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HOUSING, LAND, PROPERTY AND CONFLICT MANAGEMENT: IDENTIFYING POLICY OPTIONS FOR RULE OF LAW PROGRAMMING

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Housing, land and property (HLP) policies should, as far as possible, be addressed in conjunction to ensure that residential and land rights are dealt with more comprehensively by domestic and international actors. Recent policy research and field practice have highlighted the need to consistently address HLP disputes in order to help break cyclical conflict and provide better conditions for social and economic development. As stated in the UN Secretary-General's report, issues surrounding the transparent, equitable and efficient implementation of rights to housing, land and property repeatedly come to the fore as key rule of law concerns. Yet, capacity to assess and respond effectively still lags behind and does not receive systematic attention in the planning and implementation of international development and peacebuilding programs, especially within the UN system. Addressing this issue requires greater institutional attention through improved planning for HLP contingencies in development and post-conflict settings and appropriate resource allocation.

Against this backdrop, IPA convened an Experts' Workshop on *Land, Property and Conflict Management*, on 2-3 December 2004, organized by the rule of law project within the Security-Development Nexus Program.¹ The Experts' Workshop brought together scholars, policy-makers and practitioners from diverse disciplinary backgrounds to:

- a. discuss the importance of land and property disputes as they relate to violent conflict;
- b. contribute to a better understanding of the nature of land and property disputes and of their impact on past and potential conflict; and
- c. identify a set of policy recommendations and operational tools that are available to ensure the peaceful settlement of property and land disputes, and the establishment of legally secure property regimes.

¹ To access the concept paper, conference agenda and list of participants, go to <http://www.ipacademy.org/Programs/Programs.htm>.

FINAL RECOMMENDATIONS

1. General Principles

- Housing, land and property (HLP) policies should, as far as possible, be addressed in conjunction to ensure that residential and land rights are dealt with more comprehensively by domestic and international actors.
- HLP disputes have the potential, if not adequately handled, to aggravate or contribute to violent conflict. Unequal and discriminatory HLP policies, lack of economic opportunities and a high reliance on the agricultural sector and subsistence living may all exacerbate existing cleavages in conflict-prone or conflict-ridden countries. The linkage between HLP and conflict justifies the adoption of conflict-sensitive approaches to such policies. Furthermore, widespread HLP disputes in pre- and post-conflict settings must be granted greater attention by international development agencies, bilateral agencies and UN peace missions.
- National and international actors should recognize the tensions and complexities inherent in enacting HLP programs; policies with divergent aims—such as economic growth, privatization, tenure reform, human rights protection, institutional capacity-building and pro-poor or subsistence-oriented measures—have the potential to act at cross purposes. At the very minimum, specific HLP activities should be incorporated into wider development and peacebuilding strategies.
- Three fundamental objectives should underpin HLP policies: tenure security, access to HLP and restitution of HLP in cases of forced displacement. Achieving these objectives will help ensure that HLP policies contribute to social and economic development and peace and security, based on international human rights standards and the rule of law. Rule of law institutions and processes can play a crucial role in helping achieve these objectives and can support more equitable and peaceful HLP relations.

2. Housing, Land and Property: Conflict-Sensitive Approaches

- The relevance of HLP disputes as a driver of violent conflicts should lead to the adoption of conflict-sensitive policies by UN development actors. The World Bank, the US Agency for International Development (USAID) and the Organization for Economic Cooperation and Development (OECD) are currently incorporating conflict sensitivity into their HLP approaches. At the United Nations, the Food and Agriculture Organization (FAO) and UN-Habitat have

for long developed expertise on land and housing issues, respectively. Additionally, the key UN development agency, the UN Development Programme (UNDP), should at the very least incorporate HLP issues into its conflict analysis at the Bureau for Conflict Prevention and Recovery and engage with other relevant actors on the way HLP plays into conflict prevention and development practice.

- In much of the developing world, customary law regulates the ownership and use of HLP. The application of customary law in fragile states should be better understood and utilized by international actors working on HLP policies. International approaches must be tailored to the strengths and weaknesses of the informal systems they are supplementing and supporting.
- However, while customary tenure can demonstrably support secure and equitable property relations, it will not always adequately protect local communities from outsider interventions; it will often discriminate against specific groups, including women; local elites may manipulate customary practices for personal gain; and the presence of plural legal institutions with the authority to adjudicate upon HLP disputes may encourage “forum shopping” and lead to protracted HLP disputes.

HLP-Specific Policies

- Where severe inequities in HLP distribution act as a barrier to economic growth and social development or are a potential driver of conflict, redistributive policies should be considered.
- Registration and the provision of formal titles are one of the better known HLP policy tools. Yet, the impact of registration on economic and social development should be qualified. In particular, multiple titling can contribute to cyclical conflict and protracted disputes. The grant of “qualified titles,” under which current occupants’ rights are vested if no challenge is filed within a set time-period, can help diminish tenure insecurity. Additionally, registration systems should seek to provide legal recognition to customary or informal rights without necessarily converting these rights to imported tenure norms.
- In many agrarian societies, properties that are most vulnerable to dispute are common properties, those lands like forests and pastures, which are owned jointly by members of groups or communities. These are often incorrectly treated as un-owned lands. Innovative legal constructs are needed in order to allow registration of group ownership. It is also necessary to clarify distinc-

tions between ownership and access rights; often pastoralists have customary access rights to locally owned lands. Additionally, in order to exclude elite capture or subdivision of important common properties, communities should not be encouraged to register properties owned by individuals and families until common properties have been defined and registered in a mutually agreed fashion.

- In many situations, the creation of a register is necessary. In order for the register to be fully accessible, accountable and useful to owners, it is important to locate registers at the lowest administrative level. Systems need to be established which enable the public to inspect the register freely and at no cost and to record ownership changes for a minimal fee. Mechanisms should also be put in place to enable and assist the resolution of HLP disputes by local actors, before submitting the matter to more remote and formal adjudication.
- Placing accountability for maintaining HLP records on holders themselves rather than on the state may lower overall costs and may create incentives for consistent recording of subsequent transactions and general maintenance. Yet, where local elites are able to restrict access to records, they can become a means of consolidating political power. As such, there is a need for the creation of mechanisms at the local level for informal negotiation and mediation.

"Mainstream" Governance and Rule of Law Policies

- Devolution may be particularly crucial in agrarian settings where people depend upon land for survival. Inclusive processes for policy development and dispute resolution vested at the local level can lead to the identification of principles and practices useful for building up national level policy. Local administration of HLP issues must be accountable, that is, follow clear procedures and regulations on the representation and membership of the community, as well as on decision-making and dispute resolution.
- Decisions to devolve HLP policy processes should be based on participatory decision-making that goes beyond consultations in order to diminish the risk of manipulation and capture of such processes by opportunistic local elites, and ensure the inclusion of local stakeholders who are traditionally disenfranchised based on ethnic, class, age or gender bias. However, a top-down approach to registration and broader HLP policy may be justified under some circumstances where local consensus is incompatible with international standards.

- Informal community-based dispute settlement mechanisms are a particularly important tool to ensure effective and legitimate adjudication of HLP disputes and to promote greater equity in property relations at the community level. However, their relationship to the national judicial system should be clearly defined, in particular with regard to the existence of effective remedies.

3. Housing, Land and Property Policies in Post-Conflict Settings

- HLP disputes are prevalent in post-conflict settings characterized by large-scale displacement, abandoned land and housing, illegal HLP occupation, overlapping claims, reduced housing stock and lack of HLP records. If not addressed, HLP disputes have a real capability of jeopardizing post-conflict peacebuilding goals of national reconciliation and sustainable economic and social development.
- Where specific HLP issues were themselves among the main causes of the conflict, or directly threaten the viability of the peace settlement, a peace agreement should seek to resolve these issues without delay. While it may not always be politically sound to adopt radical HLP reforms in the immediate aftermath of conflict, peace agreements should at least mention the role of HLP in the reconstruction of the country, and international agencies should engage in a rigorous planning process and set clear timelines for the adoption and implementation of HLP policies. In particular, measures regulating the temporary allocation of HLP, including deeds registration systems (i.e., the basic recording of HLP transactions), should be immediately enacted in order to avoid increased tenure insecurity and social unrest in the short term.
- In accordance with international human rights and humanitarian law, restitution mechanisms are now commonly applied to redress widespread, systematic or discriminatory forced evictions and dispossessions of HLP, particularly where such acts were formally condemned by the international community. These restitution processes should, as far as possible, be integrated within a broader strategy that addresses the HLP rights of the general population with a view to improve tenure security and access to HLP.
- To this end, the UN should consider the adoption of rights-based HLP strategies as part of its post-conflict peacebuilding activities, and in particular, have these included in the mandate of the proposed UN Peacebuilding Support Office. At the very least, HLP

should be better integrated into the planning, implementation and sequencing of peacebuilding activities undertaken by UN agencies, including UNDP, the UN High Commissioner for Refugees, UN-Habitat or FAO.

- The situation of secondary occupants of claimed HLP should be assessed at the outset of restitution programs. Acquired rights should be taken into account, at least with the provision of some form of compensation or the provision of alternative accommodation to occupants of claimed property. These should be geared to the provisional needs of the restitution program and should be better coordinated with development of long-term social assistance programs.

- While restitution of HLP is the most desirable solution and should be actively supported by international actors, in some cases it may not be possible. Where property and housing has been destroyed on a large scale, where land to be restituted cannot be used, and where HLP tenure was not clearly regulated and subject to dispute before the conflict, alternative forms of redress—including compensation—may be more viable. The establishment of insurance funds to cover the loss of property interests that cannot be restituted should also be considered. In settings where land and property relations were inequitable or contentious prior to the outbreak of conflict, broader HLP reform should, at a minimum, take place in a phased manner alongside restitution or compensation.

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