solutions for tenants is rarely a priority. This means that the 'residual caseload' of people in camps often includes a significant proportion of people who simply have no other option but to remain where they are.

While there may be some 'fraudulent claims' to being landless, these cases are usually a minority. In some situations, they may be people displaced by a previous round of conflict and whose land or housing needs have not been met. The lack of documentation and inadequate early attention to tenure status during initial assessments or camp intake can create a very complicated and controversial situation. Kenya's recent experience with IDPs following the 2008 'post-election' violence is a case in point.

Despite the challenges described above, there are some practical measures that may be taken to avoid complications due to the absence of identity or land-related documentation.

Key roles the UN and EU can play include:

- Monitoring displacement and secondary occupation, including through satellite imagery;
- Registering the land and property rights of displaced populations as they flee or through in-take mechanisms in camps or enumerations of spontaneous settlements (see Case Study 4 below);
- Recording witness statements that may be used to substantiate future claims;
- Recognizing a broader range of evidence of land rights, including for example physical evidence, utility bills, census details, local authority records, etc.; and,
- Large-scale national identity card delivery programmes, including the use of mobile teams.

CASE STUDY 4: Registering land rights of IDPs in Timor-Leste and Colombia

Faced with repeated waves of displacement, **Colombia** adopted Law 387 in 1997 to protect the rights of IDPs. It includes specific provisions to protect land abandoned through forced displacement by ensuring its registration, providing alternative land, facilitating return and relocation and providing additional livelihoods support. In 2001, Decree 2007 was adopted to offer further guidance on the implementation of the original law. Responsible institutions are to identify the land's occupants and record the amount of time they have been linked to their land. These lands are then registered and protected from transfers. Implementation, however, has been a challenge: early warning systems to alert authorities of the need to register land and property are not always activated on time, and the follow-up support to displaced persons has not always been effective or timely.

In **Timor-Leste**, the 2006 civil unrest displaced approximately 100,000 persons and left thousands of houses destroyed. The Government, supported by UNDP and UN-HABITAT conducted an enumeration exercise in order to identify abandoned land and property and to assess the extent of damage to their homes. Teams of enumerators went to all major IDP camps and asked a representative of every household to indicate the house from which they had been forced to flee using a 1:1000 scale aerial photomap. The indicated location was marked with a unique identifier and linked to a data form containing other relevant information such as the stated condition of the house at the time of displacement, household size and other relevant data. The data was inserted in a map-based database. In 2007, the Timorese Government used the information gathered through this enumeration to implement a cash-based return and resettlement programme. By 2009, all IDP camps were deactivated.

Source: Elhawary, Samir, 'Between War and Peace: Land and Humanitarian Action in Colombia,' in Pantuliano, *Uncharted Territory: Land, Conflict and Humanitarian Action*, Rugby, Practical Action Publishing, 2009; and UN-HABITAT, 'Quick Guide to Land and Conflict', 2010.

5.3 Abandoned land and secondary occupation

Populations in flight often abandon housing, land or property, and others may then occupy it. The precise circumstance in which land was left will vary and careful consideration needs to be given to restoring land rights.

Land or property, for example, may be left in the care of neighbours or family members. Complications may ensue, however, in the event of protracted displacement: displaced members of the caretaker's family may require shelter and land for livelihoods; or the caretaker may cultivate on the displaced person's land or build additional structures. In some cases, however, the land may be sold. The caretaker may believe the displaced person to be deceased; may be coerced to sell; or may simply need to ensure the survival of their family.

Two other scenarios are also common. The land or property may be formally leased to other IDPs/returnees to make up for housing shortages (as was the case in Kosovo and Timor-Leste). The most challenging scenario occurs when evictions are part of a deliberate strategy to change the ethnic composition of a community or society, as was the case, for example, in Kosovo.

The situation may be further complicated by adverse possession or prescription laws. These laws may be interpreted to enable current occupants to claim ownership if the original owners do not return within a specified time period (often between 10 and 30 years). In most cases, laws will stipulate that the prescription period excludes the conflict period, when the owners were physically unable to use the land or occupy the property due to legitimate security concerns. Secondary occupiers may nonetheless attempt to use such laws to claim land in the aftermath of conflict. The legal framework

around abandoned land may be poorly understood by citizens and local authorities, making a systematic application of the law difficult to achieve.

Key roles the UN and EU can play include:

- Monitoring abandoned land and property during displacement and recording the land and property rights of displaced populations;
- Where they exist, reviewing and amending abandonment laws or adverse possession laws as necessary so that displaced people are not arbitrarily deprived of their rights;
- Establishing a national land and property claims process to collect, analyse and address grievances; where necessary, the process can be expanded to include countries to which populations have fled, as was the case in Kosovo;
- Providing third-party dispute resolution support to help resolve disputes concerning 'good faith' occupation and to agree on compensation for any improvements made during the displacement period;
- Providing alternative housing for IDPs or returnees who have occupied land or property in 'good faith'; and,
- Ensuring that illegal occupation is redressed without risk of retribution and drawing on security or peacekeeping forces as required.

5.4 Restitution and the right to return

Restitution refers to "an equitable remedy (or a form of restorative justice) by which individuals or groups of persons who suffer loss or injury are returned as far as possible to their original pre-loss or pre-injury position."[66] More recently, the principle of restitution has been applied to the housing, land and property rights of displaced persons and refugees through the elaboration of the Pinheiro Principles.[67] In addition, the "right to return," which is enshrined in many international human rights and refugee law instruments, has in recent years been reinterpreted as an individual right to return to one's home and claim land and property which was abandoned due to conflict.[68]

In general, rights to restitution of housing are more clearly defined and protected under international law than rights to land; and housing rights are often used as a means to also protect rights to the residential, commercial and agricultural land.[69] Many contemporary peace agreements make explicit reference to the right of displaced populations to return to their homes and have their properties returned to them. Under international law and principles of best practice, compensation in lieu of return is seen as a less effective remedy - to be pursued only under certain conditions; for example, when the physical, material or legal security of returnees cannot be guaranteed.[70]

Considerable progress has been made over the last decade in the design and implementation of mechanisms for the restitution of housing and land, as examples from Bosnia and Kosovo illustrate. Some significant challenges remain, as the examples from Timor-Leste, Rwanda and the Czech Republic illustrate also. These examples are briefly discussed in Case Study 5 below.

Despite the advances in the theory and practice of restitution, there are many instances in which the complexity of claims to land and housing does not allow for a simple legal or moral determination of the 'rightful owner'.[71] In other cases, protracted conflict can significantly impact land-use and people's livelihoods. Some particularly challenging scenarios include the following:

- **Multiple displacements**: When populations have been displaced repeatedly over the course of a number of decades or even centuries, as is the case in, for example, Timor-Leste;
- **Historical injustic**e: Colonial regimes, for example, forcibly displaced local communities in order to allocate their land to settlers or 'privileged' local communities; in others, the state turned community lands into wildlife or forest reserves, without compensation;

- **Secondary occupants without alternative land or housing**: In many cases displaced persons lack alternative land or shelter. Removal in such cases would be tantamount to forced eviction and would violate international law;
- **Changes in land access**: In protracted conflict, population increases combined with repeated division of family plots may make land-based livelihoods difficult to sustain (e.g. Rwanda and Burundi);
- **Overlapping rights and claims**: Restitution often assumes the existence of a single right-holder and a defined parcel of land. In many parts of the world, however, multiple rights-holders and multiple uses exist for the same land (See Section Two above), making 'restitution' a difficult principle to apply; and,
- **Changes in settlement patterns**: Displacement may result in populations settling in urban areas. Over time, they may have no desire to return to rural areas, nor the skills to secure sustainable livelihoods.

As the above discussion suggests, many of the principles and 'best practices' for restitution of land and housing have been derived from contexts in which: statutory land administration systems are pre-eminent across the national territory; where up-to-date, individualized property rights exist and enjoy local legitimacy; and, where there is sufficient financial, human resource and technical capacity, and a high-level of political commitment to restitution. Many of these conditions are absent in many parts of Africa, Asia and Latin America. In such contexts, the majority of land is held under informal or customary tenure, ownership rights are undocumented and often dependent upon local decision-makers and institutions.

Restitution, however, remains the preferred solution for violations of housing, land and property rights. As the Pinheiro Principles states, "[s]tates shall demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution."[72]

Key roles the UN and EU can play include:

- ➤ Conflict analysis to examine the potential for, *inter alia*, historical injustice, the existence of overlapping rights and claims, changes in land access and use, the security situation in the place of origin, livelihood strategies, etc.;
- ➤ Prioritising restitution within a framework of durable solutions that consists of: (i) the right to return and claim housing, land and property rights; (ii) local settlement and integration, whereby populations may chose to remain in the location or country in which they are displaced (as was the case with Rwandan refugees in Tanzania); and, (iii) relocation or resettlement to a third location or country;
- ➤ Strengthening conflict prevention and peace-building capacity in areas of return, relocation and integration;
- ➤ Complementing integration efforts with investments in infrastructure, services, livelihoods, etc.;
- ➤ Providing adequate and fair compensation for the loss of land and property in circumstances in which restitution is not possible; and,
- ➤ Promoting the use of alternative dispute resolution and third party mediation to support restitution programmes, as provided for in Article 12.4 of the Pinheiro Principles.

5.5 Land reform

Injustices over access and control of land are often central to the genesis of conflict, as discussed in Section Three above. In such cases, the challenge is not simply to manage land-related conflicts, address immediate grievances or return to the pre-conflict status quo. The challenge rather is to make systemic changes to the pattern of land use and address the grievances that caused violence. This is doubly

CASE STUDY 5: Land Restitution in Bosnia, Kosovo, Timor-Leste, Rwanda and the Czech Republic

Property restitution in **Bosnia** is generally seen as successful, particularly as restitution was not made conditional upon the physical return of refugees and IDPs. Many displaced people who felt that the security situation was not conducive to their return took legal control of their property and received rent payments, acting as absentee landlords.

In **Kosovo**, a Housing and Property Directorate was established in 1999 by the United Nations Mission in Kosovo, as well as a Housing and Property Claims Commission (HPCC), which was tasked with resolving claims related to the restitution of "residential property". The HPCC resolved some 29,000 property claims between 1999 and 2006. However, it was not until 2006 that another institution, the Kosovo Property Agency, was created in order to resolve claims regarding agricultural land. This delay in resolving claims over land delayed the return of some refugees and IDPs who, without land, had no significant sources of income

Restitution in **Timor-Leste** is complicated by a history of Portuguese colonisation, Japanese occupation, and Indonesian invasion. By 1978, during Indonesian rule, almost half the population was displaced and, following a successful secessionist vote in August 1999, around 75% of the population was displaced due to violence by pro-Indonesian militia. As a result of foreign dispossession and mass displacement, Timorese can claim land on the competing grounds of underlying traditional interests, titles issued during both the Portuguese and Indonesian eras, or through long-term occupation. Compounding this problem, Government land records were burnt or stolen and the Land and Property Directorate lacks authority to establish a land registry. A new land restitution law has been delayed since 2006 due to political and social instability. Overall, the highly complex situation, competing claims, and low level of local capacity have hindered the resolution of ownership issues.

In **Rwanda**, the population density has increased from 101 people per square kilometre in the 1960s to 303 per square kilometer today. With population growth and subdivision or sale, family farm holdings fell from 2.0 ha per family in 1960 to a situation in 2001 in which 60 percent of the population had less than 0.5 ha to cultivate. FAO has recommended that the average plot size for family farms should not be less than 0.9 ha. Moreover, land concentration has also increased over time, with an increasing share of arable land owned by fewer and fewer families. As several observers have noted, unequal distribution of land may be a bigger challenge than population pressure. Not surprisingly, Rwanda also experienced significant challenges regarding the return of refugees in the 1990s and 2000s. In such circumstances, restitution without land reform may face significant challenges.

In the **Czech Republic**, for example, the post-communist restitution program only examined claims stemming from relatively recent abuses of property rights, thereby excluding the claims of Jewish victims of the Nazis, some three million ethnic Germans expelled from Czech areas shortly before the communist takeover, and thousands of exiles who had defected during the communist period.

Source: Williams, Rhodri (2009), op cit; Bruce, John (2009) op cit.; Cordial and Rosandhaug op cit (2008); Leckie, Scott, 'Resolving Kosovo's housing crisis: Challenges for the UN Housing and Property Directorate, Forced Migration Review, No. 7, 2009, pp. 12-15; Huggins (2009), op cit; Fitzpatrick (2008), op cit; Wiley (2009), op cit.

important if such patterns have been reinforced or exacerbated by the destruction of assets and population displacements during conflict.

The need for land reform may be officially recognized by one or more of the warring parties, raised during peace negotiations and/or included in peace agreements. However, even if detailed and comprehensive plans for land reform are built into peace agreements, they may not be implemented in systematic, transparent, or effective ways. This is often due to a lack of political will, either at the executive level, within elites who have vested interests in the status quo or within the institutions tasked with reform.

In some cases, the failure to successfully implement post-conflict land reform is due to a de-prioritization of the issue by international and national actors. The foundations for reform should ideally be laid in the fluid moments immediately following the signature of peace accords, before political alliances have hardened and opposition to such reform has had a chance to organize.

Although peace agreements have become more frequently 'comprehensive' in recent years, most agreements lack effective mechanisms for monitoring implementation and applying some form of sanctions for institutions guilty of 'foot-dragging'. This means that the degree to which peace agreements are successfully implemented is largely a result of post-conflict political wrangling, rather than respect for the spirit and letter of peace accords. The lack of an effective verification mechanism has been cited as a problem in the implementation of Sudan's 2005 Comprehensive Peace Agreement, for example. Guatemala is another case-in-point (see Case Study 6 below).

South Africa's reforms also offer useful lessons. While successful in terms of maintaining social stability, land reform has not resulted in significant transfers of land from wealthy to poor, or from whites to blacks. The market-assisted 'willing-buyer, willing seller' approach has to date transferred only seven percent of the 82 million hectares of white-owned commercial farmland to blacks, whereas the target is to transfer 30 percent of this land by 2014.[73]

The current land reform debate is largely between "market-assisted land reform" (e.g. the South African model) and state-led expropriation models.[74] Experience suggests that both approaches can yield positive changes. The main lesson is that undertaking land reform requires sustained commitment, both political and financial.

Important factors for the UN and EU to consider include:

- Allocation and distribution of reasonable payment or compensation to farmers who give up their land; failure to adequately compensate landowners can lead to distrust in the process and disinvestment;
- Persons who acquire land cannot take on an unaffordable debt load; in some market-based systems, some form of grant must complement the contribution of beneficiaries;
- National consensus to undertake land reform requires significant time and sufficient financial resources;
- Time and resources are also required to structure the incentives to ensure that owners do not hold onto their land and that recipients are not forced to sell their land after receiving it;
- Sustained pressure from social movements is critical to sustain the momentum required to keep land reform on the agenda, including across changes in the executive; and,
- Constant monitoring and evaluation of impacts to ensure potential problems are identified and addressed so as to maintain confidence in the process.

5.6 Balancing investment and security of tenure for the poor

Governments, as well as their development partners, are keen to facilitate domestic and foreign investment in land and natural resources. Even in peacetime – as the controversy around large-scale agricultural investments attests – such investments can become

CASE STUDY 6: Land Reform Experience in Guatemala, Colombia and Chile

In **Guatemala**, several institutions were mandated to work on land-related issues arising from the peace accords. The National Institute for Agrarian Transformation (INTA) was mandated to distribute State land to the landless, but it was closely connected to former military personnel and wealthy landowners who had a vested interest in the status quo. Many INTA files 'disappeared', making it more difficult to process claims. INTA ceased to function in 1999. *Fontierras*, a land fund, was established to provide credit for purchase of land on a 'willing buyer-willing seller' basis, as well as to provide technical assistance programs to promote sustainable production on newly-acquired land-holdings. By 2005, little more than 4,000 hectares of land had been redistributed to 600 families by *Fontierras*, which has been under-funded by the Government. The market-based nature of the program has also run into some challenges, as there are few incentives for landowners to sell at market prices. The lack of a land policy, or a land restitution policy, has been identified as a serious impediment to the resolution of land-related issues arising from the civil conflict. In addition, lack of information-sharing protocols and other fundamental institutional and legal structures have been blamed for the ineffectiveness of key institutions. Political will may also be a factor.

Control over land has long been a source of conflict in **Colombia**, where arable land has been accumulated by elites, with former peasants working on large plantations under the *latifundia* system. In 1954, just 3% of landowners held more than half of all farmland in the country. Elite control over land has been supported by right-wing paramilitaries and, often, Government policies. In response, rebel movements such as the Revolutionary Armed Forces of Colombia (FARC) put agrarian reform at the top of their agenda. In areas under its control, the FARC provided basic services and ensured that farmers receive better prices for coca and food crops than those available in government-controlled areas. Over time, the socio-political issues that first drove the conflict (such as unjust land tenure laws and unequal landholding patterns) became overshadowed by the immense profits to be made in the drug trade. However, grievances around land remain acute, and conflict has only made land ownership more unequal: by 2005, some 0.4% of the total number of landowners held more than 60% of the land. Some of this land has been purchased with money from the drug trade; some has simply been grabbed at gunpoint.

Agrarian reforms in **Chile** have led to political opposition. From 1965 to 1973, extensive land reforms were carried out to strengthen political support from the peasantry by modernizing agricultural production, creating 100,000 new peasant proprietors, incorporating peasantry into State decision-making processes, and improving rural living standards. Yet, the Government's push to accelerate land reforms and its failure to supervise expropriation slowed agricultural productivity. This situation created tensions between economic classes and ultimately contributed to the September 1973 military coup that opposed the reforms. At the time of the coup, about 50% of Chile's total agricultural land was controlled by the public sector. Starting in 1974, the military Government redistributed land to over 109,000 "loyal" peasant families and evicted tens of thousands of peasants suspected of supporting the 1965-1973 agrarian reforms.

Source: Hudson, R. ed., 'Chile: A Country Case Study', GPO for the Library of Congress, Washington, 1994; Heit, H., 'Rural Development and the Agrarian Reform Process in Chile', Saskatchewan Economics Journal, 2010. Available from: http://artsandscience.usask.ca/economics/skjournal/03v5Rural%20Development.pdf. Last accessed 9 September 2010; Huggins C. (2009), op cit; Cousins, B., Draft chapter for a forthcoming book on *The Land Question in South Africa: the Challenge of Transformation and Redistribution*, edited by Hall, Ruth and Ntsebeza, Lungisile, 2005; Riesco, 'Change in the Chilean Social Model, International Labour Review, 2004; Le Billon, P., *The Geopolitics of Resource Wars: Resource Dependence, Governance and Violence*, New York: Frank Cass, 2004. The Economist, 'Land and Violence in Colombia: This Land is our Land,' The Economist, 16 September 2010.

a source of insecurity, and even conflict. In post-conflict environments, such investment can become flash points for conflict between government, the private sector and communities.

A common challenge is to find the appropriate balance between promoting investment and respecting the land rights of local communities. On the one hand, investors want their land rights to be clearly defined (surveyed and registered), of a sufficient duration so as to secure a return on their investment, and to have the confidence that their land rights will be protected by the state. On the other hand, communities may already be earning livelihoods on the same land, may claim the land belongs to them under customary law and may demand compensation or a share of the benefits of any investment.

In rural areas, this tension between investment and tenure security often arises during the review of existing concessions or when granting new concessions, whether for agriculture, forestry, mining or oil and gas. In urban areas, the issue often concerns the presence of IDPs and returnees in informal settlements on high-value land that could otherwise be used to attract investment (please see Section 5.7 Informal Settlements).

Several land-related issues arise in such circumstances. The most common issue revolves around the question of 'who owns the land'. In many countries, resource extraction rights are held or claimed by the state under statutory law. In countries with strong customary systems, local communities may claim the land belongs to them under customary law. In urban areas, communities may claim rights to the land through continued uncontested presence on the land (adverse possession).

In addition, many investments can impact the land-use and livelihoods of communities. Whether in urban or rural areas, the more intensive use of land may require the displacement or relocation of communities, or it may affect the migratory routes of pastoralists. Relocations or the demarcation of land for investment may be done through negotiated processes, or may be done through forced evictions and fences. Changes in land-use may also have negative environmental consequences that will affect livelihoods.

Investment can also generate an influx of 'newcomers' seeking employment. In rural areas with customary systems, the demand for land may compromise traditional authorities, which may allocate community land for personal benefit. Differences in social systems or values between existing communities and newcomers may create tensions. There will also be an increased demand for land, accompanied by an increase in land values.

If not addressed effectively, these tensions can contribute to conflict or can undermine an unstable post-conflict peace.

Key roles the UN and EU can play include:

- Understanding the full range of existing land and resource rights, including community land rights, pastoralist mobility rights and the rights of informal settlement residents;
- In a post-conflict period, undertake a review of past concessions and land allocations to assess community land rights, the current viability of the concessions, the actual land area required for the concession, and a consideration of alternative land-use options;
- Explicitly link the securing of community land rights to investment promotion (see Case Study 7 below).
- Provide land related information to investors, as was done in northern Uganda;
- Ensuring investments are complemented by social and environmental impact analyses and safeguard measures are implemented;
- Develop specialized information management systems, such as mining cadastres, to monitor and share information regarding investments;
- Strengthening the negotiation and dispute resolution capacity of traditional authorities and informal settlement communities;

CASE STUDY 7: Mozambique: Securing land rights and promoting investment

Mozambique's 1997 Land Law strikes a balance between respecting existing community land rights and promoting investment in rural areas. It integrates customary and statutory land administration systems within a single legal and policy framework. Community land rights can be secured through a methodology prescribed in the regulations. The law also facilitates investment by allowing private sector companies to negotiate directly with local communities. Finally, the law also recognizes: rights acquired in 'good faith', 'squatter rights' to protect the rights of IDPs who chose to remain where they were after the war, and the millions of people that simply do not have legally recognized land documents. In practice, the success of the Mozambique approach depends on the quality of the community consultation processes and the capacity of the local communities to effectively negotiate agreements. The Mozambique experience shows that the rights of local communities can be secured, but does not altogether protect them against unfavourable agreements with investors.

Sources: Norfolk, Simon and Tanner, Chris, 'Improving Land Tenure Security for the Rural Poor – Mozambique Case Study', FAO, Rome, 2007.

- Accommodate community livelihood practices, such as artisanal mining, small-holder agriculture or non-timber forest product extraction, within more intensive resource extraction investments;
- Develop wealth-sharing agreements between governments, investors and local communities; and,
- Establish grievance redress mechanisms in the event of future conflicts between investors and local communities.

5.7 Informal settlements

The influx of displaced populations to urban areas can cause cities to grow at a tremendous pace. Luanda's population, for example, increased eight times, Kabul's five times and Juba's seven-fold.[75] In post-conflict environments, civilians may be vulnerable to land grabbing by military figures, politicians or powerful businessmen, either during a period of conflict (e.g. Eastern Democratic Republic of Congo) or immediately after conflict (Rwanda, Cambodia). In some cases, land belonging to civilians is systematically sold or given by armed groups to their allies and supporters. In the post-conflict period, the value of land may rapidly increase, leading to land grabbing by speculators. In other cases, governments may facilitate the expropriation of civilians in favour of domestic or foreign investors. Depending on the legal status of their land rights, and the kinds of legislation in place, the expropriated household will typically receive minimal compensation or none at all. Poor households are unlikely to have access to legal recourse or understand the land laws and other relevant legislation in place. Some poor citizens are illiterate whilst others may simply not understand the official language in which laws are disseminated.[76]

During periods of conflict, civilians often flee towards urban areas in search of safety. While some might be able to rent housing, most will construct temporary shelters or occupy tents in IDP camps. Such settlements may occupy vacant public land or private land, often giving rise to disputes. In the case of protracted conflicts, such 'temporary' settlements may become permanent, as the inhabitants become accustomed to urban life and develop urban livelihoods, or become fearful of returning to their homes even after the end of hostilities (for example, Bujumbura, Burundi; cities in Darfur, Sudan; Luanda, Angola, etc.).

Informal settlements in urban or peri-urban areas will typically be tolerated by the state during periods of conflict. However, the post-conflict aftermath is often characterized by a sudden increase in the

economic value of land and housing, as international aid and the promise of a resurgent stable economy cause an economic boom. As a means of clearing informal areas to allow commercial investment, governments which had tolerated or even encouraged informal urban settlement may start to enforce laws on land tenure and/or building standards, which render such informal systems illegal (e.g. Cambodia and Rwanda). In some cases of 'market-driven eviction', the state may even classify private investment as a 'public good', evicting communities on the behalf of commercial operations (e.g. Angola, Rwanda). Such evictions may increase post-conflict grievances and jeopardize peace and stability.

Securing the rights of informal urban dwellers is therefore a post-conflict priority.

Key roles the UN and EU can play include:

- Supporting declarations by senior politicians and officials that forced evictions are not acceptable, and that any evictions will follow due process and international law;
- Supporting the provision of intermediate forms of tenure, that is, short-term use rights (2 to 5 years) while preserving the state's underlying right to change the land-use in the future;
- Promoting group tenures to mitigate the risk of gentrification once informal settlements are recognized or intermediate land rights are provided (see for example, the experience in Thailand);
- Promoting land-sharing and land re-adjustment, whether as a pilot project or through the adoption of new laws, to facilitate government capture of land values and use a portion of that value to cross-subsidize programmes to meet the needs of informal settlement occupants;
- Developing a GIS-based land tax information system, whereby structures and their occupants are recorded, tax revenue is generated, but no final determination of land rights are made (for example, in Somaliland); and,
- Regularizing informal settlements, as in Kandahar, Afghanistan (see Case Study 8 below).

5.8 Women's land and property rights

In many societies – whether in war or peace – women do not have equal access to land. Nor is their land tenure as secure as that of men.[77]

CASE STUDY 8: Incremental land regularization in Kandahar, Afghanistan

In the city of Kandahar, an informal settlement of over 100,000 people has developed in the northern part of the city. With a lack of legal recognition, many households have a low level of tenure security and fear eviction. Furthermore, households lack access to Government services, such as education and health-care facilities, roads, and adequate water-supply and sanitation services. With support from UN-HABITAT the municipality of Kandahar initiated an incremental regularization programme, consisting of five main steps. First, a land and property assessment was conducted to record and verify data for each parcel. The project area consists of approximately 14,000 parcels. Second, with approval from the Municipality, the property was registered. Third, the new landowners were issued a registration booklet and charged a property tax. The tax fuels the next step of the process where infrastructure is upgraded to improve the quality of living in the informal settlements. Communities perceive upgrading activities as a mechanism for reconciliation; these activities also strengthen their capacity and experience to address similar problems in the future. Finally, the process aims to legally transfer State land to the inhabitants.

Source: Turkstra, Jan and A.B. Popal, 'Peace Building in Afghanistan Through Settlement Regularization, Paper presented at the 46th ISOCARP Congress 2010, Nairobi. Accessed from http://www.isocarp.net/Data/case_studies/1639.pdf on 15 November 2010.

Land rights are accessed through three main institutions – the state, the market or social structures such as the family or community.[78] In each case, women often face greater challenges to accessing and securing land rights than men.

Women's access to land and security of tenure is often limited in traditional societies. Land tenure mirrors the distribution of power in society; and in many societies men have more power than women, translating into weaker land rights for women. Consequently, women's land rights are rarely registered in law, may be summarily revoked by men, or may simply revert to a male member of the husband's clan or family. State institutions in many societies, particularly in the South, often discriminate against women's land access and use. Similarly, government land allocation schemes tend to favour male heads of households. Land reform programmes, where they have been implemented, also tend to benefit men. Land administration systems register the land rights of men only. In fact, global estimates suggest that less than 5 percent of all land is registered in the name of women.[79]

Violent conflict has a powerful impact on gender relations. The number of women-headed households tends to increase dramatically during war, as men are recruited into combat or displaced by conflict. Women bear a greater responsibility for caring for children, the sick and the elderly, but may also take on roles traditionally reserved for men. Some women may become traders, domestic staff or combatants. Some may be forced to adopt negative coping strategies such as commercial sex work, or move to camps in order to be physically secure or to receive humanitarian assistance.

Some of the common land and property challenges faced by women in conflict include: inability to demonstrate a legally verifiable claim to land or property; disinheritance by relatives or members of the spouse's community; difficulty in accessing statutory dispute resolution institutions; and, an inability to access or effectively participate in humanitarian and recovery programmes. A failure to address the land-related challenges can negatively impact women and women-headed households.

Without access to land, women's livelihoods may become insecure. Food security and general family well-being may become at risk. Without security of tenure, women may be reluctant or unable to invest in housing, land or livelihoods.

Key roles the UN and EU can play include:

- Mainstreaming the collection and use of gender-disaggregated data in all stages of assessment, programme/policy design, monitoring and evaluation;
- Ensuring that women are empowered with the necessary information, knowledge and capacity to effectively participate in decision-making, whether it be a peace-process or a specific project or programme;
- High-level statements by politicians and respected leaders recognizing the role of women in conflict and committing all parties to guaranteeing the security of tenure of women's land and property rights;
- Strengthening or establishing mechanisms to monitor women's access to land and property and women's security of tenure, complemented by measures to increase awareness of their land and property rights;
- Encouraging broad-based dialogue at all levels of society regarding the future of land relations among women and men;
- Establish gender-responsive restitution and dispute resolution mechanisms, including: accepting oral evidence, translating procedures into local languages, and providing legal assistance; and,
- Promote joint-registration of land rights in the names of men and women.

5.9 Pastoralism and conflict

Pastoralism is a livelihoods system based on livestock rearing, mobility and the extensive use of communal land. Common types of pastoralism

CASE STUDY 9: Comparative experience in securing women's land and property rights

In **Mozambique**, the 2005 Family Law enables women to inherit property and recognizes traditional marriages. In **Latin America**, countries such as Bolivia, Honduras, Peru and Venezuela have introduced amendments to modify the concept of 'head of household' to enable women to be legally recognized as such. In **Ethiopia**, the Government initiated a large-scale certification process whereby 20 million certificates were issued, including photographs of both husband and spouse. In some areas, women have felt more secure in their land rights and therefore more confident to rent out their land for farming. In **Guatemala**, the '13 Peace Accords' included an analysis of the structural factors that prevented women from securing their land rights.[80] The Accords provided for co-ownership of land between husband and wife. However, the implementation of the Accords has been limited due to a combination of administrative problems, under-funding, and the lack of political will. In **Rwanda**, the 2005 Land Law stipulates that women can own land, and spouses and children can be registered as 'having an interest' in land, meaning that they must be consulted prior to any land transactions. However, despite the progressive nature of the 2005 land law, implementation of the law has been constrained by conservative attitudes towards women's land rights at the household level.

Source: Daley, L. Dore-Weeks, R. and; C. Umuhoza, 'Ahead of the Game: Land Tenure Reform in Rwanda and the Process of Securing Women's Land Rights', Journal of Eastern African Studies, Volume 4(1), March 2010, pp. 131 – 152; Paz y Paz Bailey, 'Guatemala: Gender and Reparations for Human Rights Violations,' in Rubio-Marin, R. ed., *Engendering Reparations: Recognising and Compensating Women Victims of Human Rights Violation*s, Ottawa, IDRC, 2006; UN-HABITAT (2008), op cit; Palmer, Fricska & Wehrmann (2009), op cit.

include: nomadic pastoralism, which does not rely on cultivation; transhumance, which involves regular seasonal migration between wet and dry season grazing or highland and lowland pastures; and agro-pastoralism, which complements cultivation with livestock rearing.[81] Pastoralist systems are common in many African, Middle Eastern and Central Asian countries. The largest concentration of pastoralist systems exists in the Horn of Africa.

In pastoralist systems, land tenure, governance and livelihoods are closely inter-linked. Communities negotiate migration routes, water and grazing access, the location of camps, etc. prior to seasonal migrations. Communities do not have exclusive rights over natural resources, but rather negotiate use-rights over different resources at different times of the year. Livelihoods depend not on individual plots, but on group access to broad, sometimes vast, territories.[82] What may appear as 'vacant land' in rural areas can contain a complicated web of invisible use-rights.

Disputes between different pastoralist communities over grazing land, water sources and other natural resources may be relatively common even during peacetime. During war, disputes can be manipulated by political figures in order to increase their local or national political influence. Wells may be destroyed or poisoned, forcing livestock keepers to change their trans-migratory routes. Disputes that led to relatively few fatalities in the pre-conflict period may become much more violent as a result of the influx of arms. Pastoralist and agricultural communities may find themselves becoming associated with opposing armed groups.

In the post-conflict period, pastoralist systems may continue to operate in a higher state of tension. Herds may be grouped together for protection, potentially creating additional stress on land, water and inter-community relations. Negotiated access to land and resources may be fraught with violence. The granting of concessions by the central government or the establishment of protected areas may block traditional migratory routes.

Where they exist, pastoralist systems require dedicated attention and targeted interventions, particularly in the context of violent conflict.

Key roles the UN and EU can play include:

- Analysis of how conflict has affected traditional tenure systems, livelihoods, and local governance institutions;
- Promote 'open-border' models that recognize multiple rights-holders and land-uses, the need for cooperative management of resources, and balance mobility and investment.[83]
- Strengthening of traditional dispute resolution and governance institutions that may have broken down during the conflict, though these same institutions often represent the 'historical memory' for sustainable NRM practices;
- Support dialogue and peace-building between communities in order to support negotiated access to water, grazing and migratory routes; where required, dedicated mediation support should be provided to regulate potential conflicts;
- Restoration or rehabilitation of 'common resource pools' such as grazing, forests and wells that may have been degraded by conflict, re-negotiating management arrangements as required;
- Development of a specific pastoralist policy and mainstreaming of pastoralist issues other land related policies and inclusion of pastoralist issues in development assistance frameworks;
- Development of a comprehensive land-use policy that recognizes mobility rights and pastoralist livelihoods.

5.10 Land policy, legal and institutional reforms

The structural nature of many land grievances can require a complete overhaul of land policies, laws and institutional frameworks. This section discusses elements of a broad strategic approach to land policy, legal and institutional reform and provides a brief overview of three important aspects of reform: (i) Land policy development; (ii) Land law reform; and (iii) Land administration reform.

5.10.1 A broad strategy for policy, legal and institutional reform

Comprehensive policy, legal and institutional reforms to address land-related grievances can be undertaken in both development and post-conflict contexts. As the late post-conflict period may often resemble a development context, the focus of this section will be on the post-conflict period. The focus will also be on statutory institutions. Issues related to resolving legal and institutional pluralism are discussed later in this section.

An incremental, phased approach to reform is generally recommended.[84] Significant, but distinct, opportunities exist in three main phases: (i) The coping phase, in the immediate aftermath of a conflict; (ii) An interim phase, as the situation begins to stabilize somewhat; (iii) And, a reform phase, as government capacity is re-established. These phases are briefly introduced below.

During the initial 'coping' phase, the challenge for the government will be to simultaneously address urgent issues, while articulating a longer-term vision for the land sector. Urgent issues may include: providing durable solutions for IDPs and refugees; managing residual and new land-related disputes; and managing expectations regarding promises made during the conflict, for example, related to land reform.

Thereafter an interim phase may result in the beginnings of a more systematic approach. The focus will rapidly shift to re-building government capacity. Some progress may be made on urgent legal issues, including the repeal of discriminatory land laws or, as in the case of southern Sudan, the development of a new land law. There may be increased demands to review abandonment laws, concession policies or introduce new laws and policies to facilitate investment. In such a situation, ad hoc policy statements can prove useful. New

CASE STUDY 10: Comprehensive land policy process development – an overview

Managing a land policy process is a complicated task and may involve some or all of the following elements:

- **Establish a team to plan and manage the process**: This can be based in a lead land ministry, in an independent body such as a land commission or another multi-stakeholder entity. There are trade-off's in terms of influence: anchoring in a strong ministry may make the process more efficient, but may be vulnerable to the influence of powerful interests. A strong ministry, however, may not exist in an insecure or post-conflict environment. An independent entity, on the other hand, may not have such strong influence within government, and will have to constantly manage relations to secure support for the process.
- **Collect background information**: Gathering information on land tenure, laws, institutions, and actors is critical to create a common understanding of issues and options. Short issue papers can be helpful. Expect positions to evolve over time as information is gathered and positions change.
- **Consult extensively**: All stakeholders should be enabled to contribute their perspective to the debate. It is important to take the debate out of national or regional centres and directly to the grassroots, particularly in a post-conflict environment when rural populations can feel cut-off from the debate and resources that can concentrate in urban areas.
- **Ensure all stakeholder groups are represented**: Ownership and buy-in to the process is critical. Strong civil society and private sector participation should be seen as an asset, not a liability. In many cases, the participation of specific groups, such as women, landless groups, renters, or pastoralists will need financial support.
- **Do not shy away from politics**: It is important that political positions are tabled early and understood by everyone. Without dealing with the politics, trust will be difficult to build and it will not be possible to move onto technical issues. Position papers, issue papers, capacity-building, retreats, exchange visits can all help to move issues from politics to compromise.
- **Develop an action plan**: A road map of both political and technical outputs should be developed to guide the reform process. It can provide many entry points for action that can accommodate slippage by refocusing from one area to another.
- **Link the policy to legal reform**: Policy statements are often broad statements that require both laws as well as more detailed regulations to implement.

Source: Adapted from UN-HABITAT, How to develop a pro-poor land policy, Nairobi: GLTN/UN-HABITAT, 2007.

institutions may be established, including land and property restitution mechanisms, which themselves may require some aspects of legal and policy reform or formulation.

In a more stable reform phase, more comprehensive programmes will be initiated. Issues regarding the future institutional arrangements in the land sector will be raised. Land administration reforms may be initiated. The division of responsibilities between institutions will stabilize, even if competition continues and there remains a certain lack of clarity. Experience suggests, however, that the prospects for significant reforms may close fairly rapidly, particularly if powerful groups have a vested interest against implementing reforms.

These phases will not unfold in a linear process and the phases will last for different periods of time in different contexts. The phased model is useful, however, to guide the development of strategies to support a systematic approach to addressing land grievances and conflicts.

5.10.2 Land policy reform

A comprehensive land policy can regularly take up to five years to develop and may require adoption by the cabinet in government or by parliament itself. Case Study 10 below provides some guidance for comprehensive land policy formulation.

In the fluid post-conflict environment, it may be preferable to begin with a more modest approach, identifying specific policy issues to be addressed or new policies that are required to address urgent issues. Such an approach does raise issues of coordination. A central body such as a land commission may help ensure coordination and coherence between policies.

5.10.3 Land law reform

Land law reform can take many forms in conflict environments. In some cases, there may be a need to repeal discriminatory laws. In others, comprehensive new land laws may be developed, as was the case in Cambodia, Mozambique and Colombia, while in cases like, for example, the Democratic Republic of Congo, an existing land law was amended. One major challenge in many post-conflict contexts is the need to address legal pluralism. The present Guidance Note examines examples where discriminatory legislation has been repealed as well as examples addressing legal pluralism.[85]

In some countries, laws on land ownership may be openly discriminatory. Examples include Liberia and the former Yugoslavia. In the latter example, in 1989 Serbian authorities passed a series of laws which prohibited ethnic Albanians from buying or selling property without Government permission[86] In other instances, laws may suddenly dispossess communities who had previously had *de facto* rights, even though these may not have enjoyed *de jure* security of tenure. In Cote D'Ivoire, for example, inhabitants of the north who had migrated from neighbouring countries were encouraged to cultivate land until 1998, when a land law was passed which barred non-citizens from owning land (although leasing was permitted). Resentment against immigrants was one of the causes of a 2002 *coup d'état* that led to an outbreak of conflict.

While repeal of discriminatory land laws may be more straightforward, reconciling customary and statutory law, where they concurrently apply – particularly in Africa, South Asia, South East Asia, the Pacific and parts of Latin America and the Caribbean – is much more complicated. In addition, this process must also address other forms of informal practice and 'conflict tenures' that have emerged during conflict. The complications involved should not be under-estimated and what follows is but a brief introduction to the issues.

The process for resolving institutional and legal pluralism is generally referred to as 'harmonization,' that is, "the continued co-existence of customary and statutory systems of law, but with well-designed, nonviolent and clear interfaces between the systems."[87] There are many variations of how 'harmonization' has been implemented in practice, from Kenya's emphasis on statutory law over customary law, to Southern Sudan's 2009 Land

Act, which makes customary law a source of law equivalent to statutory law, or Mozambique's 1997 Land Law, which tried to strike an equitable balance between the two systems.

The harmonization process tries to reconcile the different systems of land law and practice. The tasks involved include: (i) understanding the different systems in operation (statutory, customary, religious, informal and conflict tenures) and how they currently relate to each other and to statutory law; (ii) making a legal determination of which laws or practices will be recognized under statutory systems; (iii) developing clear rules to determine which law or laws apply to any particular piece of land, based on some combination of location of the parcel, previous state action regarding the parcel, and the personal status of the right-holder, and (iv) setting out clear rules governing the interface between the systems, including how and under what conditions a piece of land may be shifted from one to another.[88] The decision regarding which laws to include or exclude can be very sensitive. On the one hand, certain rules or practices must be excluded on the basis of, for example, their discriminatory nature. On the other, there is a need to ensure that socially legitimate rules are not extinguished, particularly if the capacity to replace them with statutory rules and enforcement is limited.

Governments may attempt to either fully incorporate local institutions into the state apparatus, or (more commonly) establish some formal linkages without fully incorporating them. A basic choice that the state faces is whether to (i) legally recognise local systems, but promote the use of the judicial system as the main means of resolution; or (ii) to favour local systems as the primary dispute resolution mechanism, by actively promoting local institutions, or establishing a legal requirement that citizens seek local solutions before going to court.

Where the state attempts to fully incorporate local systems, it may try to fully codify local legal principles. However, such codification may undermine the very flexibility and pragmatism that has allowed local systems to remain relevant; and the process of codification may itself provoke disputes or entrench injustices. Decision-makers may feel less accountable to the community, than to the state, and some decisions are likely to become politicized.

Regardless of the approach, the state will often attempt to 'formalize' local institutions, by providing them with some kind of legal status, and transforming them in minor or major ways. The aim will be to ensure that decisions reached through local systems will become legally-binding. Low-level monitoring and accountability mechanisms may be established and cross-referrals between local and state systems may be permitted. State officials may participate in local dispute-resolution processes, or have ex-officio roles as observers. Positions that were customarily hereditary may be transformed into elected posts, and what was previously a 'council of the elders' may be transformed into something approximating a local land commission.

5.10.4 Land administration reforms

As with the other institutional reforms proposed in this Guidance Note, an incremental approach to land administration reform is generally advisable, particularly in post-conflict contexts. Even during relatively stable situations, reforms may take decades and tens of millions of dollars to implement. The pace and nature of reforms in conflict environments should be linked to clear policy objectives, including improving tenure security, supporting dispute resolution or restitution, regulating land markets, generation of tax revenue, etc.

It should be acknowledged that only some 25-30 countries in the world have complete and up-to-date land record information. In the vast majority of conflict-affected countries, the reality is that 70 percent of the land is not covered by the land register.[90] Furthermore, those records that do exist may be out-of-date and, in conflict contexts, subject to fraud, theft or destruction. In addition, there are severe constraints with existing conventional approaches to land administration:

inability to record overlapping rights and claims, including mobility rights; focus on spatial units or parcels as the unit of analysis, rather than on social relationships as is common under customary law; and, issues related to high-cost, accessibility for the poor, and the technical and financial capacity required. As a result, most conventional systems tend to serve the needs of wealthy landowners and cover only previously recognized high-value land (tourist areas, concessions, urban areas, etc.).

Key roles the UN and EU can play include:

- Understanding the current systems of land administration in operation, including statutory and customary systems, as well as other informal practices that exist;
- Securing existing statutory land records, including digitization, the creation of back-up copies or their temporary removal to safer places, but recognizing their potential limits in terms of coverage, currency and even legitimacy;
- Promoting security of tenure for all population segments by recognizing additional sources of land rights information, including utility bills, tax receipts, census information and oral testimony. Over time these sources of evidence can be constructed into a flexible body of evidence used to adjudicate competing claims;
- Developing due process procedures to facilitate land transactions without making a final determination regarding the ultimate rights-holder; special measures should be taken to protect absentee rights-holders, including public notice and implementing a waiting period;
- Develop land-related information that may eventually serve both adjudication and the development of land information systems. In Somaliland, for example, structures were linked to occupants without making a final determination regarding 'ownership', but facilitating the collection of property tax for municipal infrastructure;[91]
- Promote open debate and dialogue regarding the future land administration system, including its relationship with customary institutions; exploring alternative models such as the Social Tenure Domain Model, developed by the International Federation of Surveyors and the Global Land Tool Network;[92] and,
- Implement a programme to incrementally strengthen institutional capacity, from basic establishment of offices, to improvement of compliance with existing procedures and more detailed training over time.

Section Five has reviewed some specific challenges that arise in conflict contexts. Section Six examines some common tools and approaches that can support a more systematic approach to land grievance and conflict resolution.

Photo: UNEP, Rwanda

6 CROSS-CUTTING TOOLS AND APPROACHES

Regardless of the stage of the conflict cycle, or the type of land-related challenge being addressed, there are tools and approaches that can contribute to an improved understanding of the conflict dynamics and the development of more effective programmatic responses. These include: (i) assessment; (ii) conflict analysis; (iii) coordination; and (iv) risk management. These tools and approaches are discussed below:

6.1 Assessment

Assessment is often a first step when addressing land issues in the context of conflict, and can be used for different purposes depending on the stage of conflict. There are four common types of assessment related to land and conflict: early warning tools, in-conflict assessments, in-take questionnaires for displaced persons and Post-Conflict Needs Assessments (PCNA). These are introduced briefly below.

6.1.1 Early warning tools

An early warning system is a tool used in order to identify the causes of conflict, predict the outbreak of conflict, and perhaps most importantly, mitigate that conflict. There are many different early warning systems, using different methodologies and approaches: qualitative, quantitative, a combination of both qualitative and quantitative and network approaches.[93] Early warning systems are generally used to produce a variety of information including: baseline studies, risk assessments, trend analysis, etc.

Early warning systems have been developed to include land-conflict information in a variety of contexts, including in Liberia and Sudan. In general, such systems usually limit the amount of land-related information they collect, as they are part of a much broader and multi-variable tool. Consequently, information may be limited to issues such as: date; parties to the dispute; nature of the dispute; and, impact in terms of death, destruction and injuries. Often resources are limited and the emphasis is placed on the collection, but not the analysis or monitoring of information.

Critics of early warning systems also note that while they may predict the outbreak of conflicts, they are seldom effective in preventing or responding to these conflicts. There is a recognized need to bridge the gap between early warning and early response. Where such linkages are made, however, early warning systems could play an important role as part of a more systematic approach to land grievances and conflicts.

6.1.2 In-conflict assessments

During a conflict, rapid or real-time assessments are often used. Such assessments are often designed to provide a 'snap-shot' image of the current state, drivers and impact of land-related conflict. One such tool is the HLP Situation Assessment Tool developed by UN-HABITAT (see Case Study 11 below). The process includes four steps: information gathering and analysis; preparation of a draft report on main findings and recommendations; meeting with stakeholders to discuss findings and agreement on an action plan; and the utilization of resulting action plan in multi-sectoral humanitarian programming.

6.1.3 In-take Questionnaires

A third type of assessment is the 'in-take questionnaire'. These are used when people arrive at camps, when conducting surveys of spontaneous settlements or as input into other multi-sector assessments. In-take surveys are particularly

important in conflict contexts because of their ability to: capture land-related information early, when respondents may be relatively easier to locate and their information more accurate; and contribute to an understanding of the potential land-related grievances, as well as the types of evidence of land rights commonly available. Data may be collected on a few issues including, for example:

- Existence of any land and property left behind;
- The nature of the rights to the land or property: statutory, customary, informal, etc.;
- The evidence of the land or property right – legal document, utility bill, witness statement, local government or traditional authorities, etc.;
- The approximate size of the plot, its location, any improvements (buildings, farms, etc.); and,
- The current status of the land or property – destruction, occupation, etc.[95]

6.1.4 Post-Conflict Needs Assessments

Post-Conflict Needs Assessments (PCNAs) are carried out in the phase when conflicts move towards a post-conflict situation. A PCNA is usually jointly coordinated by national stakeholders and multilateral agencies, with teams comprised of national and international technical experts. The aim is to assess the land context and to develop programming options. There are four key elements in recovery planning: pre-assessment; assessment and recovery planning; validating and financing and implementation.[96]

CASE STUDY 11: HLP rapid assessment tool

The assessment tool is divided into three parts: (i) HLP Conflict; (ii) HLP Rules; and (iii) HLP institutions. The tool identifies five areas of interest with respect to HLP conflicts: a typology of HLP issues, their geographic and time dimensions, as well as an analysis of the parties and the broader historical and land tenure context. In terms of HLP rules, the tool examines questions related to international obligations, domestic formal rules, recognition of informal and customary rules, and policies supported by statutory law. Finally, HLP institutions examine: statutory institutions, customary and religious institutions; informal practice; as well as relevant regional, national and local institutions.[94]

Source: UN-Habitat 'HLP Rapid Assessment Tool', Geneva : UN-HABITAT, 2010

Table 3: Example of some HLP Issues in the PCNA process

PRE-ASSESSMENT	ASSESSMENT AND RECOVERY PLANNING	VALIDATING AND FINANCING	IMPLEMENTATION
Land tenure and institutions Land markets Surveys of damaged housing Extent and nature of potential HLP issues Historical grievances etc.	Programming options Budget Prioritization of needs	Findings and priorities validated and results published Donor meeting Start-up	Periodic monitoring and reporting against measurable performance indicators Communication strategy in support of monitoring Adjustment to plan and resource allocation as needed[97]

6.2 Conflict analysis

Conflict analysis is the "systematic study of the context, causes, actors, and dynamics of conflict."[98] Conflict analysis can serve three broad purposes. First, it can contribute to improved understanding of conflict, why it occurs and how it can be prevented, managed or contribute to positive social change. Second, conflict analysis can also be used to better understand the potential impact of interventions to be implemented in a conflict-sensitive manner. Finally, conflict analysis can also contribute to the management of political economy risks, that is, the possibility that international assistance will be manipulated, captured or that fundamental structural reforms simply go unimplemented (please see section 6.4 below).

There are many different tools for conducting conflict analysis. One approach consists of determining the profile, causes, actors and dynamics of conflicts.[99] It is a generic approach that can be applied to land issues. The most prominent dimensions are land tenure, institutions and political economy (interests, constraints and incentives). Other important factors to consider include history, culture, economy and political environment. By asking questions related to context, causes, actors and conflict dynamics, the different dimensions and root causes are covered, as are the possible entry points for intervention.

- **Structural causes**: Pervasive factors that have become built into the policies, structures and fabric of a society and may create the pre-conditions for violent conflict;
- **Proximate causes**: Factors contributing to a climate conducive to violent conflict or its further escalation, sometimes apparently symptomatic of a deeper problem; and,
- **Triggers**: Single key acts, events, or their anticipation that will set off or escalate violent conflict.

In a prevention scenario, a conflict analysis can identify grievances and structural inequalities that could eventually lead to conflict if not addressed in an early stage. In a conflict scenario, it is important to identify the role of land and how it is changing over time. In a post-conflict scenario, identifying the structural root causes is essential in order to address the problems. They can be found using some features from the EU checklist for root causes of conflict (see Case Study 12 below).

6.3 Coordination

Coordination is never more important – nor often more elusive – than in the land sector in conflict contexts. Four principle coordination challenges exist with respect to land in conflict environments:

Table 4: Conflict analysis

CONTEXT	CAUSES	ACTORS	DYNAMICS
Where? Timeline? What is the conflict about?	Why is there a conflict? What are the root causes? What are the triggers of conflict?	Who is involved? Who benefit from the conflict?	How does the conflict change over time? What are the power relations? What are the incentives and constraints?

CASE STUDY 12: EU Checklist for root causes of conflict (adapted)

1. **Legitimacy of the state**: How inclusive is the statutory land administration system? Is there equitable access to land and resources? Are there any historical grievances related to land? Can land policies, laws and institutions be influenced by citizens? Can citizens participate in and influence land-use decisions? Is corruption present?
2. **Rule of law**: How is the capacity and accessibility of courts? Are there many disputes before the courts? Are laws concerning land known, respected and functional? Are land-related decisions enforceable? Are Alternative Dispute Resolution and third-party mediation systems integrated within the law?
3. **Respect for fundamental rights**: Are there evictions? Is the right to property/home respected? Are indigenous land rights protected? Is inheritance respected? Are religious and cultural rights respected? What international or regional conventions or covenants have been ratified? Are these being implemented?
4. **Civil society and media**: Are there any organised grassroots organisations focusing on land issues? How are social inequalities in access to land tackled? Is there media coverage on land issues? How independent and professional are the media?
5. **Relations between communities and dispute-solving mechanisms**: How are relations between identity groups managed? Does the state effectively regulate tensions and disputes between communities? Do customary, religious and informal institutions play a leading role in conflict resolution when in comes to land? Are there uncontrolled flows of migrants/refugees?
6. **Sound economic management**: Are land markets functioning effectively? Is there an effective and equitable distribution of land- and resource-related revenue? Are wealth-sharing agreements functional? Does investment undermine security of tenure for poor groups?
7. **Social and regional inequalities**: Are there regional disparities in economic growth, land-based livelihood opportunities, and investment? How are regional disparities tackled?
8. **Geopolitical situation**: How stable is the region's geopolitical situation? Are there any regional population displacements? Is the state affected by external threats due to land or resources connected to land? Is the state affecting regional stability?[100]

first, at the global level, land issues are not very well represented in the humanitarian cluster system; second, the fragmented nature of the land sector creates coordination challenges within governments and among national stakeholders; third, there is often weak coordination within the assistance community itself; and finally, the combined result is often poor coordination between international assistance and national stakeholders.

At the global level, the humanitarian cluster system is organised into 11 thematic issues or "clusters": agriculture; camp coordination and management; early recovery; education; emergency shelter; emergency telecommunications; health; logistics; nutrition; protection; and water, sanitation and hygiene. The cluster system also includes several crosscutting issues, namely age, environment, gender and HIV. While land issues are relevant to all the clusters and cross-cutting issues, land issues are represented as a 'working group' within the protection cluster through the housing, land and property working group (see Table 5: Land issues and the humanitarian Cluster System).

The relative invisibility of land issues at the global level creates several coordination challenges. Most importantly, land issues tend to be seen

Table 5: Land issues and the Humanitarian Cluster System

HUMANITARIAN CLUSTERS		
Agriculture Livelihoods, investment, community land rights, youth, abandoned land, irrigation.	**Camp coordination/management** Location of camps, host community relations, IDP/refugee returns, Gender-Based Violence.	**Early recovery** Economic development, livelihoods, rule of law, DDR, governance, etc.
Education Location of schools, community relations, land mine awareness, etc.	**Emergency shelter** Access to land, secondary occupation, land grabbing.	**Telecommunications** Access to land for infrastructure, mobility.
Health Livelihoods, nutrition, hygiene, etc.	**Logistics** Mobility, new road construction, etc.	**Nutrition** Livelihoods, hygiene, etc.
Protection Land and property rights, displacement and return, women, vulnerable and indigenous groups, etc.	**Wash** Water supply infrastructure, irrigation, water management, etc.	
CROSS-CUTTING ISSUES		
Age Elderly, orphans, demobilized youth, etc access to land or inheritance issues	**Environment** NRM, resource conflicts, risk reduction, high value natural resources, etc.	**Gender** Access to land for women soldiers, women-headed households; inheritance issues; gender-based violence and HIV.
HIV Gender-based violence, inheritance issues		

as a 'development' issue, something which can be postponed until after the critical 'life-saving' humanitarian phase is over. The perception that land issues are a 'development' issue then makes it difficult to mobilize resources to enable specialist agencies such as UNEP, FAO and UN-HABITAT to be on the ground in the early stages of an international response. Existing funding mechanisms and the donor community are generally not geared towards funding initiatives that do not immediately address 'life-saving' issues. This bias does not recognize that the failure to address land issues early and effectively can have significant negative impacts: it can contribute to significant delays to humanitarian action (while clarity regarding land rights is being established); significant risks to humanitarian staff (whose neutrality may be compromised by the perception that their assistance is supporting one side's land rights claims over another's); and may even contribute to a return to conflict (due the inability to channel

land disputes into effective, non-violent processes during the peace-building phase). The invisibility of land issues at the global level can exacerbate coordination challenges at the country level.

Within government, significant coordination challenges exist, simply due to the fragmented nature of responsibility within the land sector. Responsibilities for land are often divided between several ministries and departments, and land information is rarely shared across institutions. Coordination challenges also exist between government and national stakeholders, particularly in contexts where state formation is incomplete or there are deep-seated grievances by one community against the government. The absence of a strong umbrella organisation representing civil society can undermine the effectiveness of a strong lobby group capable of engaging with government and supporting the process of reform.

International support often faces its own internal coordination challenges. Common manifestations include sectoral approaches, policy incoherence, and the lack of sustained support. Rarely is overall, land-sector coordination support provided. Competition between international assistance actors is another common challenge. Development partners may compete to be the 'lead' agency 'responsible' for the land sector or for a specific niche within it, such as, for example, the extractive industries. In some cases, development partners may also champion competing approaches to the same issue, for example, vis-à-vis land registration systems. There may also be tensions between international NGOs and development partners concerning the appropriate balance between protecting community rights and promoting economic investment.

CASE STUDY 13: Donor coordination in Georgia and Kenya

After independence in 1991, Georgia suffered from internal conflict, corruption and poor governance and high levels of poverty. Georgia received significant donor support in the land sector; however, because these were often driven by donor imperatives, their implementation followed different approaches and standards. Following the 2003 change in leadership and the creation of a new land agency, donor coordination was explicitly identified as an area for reform. A donor coordination council was established. Working groups with representatives from the different donor-funded projects were created to address four issues: (i) Registration database and software; (ii) Development of legislation; (iii) Registration procedures/instructions; (iv) Administrative structure and human resource strengthening. The result has been that donor efforts have become more results-oriented and consensus-oriented, with improved levels of accountability, participation and inclusiveness.

In Kenya, a donor coordination mechanism has been established based on the principles of the Paris Declaration. Areas of coordination include: preparation of a coordinated position prior to regular meetings with government; the establishment of a basket-fund mechanism for support to the land sector; the establishment of a separate basket-fund mechanism to provide dedicated support to non-state actors (NSAs, including NGOs and the private sector); streamlined reporting; and less transaction costs for government in terms of meetings with development partners. The coordinated approach is seen to have contributed to the manner in which pro-poor and gender-related issues were addressed within the national land policy process. Following the 2008 post-election violence, donor policy shifted from support to land administration reform to coordinated support to NSA's – promoting increased debate and demands for greater accountability in the land sector in the run-up to the referendum on the new national constitution in 2010.

Sources: Dabrundashvili, 'Property Rights Registration System Reform in Georgia, Land Reform', Rome, FAO, 2007; UN-HABITAT, 'How to Establish an Effective Land Sector', GLTN/UN-HABITAT, Nairobi, 2007.

6.4 Risk management

Providing assistance to the land sector in conflict contexts involves challenges that call for a flexible approach to implementation as well as the management of political economy risks. In addition to the challenges associated with institutional fragmentation and poor coordination in the assistance community (see Section 6.3 Coordination, above), there are several other factors that necessitate a risk management approach.

Land challenges in conflict contexts are difficult to define and are constantly evolving. The factors contributing to insecurity of tenure, landlessness and displacement are complicated. Poor coordination can make even basic communication difficult, making it difficult to arrive at a common understanding of the challenges and opportunities for reform. Ensuring that the problem analysis and reforms keep pace with a constantly shifting reality can prove challenging. New information may emerge. A deeper understanding of a specific problem may be achieved. Alliances and relationships between actors may shift. Vested interests may emerge to slow down or delay reforms.

In a confusing institutional and policy environment, it can also be difficult to identify a clear solution. Land challenges may not result in verifiably "right" or "wrong" answers, but rather stakeholders must content themselves with agreement on "better", "worse" or "good enough" ways forward. Negotiations may result in compromises that are not perfect, but the best that can be achieved at the time. This may give rise to the need to develop strategies to "manage the problem" rather than to definitively "solve the problem". The lack of clear solutions can make it difficult for stakeholders to stay the course over the long period of reform. Fatigue, shifts in the political agenda, and lack of resources may result in the end of efforts to address the problem, even though the problem will persist.

Land sector reforms often require changes in the behaviour of citizens, of land professionals, and in organizational culture. This can be particularly challenging in a post-conflict environment. Loss of staff, lack of exposure to current international 'best practices,' a weak civil society, conflict messages from external agencies can make institutional reform difficult.

There are initiatives, however, that can help mitigate and manage the political risks associated with land interventions in conflict contexts. Some of these include:

- Conflict analysis (see Section 6.2 above), including a political economy analysis to better understand land tenure, land markets and the political economy of land. Relationships between actors, as well as their interests, incentives and constraints, may offer critical insights useful for supporting institutional and other reforms. Some specific development tools that support political economy analysis are highlighted in Case Study 14 below.
- Continuous and targeted information campaigns. The conflict environment is characterized by a poor outreach and even deliberate misinformation. Messages need to be targeted for specific audiences. The language must be accessible and appropriate. Translation into local and vernacular language is critical. Ensuring that feedback from the campaigns informs problem definition and policy evolution is critical.
- A long-term strategy and commitment is required to guide post-conflict interventions on land issues. Without clear and sustained commitment from international actors, vested interest may simply delay implementation.
- Adopting a flexible approach to programming. There is a need to combine 'fire-fighting' on urgent issues with longer-term reform processes. At the same time, actors on the ground must be able to adapt to a constantly changing environment, for example, by shifting the focus of programming from one objective or activity to another.

- The timing and sequencing of interventions is critical. A phased approach, beginning with less controversial issues in order to build confidence between stakeholders is recommended. Pilot projects are another way to take an incremental step towards more systematic institutional reforms.
- Link technical and legal approaches to more popular consultations. Policy-making in conflict environments can be dominated by narrow, technical specialists. This can rapidly reduce the number of participants in a reform process and by doing so, limit the broad-based support for long-term change.
- Develop and implement specific strategies for champions and challengers. It is important to identify and support change agents from as many stakeholder groups as possible. Specific strategies may be required to support particular champions (for example particular politicians) as well as for less powerful stakeholder groups (such as for example, non-state actors and women). The legitimate concerns of challengers should be understood and accommodated where possible. Incentive structures should be aligned with reforms.

CASE STUDY 14: Examples of tools for political economy analysis

- **Civil Society Index (Civicus)**: A self-assessment and action planning tool, the CSI aims to enhance the strength and sustainability of civil society, and to strengthen civil society's contribution to positive social change. See http://www.civicus.org/csi
- **Democracy and Governance Assessment (USAID)**: The framework examines four issues concurrently: political system, actors, institutions and implementation to enable USAID field offices to develop appropriate support programmes based on a country's history and political evolution. http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/dg_office/assess.html
- **Drivers of Change (DFID)**: An approach for understanding how change happens, it was developed to make the link between political processes and donor programming. It focuses on power relationships, institutions (formal and informal) and structures. See http://www.gsdrc.org/go/topicguides/drivers-of-change
- **Governance Questionnaire (GTZ)**: The tool uses a multi-disciplinary approach to examine six areas: state-society relations; the political system; political culture, change agents and development paradigms; gender; economy and markets; international integration. It includes a special emphasis on "informal" rather than "formal" rules. See Faust and Gutierrez (2004) Governance Questionnaire
- **Poverty and Social Impact Analysis - PSIA (World Bank)**: PSIA combines multidisciplinary analysis (qualitative and quantitative) with policy dialogue to understand the distributional impacts of policy reforms. See http://www.worldbank.org/psia
- **Power Analysis (SIDA)**: The approach examines power and its distribution within society, as well as relationships between key actors. It also emphasizes informal relationships between key actors. See http://www.sida.se/sida/jsp/sida.jsp?d=118&a=24300&language=en_US

Source: Adapted from Nash, Robert; Hudson, Alan, and Luttrell, Cecilia, 'Mapping Political Context: A Toolkit for Civil Society Organisations'. London: ODI, July 2006; and Holland, Jeremy, 'Tools for Institutional, Political and Social Analysis of Policy Reform', The World Bank, Washington, 2007

7 RESOURCES, TOOLS AND ORGANIZATIONS

Some tools and resources of relevance for practitioners working on issues related to land and conflict are presented below.

7.1 Existing toolkits and guidance for practitioners

Table 6

THEME	RELEVANT TOOLKIT OR GUIDANCE NOTES
Land tenure	**Land Policy Development in an African Context: about Growing Land Scarcity and Concern about Land-Related Conflicts (FAO, 2009)**: ftp://ftp.fao.org/docrep/fao/012/ak547e/ak547e00.pdf **Land Tenure (DFID, ODI 1999)**: http://www.oxfam.org.uk/resources/learning/landrights/downloads/landtv6.pdf **Secure Land Rights for all (UN-HABITAT, 2008)**: http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=2488&alt=1
Land and conflict	**Uncharted Territory: Land, Conflict and Humanitarian Action (ODI, 2009)** http://www.odi.org.uk/resources/details.asp?id=4409&title=uncharted-territory-land-conflict-humanitarian-action **Land & Conflict: A Toolkit for Intervention (USAID, 2005)**: http://www.usaid.gov/our_work/cross-cutting_programs/conflict/publications/docs/CMM_Land_and_Conflict_Toolkit_April_2005.pdf **Land, Violent Conflict and Development (OECD, 2004)**: http://www.oecd.org/dataoecd/29/50/29740608.pdf
Land administration	**Access to Rural Land and Land Administration after Conflict (FAO, 2005)**: ftp://ftp.fao.org/docrep/fao/008/y9354e/y9354e00.pdf **A Post-Conflict Land Administration and Peacebuilding Handbook, Volume 1: Countries with Land Records (UN-HABITAT, 2007**): http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=2443&alt=1

Table 6... *Continued*

THEME	RELEVANT TOOLKIT OR GUIDANCE NOTES
Urban land issues	**Land Tenure and Land Regularization in Informal Urban Settlements in Developing Countries (GTZ 1998)** : http://www.gtz.de/de/dokumente/en-land-tenure-urban-engl.pdf **Planning Sustainable Cities (UN-HABITAT, 2009)**: www.unhabitat.org/downloads/docs/GRHS_2009Brief.pdf **The Urban Planning in a State of Flux Series (UN-HABITAT)**: Somalia: http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=2294&alt=1 **Eastern and Southern Africa**: http://www.unhabitat.org/downloads/docs/5153_98891_Brochure_In_situ_upgrading_and_prevention_of_slums_CWSFINAL.pdf
Pastoralism	**Mainstreaming conflict prevention in development cooperation: Tip sheet on the links between pastoral livelihoods and conflict prevention (SDC, 2005)**: http://www.iisd.org/pdf/2005/security_pastoral_tipsheet.pdf
Displacement and returnees	**Forced Eviction – Towards Solutions? (UN-HABITAT 2007)**: http://www.internal-displacement.org/8025708F004CFA06/(httpKeyDocumentsByCategory)/5FC603DBB174F1B7C12572E4004C1AB3/$file/2nd_AGFE_report.pdf **Handbook on Housing and Property Restitution for Refugees and Displaced Persons (FAO, NRC, OCHA, OHCHR, UN-HABITAT, UNHCR 2007**): http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/PinheiroPrinciplesHandbook2007.pdf **Internal Displacement: Global Overview of Trends and Developments in 2009 (IDMC 2010)**: http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/8980F134C9CF4373C1257725006167DA/$file/Global_Overview_2009.pdf
Women's land and property	**Making Progress–Slowly. New Attention to Women's Rights in Natural Resource Law Reform in Africa (Liz Alden Wily 2001)**: http://www.oxfam.org.uk/resources/learning/landrights/downloads/slowprogrtf.rtf **Policy Makers Guide to Women's Land, Property and Housing Rights Across the World (UN-HABITAT, 2007)**: http://www.chs.ubc.ca/archives/files/Policy%20Makers%20Guide%20to%20Women%27s%20Land,%20Property%20and%20Housing%20Rights%20Across%20the%20World.pdf **Women War and Peace (UNIFEM, 2002)**: http://www.unifem.org/materials/item_detail.php?ProductID=17
Coordination	**How to Establish an Effective Land Sector (UN-HABITAT, 2008)**: http://www.unhabitat.net/pmss/getElectronicVersion.asp?nr=2540&alt=1

Table 6 … *Continued*

THEME	RELEVANT TOOLKIT OR GUIDANCE NOTES
Conflict management	**Conflict-Sensitive Approaches to Development, Humanitarian Assistance and Peacebuilding: Resource pack (Conflict Sensitivity, 2004)**: http://test.alertinternational.co.uk/publications/conflict-sensitive-approaches-development-humanitarian-assistance-and-peacebuilding-res **Conflict-Sensitive Approaches to Development (Safer World, International Alert, International Development Research Center, 2001)**: http://www.idrc.ca/uploads/user-S/10596649641conflict-sensitive-develop.pdf **Land Tenure Alternative Conflict Management (FAO, 2006):** ftp://ftp.fao.org/docrep/fao/009/a0557e/a0557e00.pdf **Land Tenure Manuals 2: Land Tenure Alternative Conflict Management (FAO, 2006**): ftp://ftp.fao.org/docrep/fao/009/a0557e/a0557e00.pdf
Conflict analysis	**Conflict Analysis for Project Planning and Implementation (GTZ 2002)** : http://www.gtz.de/de/dokumente/en-crisis-conflictanalysis-2001.pdf **Conflict Analysis for Project Planning and Management GTZ (2001):** http://www.gtz.de/de/dokumente/en-crisis-conflictanalysis-2001.pdf **Conflict Analysis Framework (World Bank 2002)**: www.worldband.org/conflict **Conflict and Policy Assessment Framework (Clingendael Institute 2000)**: www.clingendael.nl/cru, http://www.clingendael.nl/publications/2000/20000602_cru_paper_vandegoor.pdf **EC Checklist for Root Causes of Conflict (European Commission 2001**): http://europa.eu.int/comm/external_relations/cpcm/cp/list.htm, http://www.conflictsensitivity.org/node/67 **LAND CONFLICTS: A practical guide to dealing with land disputes (GTZ, 2008)**: http://www2.gtz.de/dokumente/bib/gtz2008-0039en-land-conflicts.pdf **Making Sense of Turbulent Contexts: Analysis Tools for Humanitarian Actors (World Vision 2003)** **Methods Document: Manual for Conflict Analysis (SIDA, 2006)** **Strategic Conflict Assessment (DFID 2002**): http://www.dfid.gov.uk **Conflict Assessment Framework (USAID, Office of Conflict Management and Mitigation 2002)**: www.usaid.gov **Working with Conflict: Skills and Strategies for Action (Responding to Conflict 2000)**: www.respond.org

Table 6… *Continued*

THEME	RELEVANT TOOLKIT OR GUIDANCE NOTES
Land use and settlements	**A Critical Review of Approaches to Assessing and Monitoring Livelihoods in Situations of Chronic Conflict and Political Instability (ODI, 2002)**: http://www.odi.org.uk/resources/download/1986.pdf **Conflict-sensitive Conservation: A Practitioners Manual (IISD, 2009)**: http://www.iisd.org/pdf/2009/csc_manual.pdf **Livelihoods and Conflict: A Toolkit for Intervention (USAID, 2005)**: http://www.usaid.gov/our_work/crosscutting_programs/conflict/publications/docs/CMM_Livelihoods_and_Conflict_Dec_2005.pdf **Land and Natural Disasters: Guidance for Practitioners (UN-HABITAT 2010)**: http://www.disasterassessment.org/documents/Land_and_Natural_Disasters_Guidance4Practitioners.pdf
Monitoring and evaluation	**Guidance on Evaluating Conflict Prevention and Peacebuilding Activities (OECD, 2008)**: http://www.oecd.org/secure/pdfDocument/0,2834, n_21571361_34047972_39774574_1_1_1_1,00.pdf

7.2 Additional reading

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7.3 UN and EU capacities

The following capacities were identified directly in relation to land and conflict.

United Nations

Human Settlements Programme (UN-HABITAT): UN-HABITAT's global division runs two major world-wide campaigns, the Global Campaign for Secure Tenure and the Global Campaign on Urban Governance, and four main branches covering world-wide programmes. Land and conflict are dealt with in particular in the Disaster Management Programme. They provide support to other UN agencies, governments and local authorities regarding post-conflict land problems.

UNDP Drylands Development Centre: The Centre is working to reduce poverty with a more sustainable land management of drylands. They carry out research and analysis of policies that affect communities in the drylands; help to ensure that national policy and planning frameworks address the social and environmental concerns of dryland populations; promote the strengthening of the capacities of individuals and institutions at the local level while working to ensure that national policy and legislation support local development.

Department for Political Affairs (DPA): DPA has established a Mediation Support Unit (MSU) and a stand-by team of mediation experts. Thematic topics include high-value resources, land and water. MSU provides technical support to UN agencies and missions in conflict prevention and mediation process design and implementation. DPA also maintains a framework for political analysis that incorporates a natural resource dimension. DPA offers a yearly expert training program on "Coping with non-traditional security threats", which is organized in conjunction with the Geneva Centre for Security Policy (GCSP). Relevant aspects of the program include "War Economies and the Illegal Exploitation of Natural Resources".

United Nations Environment Programme (UNEP): UNEP has established a Disasters and Conflicts programme to assess and address the environmental causes and consequences of disasters and conflicts. UNEP can deploy teams of environmental experts to conduct field assessments of natural resources and their link to conflict and peacebuilding. UNEP is pilot-testing a new methodology to identify potential environment and security risks from climate change. In countries affected by conflicts or disasters, UNEP can establish field-based capacity-building programs on environmental governance and natural resources management. Partner countries include Afghanistan, Central African Republic, DR Congo, Sudan, Haiti, Nigeria, Occupied Palestinian Territories, Sierra Leone, and Sudan. UNEP also manages the GEO Data portal, containing more than 500 different variables, as national, sub-regional, regional and global statistics or as geospatial data sets (maps), covering themes like freshwater, population, forests, pollution emissions, climate, disasters, health and GDP.

United Nations Educational, Scientific and Cultural Organization (UNESCO): The UNESCO Program From Potential Conflict to Cooperation Potential (PCCP) provides specific information on water and conflict resolution, as well as case studies on lessons learned. Most importantly, PCCP offers a number of capacity-building tools. Training covers dispute resolution and negotiation, professional skills development and regional courses (South East Europe, Latin American Countries, and Southern African Developing Countries).

United Nations Development Programme (UNDP): The UNDP Bureau for Crisis Prevention and Recovery (UNDP-BCPR) is involved in assisting countries with natural wealth management and land conflict issues at the local and national

level. Partner countries include Guatemala, Ecuador, Bolivia, Ghana, Nigeria, Sierra Leone, Liberia, Sudan, Kenya, Mali, Sao Tome e Principe, South Africa, Bangladesh, Indonesia, and Fiji.

UN Department of Economic and Social Affairs (DESA): DESA maintains the Peacebuilding Portal, an interactive website that shares background and contact information on organizations involved in land and other aspects of the natural environment. Most of the organizations are local and 85 are active in the area of land and environment.

World Food Programme (WFP): WFP conducts a Vulnerability Analysis and Mapping (VAM) exercise which identifies areas of food insecurity and emerging vulnerability. The in-depth studies identify people at risk of food insecurity, provide information on their numbers and location, explain the reasons for food insecurity and explore opportunities for assistance.

Food and Agricultural Organization (FAO): FAO acknowledges secure access to land as a direct factor in the alleviation of hunger and rural poverty. Land Tenure Service (SDAA), within FAO, has been working on land tenure rights, security of tenure and land access in the field of rural development. The perspective is that secure access and secure rights to land can be fundamental in the achievement of food security and sustainable rural development. They produce manuals and tools to be used in assessing land and food security issues. The statistical database FOASTAT provides data related to food security and land use for over 210 countries in times-series from 1961. The data can be used in identifying and addressing conflict potential. In crisis situations, they work with other humanitarian agencies to protect rural livelihoods. The Livelihood Support Programme (LSP) produced an excellent series of tools connected to land tenure rights.

World Bank: The World Bank acknowledges natural resource management as a potential source of conflict and addresses this issue from an Alternative Conflict Management (ACM) perspective. The Bank has used the ACM perspective in disputes over management of forests and pastures and other natural resources. In an attempt to develop practical approaches and policies for the international community on natural resources and conflict, the World Bank's Conflict Prevention and Reconstruction Unit and the Development Research Group established the Governance of Natural Resources Project in 2002.

UNFCCC: The Nairobi work programme of the UNFCCC is a five-year programme (2005-2010) implemented by member parties, intergovernmental and non-governmental organizations, the private sector, communities and other stakeholders. Its objective is to assist all parties, and in particular developing countries, to improve their understanding and assessment of impacts, vulnerability and adaptation to climate change. The goal is to help the parties make informed decisions on practical adaptation actions and measures to respond to climate change on a sound scientific, technical and socio-economic basis, taking into account current and future climate change and variability. The potential security implications of climate change are considered within the programme.

Environment and Security Initiative (ENVSEC): ENVSEC works to assess and address environmental problems which threaten or are perceived to threaten security, societal stability and peace, human health and/or sustainable livelihoods, within and across national borders in conflict prone regions. The Initiative collaborates closely with governments (particularly ministries of foreign affairs, defence and environment), national experts and NGOs. Based on detailed environment and security assessments, the Initiative develops and implements work programmes aimed at reducing tensions and solving the problems identified. ENVSEC was established in 2003 by the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP), and the Organization for Security and Co-operation in Europe (OSCE). The North Atlantic Treaty Organisation (NATO), the United Nations Economic Commission for Europe (UNECE) and the Regional Environment Center for Central and Eastern Europe (REC) are also members of ENVSEC.

Global Water Partnership: Founded in 1996 by the World Bank, the United Nations Development Programme (UNDP), and the Swedish International Development Cooperation Agency (SIDA) to

promote integrated water resource management (IWRM). GWP works to facilitate dialogues that result in changes to policies, laws, and institutions. GWP created the GWP Tool Case study, a public, online, up-to-date, knowledge centre with the tools, references, and case studies needed for implementing IWRM.

European Union:

Programme for the Prevention of Violent Conflicts: This Programme identifies conflict prevention as a priority for all of the EU's external actions. Social and environmental policies are expressly mentioned among the means at the disposal of the EU to support conflict prevention efforts. The EU also has an extensive set of instruments for structural long-term and direct short-term preventive actions. The long-term instruments include development co-operation, trade, arms control, human rights and environment policies as well as political dialogue.

Strengthening Capacities for the Consensual and Sustainable Management of Land and Natural Resource – A Capacity Inventory: This is an inventory of resources designed to strengthen the ability of national stakeholders and their UN and other international counterparts to: analyse, prevent and resolve disputes over land, water and natural resources; to minimize tensions over natural resources; and to develop sustainable solutions to achieve peace.

Forest Law Enforcement, Governance and Trade (FLEGT), the EU Action plan: The FLEGT sets out a programme of actions that forms the European Union's response to the problem of illegal logging and trade in associated timber products. FLEGT addresses illegal logging and links good governance in developing countries with the legal trade instruments and influence offered by the EU's internal market.

Global Atlas and Information Center on Natural Resources and Conflict: The Center coordinates an international network of organizations to collect and maintain relevant information related to the exploitation and degradation of natural resources and conflicts; analyse the collected data in order to develop a better understanding and discovery of the links between natural resources and conflicts; harmonize existing data; and carry out a series of detailed assessments of critical indicators (critical resources, illegal activities, exploitable resources in conflict prone areas) by the means of satellite remote sensing.

Global Monitoring for Environment and Security (GMES): GMES is a joint initiative of the European Union and European Space Agency which focuses on developing an autonomous and operational Earth observation capacity. The objective is to rationalize the use of multiple-sources data to get timely and quality information, services and knowledge, and to provide autonomous and independent access to information in relation to environment and security.

GMES services for Management of Operations, Situation Awareness and Intelligence for regional Crises (G-MOSAIC): G-MOSAID provides the European Union with intelligence data that can be applied to early warning and crisis prevention as well as to crisis management and rapid interventions in hot spots around the world. G-MOSAIC supports intelligence and early warning for key factors that contribute to regional crises, such as weapons proliferation, conflict over natural resources, population pressure, land degradation, and illegal activities.

7.4 UN and EU Programming Instruments

Once the potential for environmental scarcity and/or climate change to contribute to conflict is identified, preventative actions should be integrated into the relevant policy framework covering relief, recovery or development. This will ensure the issue receives maximum visibility and political support together with sufficient financial resources and internal UN coordination. The key frameworks include:

Flash appeals and Consolidated Appeal Processes (CAP): Following a peace agreement or cease-fire, the UN often issues a flash appeal to respond to urgent humanitarian needs that could not be addressed during the conflict. These often include food, water and shelter provisions for refugees and IDPs as well as other critical services and protection. In some cases, when more planning and analysis is possible, a consolidated appeal process (CAP) is issued, covering humanitarian needs for a full year.

Post-Conflict Needs Assessment (PCNAs): First used in 2003, PCNAs are undertaken by the UN Development Group, the World Bank and the EU in collaboration with the national government and with the cooperation of other donor countries. PCNAs are increasingly used by national and international organizations for conceptualizing, negotiating and financing a common shared strategy for recovery in post-conflict settings. The PCNA includes both the assessment of needs and the national prioritization and costing of needs in an accompanying transitional results matrix. Most PCNAs cover two to four years and form the analytical basis for broader peacebuilding plans.

National recovery plan or development strategy: In cases where a PCNA was not conducted, or where a new government chooses to replace the PCNA with a new strategy, a national recovery plan or development strategy will be issued by the transitional or elected national government. This strategy sets out national priorities and their costs and requests assistance from the international community to meet the identified needs.

Poverty Reduction Strategy Paper (PRSP): Once a post-conflict country has moved from transition to development, interim or full PRSPs are often developed. Designed by the International Monetary Fund (IMF) and the World Bank in 1999, PRSPs are produced in cooperation with the government, key stakeholders and international partners. PRSPs focus on the economic and financial profile of the country and provide a plan for reducing poverty and supporting the economy through various interventions. PRSPs are instrumental for a country to obtain financing and debt relief from the IMF and the World Bank.

Common Country Assessment (CCA) and UN Development Assistance Framework (UNDAF): In response to a national recovery plan, development strategy or PRSP, the UN country team conducts a CCA, aiming to identify how the national priorities can be met by the UN. The CCA attempts to focus UN efforts into three or four main pillars as defined by the priority needs. Based on the CCA, a UNDAF then establishes concrete outcomes and indicators around each pillar and provides detailed costing. Specific agencies and partners are listed together with a timeline. In post-conflict countries, CCAs and UNDAFs are conducted once the country is transitioning from recovery to development (three to five years after the conflict).

Integrated Peacebuilding Strategies (IPBS): IPBS documents attempt to provide a long-term strategic vision for peacebuilding (5-10 years), which brings together political, security, humanitarian, development and other efforts to ensure that they all contribute to the long-term result of achieving sustainable peace. They provide an agreed framework for the government's commitments and the international community's support to peacebuilding activities, ensuring greater coherence and coordination to address identified priorities and gaps.

EU Country Strategy Papers (CSP): CSPs provide a framework for European Union development assistance towards the ACP (Africa, the Caribbean and Pacific) countries. CSPs are prepared in close consultation with state and non-state stakeholders and key donors, notably EU member states. The overall objective underpinning the CSPs is to reduce poverty through accelerating the process of sustainable development. The strategies provide a comprehensive and coherent framework for future EU-ACP cooperation, and combine, to the extent possible, all relevant resources and instruments. The EU has begun the process of establishing CSPs for partners in all regions covered by the different regulations: ACP (Africa, Caribbean and Pacific), ALA (Asia and Latin America), CARDS (for the Balkans), MEDA (for Mediterranean), TACIS (for Eastern Europe and Central Asia).

EU Country Environment Profile (CEP): The CEP is a document that contains the necessary elements to inform the preparation of the EU Country Strategy Paper from an environmental point of view. A CEP should be prepared for all development partner countries. The CEP should contain a review of the state of the environment in the country, assessing the state and trends of the environment in relation to development, including an identification of the main environmental problems to solve or avoid.

7.5 Civil society initiatives and professional associations

There are a number of local, regional, and international Non-Governmental Organizations (NGO) and civil society groups working on topics covered in this Guidance Note. These groups can provide a great deal of knowledge and expertise in the area, often with a greater understanding of the social, political, and economic context and history. Furthermore, these groups also have greater familiarity with local organizations or the context of a particular problem. These groups should include environmental, civil and human rights, and women's rights groups.

Oxfam: Oxfam is an international confederation of 14 agencies working together to improve livelihoods, and ensure multi-stakeholder participation. Oxfam provides technical and financial support with the ultimate goal of eradicating poverty and injustice. Oxfam has campaigns on climate change, addressing and avoiding conflict and disaster, and ensuring food security. http://www.oxfam.org/

Care International (CARE): CARE operates in over 70 countries, and is a relief and development NGO working to address global poverty through capacity-building, education, small loans, and program support. CARE works in a number of issue areas, including water, sanitation, environmental health, agriculture, and natural resources. http://www.care.org/

International Federation of Red Cross and Red Crescent Societies (IFRC): The IFRC is the world's largest humanitarian assistance agency with 186 members worldwide. Two of their key programme areas are disaster response and disaster reduction. http://www.ifrc.org/index.asp

Aga Khan Foundation: The Aga Khan Foundation works on a small number of development problems through intellectual and financial partnerships with other organizations. Most grants are made to grassroots organizations testing innovative approaches in the field. Their work is concentrated in over 25 countries, mostly in poor areas of South Asia and Central Asia, Eastern and Western Africa and the Middle East. http://www.akdn.org/AKF

International Alert (IA): IA is an independent peacebuilding organization that works to establish the foundations for lasting peace and security in communities affected by violent conflict. International Alert works in over 20 countries and territories around the world, both directly with people affected by violent conflict as well as at government, EU and UN levels to shape both policy and practice in building sustainable peace. IA has conducted focused work on managing conflicts from natural resources as well as on climate change and security. http://www.international-alert.org/

Interpeace: Interpeace is an international peacebuilding organization that helps divided and conflicted societies build sustainable peace. Interpeace works with local peacebuilding teams, made up of nationals from the country concerned, to facilitate dialogue with all sectors of society. These dialogue processes enable populations directly affected by conflict to rebuild trust, to define priorities for social, economic and political rehabilitation, to find consensus-based solutions to conflict, and to assist with their implementation. http://www.interpeace.org/

Saferworld: Saferworld is an independent organization that works directly with local people as well as through governments and international bodies to prevent violent conflict and encourage co-operative approaches to security. Saferworld

has conducted focused work on managing conflicts from natural resources as well as on climate change and security. http://www.saferworld.org.uk/

Conciliation Resources (CR): CR is an independent charity working internationally to prevent violent conflict, promote justice and build lasting peace in war torn societies. http://www.c-r.org

International Development Law Organization (IDLO): IDLO has been working with rule of law assistance for more than 25 years. They have UN observer status and have 20,000 legal professionals in 175 countries and 46 independent alumni networks. They supports efforts by developing and transitional countries to strengthen rule of law and good governance in order to stimulate sustainable economic and social development and to alleviate poverty through mobilization of stakeholders at all levels of society to drive institutional change. http://www.idlo.int

I**nternational Federation of Surveyors (FIG, Fédération Internationale des Géomètres)**: FIG is an international organization representing the interests of surveyors worldwide that supports international collaboration for the progress of surveying in all fields and applications. FIG represents more than 100 countries throughout the world and provides an international forum for discussion and development aiming to promote professional practice and standards. The current work plan, entitled "Building the Capacity" lays emphasis on strengthening professional institutions and promoting professional development. Their Commission 7: Cadastre and Land Management work with e.g. development of pro poor land management and land administration is an example of the type of work they are engaged in. http://www.fig.net

Norwegian Refugee Council (NRC): NRC has offices in 20 countries and provides humanitarian assistance to refugees, IDPs and returnees worldwide. They have an emergency stand-by force and in 1998 established the International Displacement Monitoring Centre (IDMC) in Geneva. One of the NRC five core activities is the Information, Counselling and Legal Assistance (ICLA) assists persons displaced due to conflict to achieve durable solutions and to fulfil their rights. http://www.nrc.no

International Displacement Monitoring Centre (IDMC): IDMC monitor conflict-induced internal displacement worldwide and contributes to improving national and international capacities to protect and assist IDPs and refugees around the world. IDMC runs an online database providing information and analysis on internal displacement in some 50 countries. The Centre advocates for durable solutions to the plight of the internally displaced in line with international standards. They provide training activities to enhance the capacity of local actors and support local and national civil society initiatives. http://www.internal-displacement.org

PACT: PACT works for strengthening organizations and institutions and have implemented project in more than 60 countries during the last two years. Their sectors connected to land and conflict are: democracy and governance, livelihood, natural resource management and peacebuilding. They seek to achieve social, economic and environmental justice by strengthening the capacity of grassroots organizations, coalitions and networks and forging linkages among government, business and the citizen sectors. They have also experience of grants management, since they were originally the grants administration of the United States Agency for International Development Office of Private Voluntary Cooperation. http://www.pactworld.org/

7.6 Funding sources

In the last decade, a number of new financial instruments have been established which can help finance land and conflict management and governance needs:

Multi-donor trust funds (MDTFs): MDTFs are funding instruments through which donors pool resources to support humanitarian, recovery,

reconstruction and development activities according to national priorities. As such, they are important tools for donor coordination and policy dialogue. Project funding is largely determined by priorities established through a UN, World Bank and EU post-conflict needs assessment. In post-conflict settings, MTDFs were first established for Afghanistan in 2002, followed by Iraq in 2004 and Sudan in 2005. In all cases, natural resource management and environmental governance needs have been eligible for MDTF support.

UN Peacebuilding Fund (PBF): Established in 2006, the PBF stands at nearly USD 350 million. The fund is split into two major components. On the one hand, the PBF Immediate Response Facility (IRF – approximately 15 percent) is designed to jump-start immediate peacebuilding and recovery needs, and to respond to emergency or shock events. It is a flexible and rapid funding tool for projects submitted by the Senior UN Representatives. On the other hand, the Peacebuilding and Recovery Facility (PRF – approximately 85 percent) supports a structured peacebuilding process, driven by national actors based on a joint analysis of needs with the international community. A country allocation is established based on an approved PBF Priority Plan. Projects addressing natural resource management challenges that may lead to violence and insecurity or that support reintegration, reconciliation, stabilizing infrastructure or governance are eligible for PBF financing. For example, the PBF provided financing to the Democratic Republic of Congo to address the illegal exploitation of natural resources as part of restoring state authority.

EU Instrument for Stability: With a total budget of EUR 2 billion, this instrument was established by the European Union for the period 2007-2013 to respond to the needs of countries threatened by or undergoing severe political instability or suffering from the effects of technological or natural disasters. It also aims to streamline short-term crisis response within the longer-term programs of the EU. Addressing linkages between conflicts and the mismanagement of natural resources is one of the thematic areas financed by the instrument. There is also a dedicated conflict resources facility of EUR 2 million within the instrument. In August 2009, a new "third facility for urgent actions involving Policy Advice, Technical Assistance, Mediation and Reconciliation" was established with a budget envelope of EUR 12 million. Among other actions, it can finance measures to promote equitable access to and transparent management of natural resources in a situation of crisis or emerging crisis.

World Bank State and Peacebuilding Fund (SPF): Established in July 2008, the SPF seeks to address state and local governance needs, and peacebuilding in fragile and conflict-affected situations. Its operating budget for the period 2009-2011 is USD 100 million. The SPF has two main objectives: to support measures to improve governance and institutional performance in countries emerging from, in, or at risk of sliding into crisis; and, to support the reconstruction and development of countries prone to, in, or emerging from conflict. Natural resource management interventions relating to conflict prevention and peacebuilding are eligible for financing. For example, the SPF is financing technical assistance to the Central African Republic to help the government develop a new economic plan focused on restoring credible systems of management of public finances and natural resources.

Delivering as One Funding Window: A multi-donor funding facility was established in January 2009 to support the UN to "deliver as one" in the achievement of the Millennium Development Goals (MDGs). The "Delivering as One Funding Window", worth USD 275 million, is used to finance joint UN programs that are designed to address the MDGs. In some post-conflict countries, the fund can provide support to address natural resource management issues. In Sierra Leone, for example, the fund has supported a joint program by UNEP, UNDP, FAO and WHO on resource management reform and capacity-building.

Global Environment Facility (GEF): The Global Environment Facility was established in 1991 as a partnership of 10 agencies, including UNDP, UNEP,

the World Bank, FAO, the Asian Development Bank (ADB), and the African Development Bank (AfDB), in order to provide financial support to projects working to improve the global environment. To date, the GEF has allocated $8.8 billion, supplemented by more than $38.7 billion in co-financing, for more than 2,400 projects in more than 165 developing countries and countries with economies in transition. The GEF's Small Grants Program has made over 10,000 small grants to non-governmental and community organizations. The GEF's areas of work include: climate change, land degradation, international waters, capacity development, and sustainable Forest Management. The GEF also administers two trust funds dedicated to climate change adaptation: the Special Climate Change Fund (SCCF) and the Least Developed Country Fund (LDCF).

Swedish International Development Cooperation Agency (Sida): Established in 1965, Sida is a government department of the Swedish Ministry for Foreign Affairs. Their overall mission is to reduce poverty. They dispose of 1% of the Swedish GNI and are a major donor in areas that concern: democracy, human rights and gender equality; economic opportunity; knowledge, health and social development; environmentally sustainable development; and peace and security. The donations are mostly intended for use in development countries. http://www.sida.se/English

Stabilization and reconstruction Task Force (START): START was created as in 2005 under the Department of Foreign affairs in Canada. It is an international crisis response institution and is designed to help answer the growing international demand for support and involvement in complex crises and to coordinate policy and program engagements in states in or at risk of crisis. They have programmes in support of conflict prevention and peacebuilding, peacekeeping and peace operations, including security system reform, through the Global Peace and Security Fund (GPSF). http://www.international.gc.ca/start-gtsr/index.aspx

Department for International Development (DFID): DFID is a part of the UK Government and works for eradicate extreme poverty. They have offices in around 40 countries and provide aid to around 90 countries by working with governments of developing countries as well as charities, businesses and international bodies, including the World Bank, UN agencies and the European Commission. http://www.dfid.gov.uk

United States Agency for International Development (USAID): USAID is an independent US federal government agency that receives overall foreign policy guidance from the Secretary of State. It was first created to support the Marshall Plan reconstruction of Europe after World War Two. They spend around one-half of 1 percent of the federal budget and support long-term economic growth, agriculture and trade; global health; and democracy, conflict prevention and humanitarian assistance. In the area of land and conflict they work with designing development assistance programs that address the causes and consequences of violent conflict. The Office of Conflict Management and Mitigation (DCHA/CMM) works directly with these questions and is supporting USAID missions by developing a series of toolkits. http://www.usaid.gov

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