

CHECKLIST

OF HOUSING, LAND AND PROPERTY RIGHTS & BROADER LAND ISSUES THROUGHOUT THE DISPLACEMENT TIMELINE FROM EMERGENCY TO RECOVERY



Reconstructed house next to structure destroyed in 2004 riots, Kosovo

ENABLING
IMPROVED IDENTIFICATION AND ASSESSMENT
AND
MORE EFFECTIVE RESPONSE

Disputes involving housing, land and property (“HLP”) are both a fundamental **cause** of conflict as well as a **result** arising in the aftermath of conflict. In humanitarian operations, these disputes pose immediate protection and early recovery challenges. If left unaddressed, disputes surrounding HLP can undermine peace and re-ignite hostilities.

Displaced populations will invariably try to claim or reclaim access to HLP during and after a conflict. This process generates further tension within and across communities, whether in areas of origin, current displacement or upon return or settlement elsewhere:

- **During displacement**, site selection, water, pastoral and agricultural access for informal and formal camp settlements can be challenged by the difficulty of determining who has the rights to the land.
- When considering **return**, displaced individuals often base their decision largely on whether they will be able to reclaim their HLP and thus rebuild livelihoods; **after return**, their attempts to reclaim assets may lead to renewed conflict.
- Alternatively, when the displaced choose to **settle** in new areas, the management of tenure relationships with local communities and institutions can determine the success or failure of a sustainable integration.

But it is **not only the displaced** who have concerns about their HLP rights and broader land issues during and after conflicts. Conflicts inevitably impact a wide range of relationships--social, economic, environmental, and political—and these changes have consequences for all members of the community, including those not displaced.

Perhaps most crucially, **reconciliation** and the sustainability of the emerging peace in a **post-conflict period** can depend on how early and effectively protection of HLP rights and the broader land issues are recognised and addressed. The lessons learned from Afghanistan, Rwanda and Sudan, among others, show the consequences of inadequately addressing HLP concerns early, appropriately and sustainably, whether during the immediate aftermath of a conflict or the peace and rebuilding period that follows.

In 2005, the Humanitarian Response Review identified protection of HLP rights as one of the major gaps in the humanitarian response system. Humanitarian Coordinators and Resident Coordinators are therefore challenged – and accountable-- to address these issues appropriately and early, beginning while a conflict may still be unresolved.

CHECKLIST FOR ACTION

✓ INCLUDE HOUSING, LAND AND PROPERTY RIGHTS AND LAND ISSUES QUESTIONS IN REGISTRATION, PROFILING AND INTENTION SURVEYS

Registration, profiling and intentions surveys of displaced persons should gather as much information as possible at the earliest stage of displacement concerning the HLP situation in the area of origin. Even within rapid surveys or accelerated registration processes, **a few simple but strategic questions** can identify immediate protection issues today as well as constraints to achieving durable solutions tomorrow. Such information can include area of origin and living arrangements pre-flight, prior arrangements for access to land and property (individual or family, statutory or customary ownership, pastoral rights, social tenancy, rental, etc.); possession or absence of supporting documents, and any reports of property destruction or occupation.

✓ COMMUNITY CONSULTATION: CONSIDER THE LAND ISSUES WHERE THE DISPLACED ARE NOW

Wherever the displaced now shelter, it is **essential to understand land tenure arrangements**, including statutory and customary access rights, to land, water, grazing, and other natural resources. Apparently unused land may actually be subject to complex customary tenure arrangements and claims not readily known to displaced communities, international agencies or national government officials. Rapid assessment visits are unlikely to disclose the intricacies of land tenure arrangements, especially where customary law applies. Left unaddressed or pushed aside for later, tension over land can arise between host communities and the displaced, international agencies and national government. Access to land in areas surrounding camps must also be discussed with relevant actors.

✓ IDENTIFY AND WORK WITH EXPERTS EARLY

International and national experts should be identified early and secured for assessment and intervention programming. The complexity of these issues means that existing staff within agencies, particularly during initial emergency response, are not likely to adequately assess these specialized issues. Ideally, if deployment of these experts is **co-funded by different actors**, the resultant assessments and guidance provides a single credible and coherent source to help shape quick, coordinated response by more than one agency, without agency duplication. The most comprehensive response will likely include **both national as well as international expertise**. Including national land experts from the start is crucial to understanding the legal, institutional, political and social contexts.

✓ INCORPORATE HOUSING, LAND AND PROPERTY ASSESSMENTS AND RESPONSES INTO APPEALS OR OTHER HUMANITARIAN BUDGETS

Because reasons for conflict differ, and the formal and customary basis for property ownership or tenure arrangements can be complex, resultant HLP issues are **extraordinarily country- and context-specific**. These issues deeply impact both the immediate accommodation of displaced persons as well as whether they return or settle elsewhere. Groups such as women, minorities, indigenous peoples or slum dwellers are particularly vulnerable to marginalization. Most beneficial to a comprehensive understanding of these factors is an expert identification—as soon as possible in the crisis timeline—of relevant issues, local law context and recommendations for action. Such an expert assessment is, itself, a valuable response action, and can be proposed early within the appeal process.

✓ ADVOCATE TO SECURE EXISTING OFFICIAL RECORDS REGARDING HOUSING, LAND AND PROPERTY RIGHTS

In the midst of conflict, official records of rights and ownership in government offices (such as title registries or cadastres) may be at **risk of destruction or tampering**, whether due to general conflict and looting or by specific targeting. National and local authorities should be reminded of their obligations to secure these records, including if necessary evacuation to safer locations. Multinational forces, including UN peacekeeping presence, may also assist.

✓ PROMOTE HOUSING, LAND AND PROPERTY RIGHTS AND BROADER LAND ISSUES WITHIN PEACE NEGOTIATIONS AND AGREEMENTS

Peace agreements can **explicitly include provisions regarding HLP rights**. Humanitarian and Resident Coordinators and Country Teams can provide information of the land situation for the peace negotiations and in addition advocate for **HLP** issues to be thoroughly considered by peace negotiators and the parties of the conflict. Particularly important are clear consensus regarding non-discriminatory access to restitution mechanisms and land tenure, and the universal applicability of HLP rights protection to all persons, including the displaced regardless of when and if they decide to return. **Humanitarian and Resident Coordinators can be significantly influential in high level advocacy** to address these issues early and constructively as an essential component of the peace agreement. National responsibility for resolving property issues in accordance with both the terms of any peace agreement as well as international law should be emphasized consistently in all contacts with competent authorities.

Because questions of land can be **inflammatory** in post-conflict situations, some may advocate pushing such questions to a later date. Delays may be politically expedient, but the risk is that land and property issues remain unaddressed and compromise the peace in later months. Alternatively, those currently in power may be tempted to rush through *ad hoc* measures. This too may have serious implications for future harmony. Instead, an approach that documents the existence of overlapping and perhaps disputed rights and claims may be more conducive to reconciliation and nation-building than one rigidly applying either the principle of restitution or of adverse possession.

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✓ **ENSURE HOUSING LAND AND PROPERTY RIGHTS AND BROADER LAND ISSUES ARE CONSIDERED IN JOINT ASSESSMENT AND PROGRAMMING FOR DURABLE SOLUTIONS**

Inter-agency assessment missions to support durable solutions should consider how HLP rights and broader land issues will be most effectively safeguarded or addressed within repatriation or return program planning as well as in strategies to support the local integration for IDPs and refugees who decide not to return. Beyond physical surveys of damaged housing in areas of conflict, assessments should also consider the other potential obstacles to durable solution, such as:

- Extent of secondary occupation of homes;
- If unjust and arbitrary applications of law occurred *after* flight;
- If property registration records (or other locally acceptable evidence of land rights) were destroyed or lost;
- Whether lack of tenure security might prevent some communities or individuals from returning to their original homes or land;
- Whether the judicial system provides effective, accessible and impartial remedies; and
- The capacity of local or traditional institutions to address land disputes and issues.

✓ **DEVELOP AN INTER-AGENCY PLAN OF ACTION TO RESTORE HOUSING LAND AND PROPERTY RIGHTS AND ADDRESS BROADER LAND ISSUES**

The UN Country Team and participating Cluster agencies should develop a **Plan of Action** to address HLP rights and broader land issues. This Plan of Action should be the first step in developing an effective response. The plan should be consistent with international law, national legal frameworks and customary practices. All actors need to ensure **full participation** of displaced persons and returnees—including groups vulnerable to marginalization such as women, indigenous peoples and minorities, and with reference to any customary traditions—in developing plans of action. An Inter-Agency Plan of Action, or other coordinated effort, can also help ensure that organized return or settlement elsewhere of the displaced occurs to the extent possible within a broader plan for tenure stabilization, rehabilitation and reconstruction for all communities.

✓ **LEGISLATIVE ANALYSIS: DESK REVIEW OF NATIONAL LAWS, POLICIES AND INSTITUTIONS RELEVANT TO HOUSING LAND AND PROPERTY RIGHTS AND BROADER LAND ISSUES**

Collect, compile and analyze all national laws and policies that are relevant to HLP and broader land issues, including:

- Land tenure and institutions;
- Land and housing laws and policies;
- Land markets;
- Forced evictions, relocation or resettlement;
- Right to housing, land and property restitution after unlawful or arbitrary deprivation;
- Right to privacy and respect for the home; and
- Right to freedom of movement and to choose a place of residence.

Any such analysis should specifically consider whether inheritance, family or other laws discriminate against women, indigenous peoples or other minorities, and whether housing abandonment laws were adopted after flight.

National legal staff will be particularly useful in this process of legal analysis, for their expertise in local law, administrative realities and language.

The resultant compilation will later also be a valuable resource for training and dissemination activities.

✓ **CONTEXTUAL ANALYSIS: ANALYSE THE ADMINISTRATIVE CAPACITIES, AS WELL AS LOCAL PRACTICES AND FORMAL OR INFORMAL MECHANISMS REGULATING HOUSING, LAND AND PROPERTY RIGHTS AND BROADER LAND ISSUES**

Contextual analysis of practices and formal or informal mechanisms regulating HLP rights and broader land issues is essential to **design solutions that are adapted and acceptable to the populations concerned**. Comprehensive and innovative legislation may, for example, fail to protect these rights in the absence of administrative arrangements and functioning government agencies to enforce. **Customary dispute resolution practices** may have significantly more credibility in areas geographically removed from administrative centers. Full understanding of the local context promotes effective responses.

THE PINHEIRO PRINCIPLES

The **normative framework** for addressing housing, land and property rights in the context of displacement is summarized in the 2005 *Principles on Housing and Property Restitution for Refugees and Displaced Persons*.

Known as the “**Pinheiro Principles**,” this document is not a new international treaty but rather a compilation and restatement of existing rights based in international human rights and humanitarian law.

The Pinheiro Principles reaffirm that **all displaced persons**—whether internally displaced or refugees, and whether or not they return—shall be protected from **arbitrary and unlawful deprivation of any housing, land and/or property**, and retain the right to have such property restored to them or be adequately compensated.

✓ **ASSESS AND IMPROVE TENURE SECURITY OF THE DISPLACED—AND THE MOST VULNERABLE AMONGST THEM—IN ALL ADVOCACY AND PROGRAM ACTIVITIES**

High level political statements to confirm security of tenure for all persons can help stabilize the post-conflict environment while more durable solutions are identified. Many post-conflict situations where informal ownership prevails have undertaken **land reform** programs recognizing customary and informal land rights, transforming them into statutory rights (including issuance of property title documents). Advocates should ensure that new mechanisms do not disadvantage displaced persons in formalizing land rights they enjoyed before being displaced. For example, where formalization of rights is linked to continuous presence on the land, exceptions should be expressly provided for those who have been displaced.

In the rehabilitation and upgrading of camp settlement, collective centers, or slums, agencies undertaking such activities should ensure that residents of the structures will be granted tenure security if they do not own these dwellings.

PROGRAMMING IDEAS

Possible **program interventions** to support HLP rights and broader land issues:

- Sponsor an **Expert Situation Assessment** to better understand the HLP and land tenure context and potential related issues.
- Establish **Land Dispute and Conflict Monitoring** to find baselines and to monitor trends and emerging issues over time.
- Promote **Public information Campaigns** to inform affected communities about their rights.
- Create **Legal Aid and Counseling Centers** to provide necessary help to the displaced and returnees regarding securing their HLP rights.
- Provide **Technical and Financial** support to land administrative agencies and adjudicatory processes.
- Refine existing **De-mining or Reconstruction projects** to support full implementation of **HLP** rights (e.g. prioritizing demining or shelter projects for those who currently occupy someone else's home, creating alternative interim accommodation for those awaiting dispute resolution, etc.)
- Create a **fair and equitable environment** for real estate transactions by displaced persons who wish not to return but to sell their property; they may then use such funds to integrate elsewhere.
- Advocate **reform of any HLP legislation** inconsistent with international human rights standards.

FOR SUPPORT TO YOUR OPERATIONS, CONTACT:

The global **Working Group of the Protection Cluster**, as well as its **Housing, Land and Property Area of Responsibility (AoR)** Group, can provide **country-specific advice, assessment and program design missions** for the protection of HLP rights, as well as identify HLP experts for in-country placements. The Group can also promote the short-term **deployment** of appropriate senior support staff under the **ProCap** program. Participating agencies of the HLP AoR Group include: **IDLO, IDMC, IOM, OHCHR, UN-HABITAT and UNHCR**. For detailed information and **agency focal points**, see: <http://www.humanitarianreform.org/Default.aspx?tabid=434>

The **Cluster Working Group on Early Recovery** can provide advice and support on linking shelter, land and property issues into broader early recovery processes. Early Recovery Advisors deployed on behalf of the CWGER can help to make links between land issues and other related programme areas and can support the integration of land issues in joint early recovery needs assessments, strategic planning exercises, resource mobilization strategies, etc. With support from CWGER, UN-HABITAT has also developed several important guidelines, including a Quick Guide on Post-Conflict Land Issues and more detailed Guidelines. For detailed information and **agency focal points**, see: <http://www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=80>

The **Humanitarian Policy Group (HPG) of the Overseas Development Initiative (ODI)** currently maintains a roster of experts in housing, land and property issues.

For more detail and continuously updated information, see: <http://www.odi.org.uk/>

Additional resource documents:

- *Access to rural land and land administration after violent conflicts*, FAO Land Tenure Studies 2005.
- "Action Sheet 11: Land and Property," in *Handbook for the Protection of Internally Displaced Persons*, (provisional release version, 2007), Global Protection Cluster Working Group.
- *Handbook: Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'*, March 2007. FAO/IDMC/OCHA/ OHCHR/UN-HABITAT/UNHCR.
- *Post-Conflict Land Guidelines* (in progress). Early Recovery Cluster/GLTN/UN-HABITAT.

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- *Post-Conflict Land Quick Guide* (Draft, June 2009). Early Recovery Cluster/GLTN/UN-HABITAT.
- *Post-Disaster Land Guidelines*. Early Recovery Cluster/GLTN/UN-HABITAT.
- *Principles on Housing and Property Restitution for Refugees and Displaced Persons*. UN Sub-Commission on the Protection of Human Rights 2005 (also known as the “Pinheiro Principles”).

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