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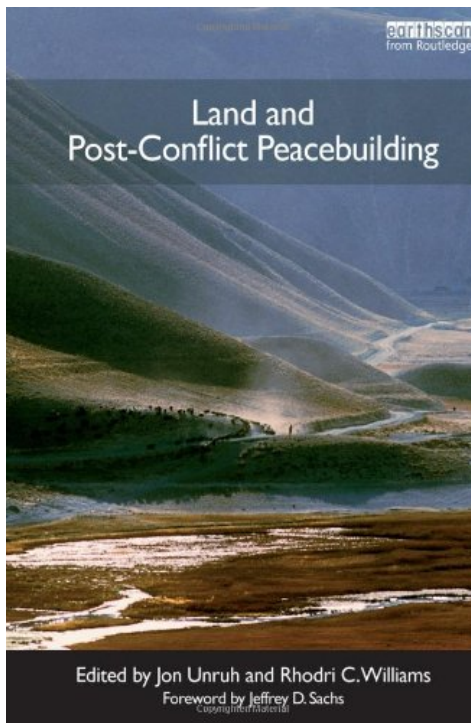
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Land: A foundation for peacebuilding

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Land: A foundation for peacebuilding

Jon Unruh and Rhodri C. Williams

Managing land tenure is one of the most persistently troublesome issues in peacebuilding processes. At the same time, land and property rights offer valuable opportunities to deliver peace dividends to war-weary populations, as well as long-term improvements in livelihoods, governance, and the economy. For example, in post-conflict countries, where agriculture is often not only a subsistence activity but also the source of a substantial portion of gross domestic product, exports, and government revenues, there are often strong incentives for the development of large-scale agricultural plantations (De Schutter 2011). When the large-scale land acquisitions necessary for such activities compete with subsistence farming for the use of arable lands, inequities arise that can be addressed by the development of a credible and coherent system of land management. Paying attention to land issues can also help mitigate volatile ethnic, tribal, and religious claims on and attachments to lands (Bruch et al. 2009).

Although addressing post-conflict land disputes is rarely easy, doing so is often essential. In the worst case, failure to address tensions over land can create or perpetuate potentially destabilizing grievances. Successful approaches to land issues, however, can both consolidate progress toward sustainable peace and help to sustain peace over the longer term. In order to identify effective approaches for managing land and other natural resources in the course of peace processes, it is crucial to understand the nature of land tenure and underlying social relations during and after armed conflict.

Where countries emerging from conflict have addressed land issues effectively, doing so has laid the foundation for a durable peace. In Mozambique, for example, both the government and civil society understood that a progressive land policy was necessary to deal with post-civil war tensions over land. The 1997 Land Law takes into account the customary occupation of land, while also

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including mechanisms to promote investment.¹ The law also supports local empowerment: because members of local communities are aware of their rights under the Land Law, they can use the law to gain access to capital, either for their own initiatives or by negotiating with investors and the state for agreements regarding access to land by outsiders (Tanner 2010). Similarly, Liberia and Sierra Leone have engaged in extended dialogues to build broad support for structural reforms of land management, and Bosnia, Rwanda, and Timor-Leste have made incremental gains under highly challenging circumstances.² Taken together, such experiences highlight both the opportunities that are inherent in making land a peacebuilding priority and the challenges associated with such efforts.

This book examines the diverse experiences of seventeen post-conflict countries in managing land tenure and related issues during the transition to peace. This chapter establishes the foundation for the more detailed treatments to follow. It begins with an overview of the importance of land management and governance to post-conflict peacebuilding. The chapter then provides a discussion of seven key challenges associated with land issues in post-conflict situations, and notes preliminary considerations of the ways in which these challenges can be approached. These challenges include: tenure security, prospects of renewed conflict, changes in land tenure, emergence of alternative tenure approaches, land law reform, urban areas, and interactions between efforts to resolve tenure issues and other peacebuilding activities. The chapter concludes with a guide to the contents of the book.

LAND MANAGEMENT AND PEACEBUILDING

Land is crucial to meeting some of the most basic human needs—from identity to shelter and sustenance. It is also central to livelihoods and food security: in post-conflict countries, 60 to 80 percent of livelihoods typically depend on agriculture and natural resources (Bruch et al. 2009; USAID 2009). United Nations studies on the relationship between natural resources and disarmament, demobilization, and reintegration have found that 50 percent of former combatants

¹ Land Law, Act No. 19/97, October, 1997. Most land rights practitioners and academics distinguish between traditional, indigenous, and customary land rights, all of which are frequently described as “informal,” in distinction to the formal, typically legislative rules adopted by official state organs. When traditional land rights are under discussion, the focus is primarily on historical arrangements, even if these arrangements are still in effect. Referring to land rights as “traditional” implies that land rights do not change over time. Indigenous land rights are attached to specific indigenous groups. Such rights may be (or have elements of) traditional or customary rights, but they are linked to particular indigenous groups and, by definition, do not apply to others. Customary land rights are arrangements that are currently in effect and are generally nonstatutory. Of the three terms, “customary” is the broadest and most useful because it acknowledges that informal tenure arrangements change; that they can take on aspects of traditional, statutory, and indigenous systems; and that they can evolve to meet current needs that may not be answered by the structures of traditional or indigenous land rights. In short, customary systems are hybridized and take on new forms as needed.

² See, for example, Cotula, Toulmin, and Hesse (2004).

participating in reintegration programs chose agriculture (in some cases, the proportion was as high as 80 percent) (UNDP and UNEP 2012), but that access to land can be a limiting factor for such programs (UNEP 2012).

In the wake of armed conflict, especially prolonged civil conflict, a significant proportion of affected populations will seek access to new land or restitution of abandoned property; both actions can present profound challenges to countries and governments recovering from conflict, particularly in light of the weakening or disintegration of both formal and customary institutions that are crucial to the administration of land-based resources.³ After the ceasefire that ended the 1992–1995 conflict in Bosnia and Herzegovina, for example, well over 200,000 claims to property were asserted (Williams 2013a*⁴). The Mozambican civil war (1975–1991) dislocated 6 million people—approximately half the national population (USCR 1993). Conflicts in Iraq (since 2006) and Sudan (intermittent over the course of five decades) have led to similarly high levels of displacement; estimates indicate that 1.6 million people were displaced in Iraq, and 2.3 million in Sudan (IDMC 2012). Land issues are further complicated when widespread grievances over land access and distribution contributed to the conflict, as in El Salvador (Corriveau-Bourque 2013*) and Darfur (Flint and de Waal 2008; Tubiana 2007).

The search for new land, for restitution, and for redress of historical grievances can drive land and property rights issues to the fore over large areas, including urban centers, in a short period of time and for considerable numbers of people. And the post-conflict reestablishment of ownership, use, and access rights is likely to be as complicated as the histories of the lands in question. Nevertheless, depending on the size of the displaced population and the political sensitivity of land conflicts, addressing land issues can be one of the most important aspects of post-conflict stabilization.

Despite the importance of land to many aspects of peacebuilding—including livelihoods, macroeconomic recovery, governance, and reintegration of former combatants, in particular—it has been addressed unevenly in peacebuilding processes. However, after two decades of concerted efforts to support post-conflict peacebuilding efforts—often on an ad hoc basis—the international community is starting to conceive of peacebuilding more coherently and strategically. High-profile reports from the United Nations Secretary-General, the United Nations Environment Programme, the UN Civilian Capacity Senior Advisory Group, the World Bank, and fragile states (UNSG 2009, 2010, 2012; UNEP 2009; UN 2011; World Bank 2011; International Dialogue on Peacebuilding and Statebuilding 2011), along with ongoing work in academia, have given rise to a growing body

³ *Affected population* refers to people who are seeking access to land at a given time; it includes refugees and internally displaced persons attempting to return to their lands of origin, dislocatees who cannot or do not wish to return to their areas of origin, and those who were displaced well before a conflict and who view the post-conflict period as an opportunity to regain long-lost lands. In addition to affected populations, other actors—including excombatants, opportunists, state actors, and individuals or entities with claims dating back to previous regimes—may also be pursuing access to new lands.

⁴ Citations marked with an asterisk refer to chapters within this book.

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Post-conflict peacebuilding and natural resources: Key terms and concepts

Following conflict, peacebuilding actors leverage a country's available assets (including natural resources) to transition from conflict to peace and sustainable development. Peacebuilding actors work at the international, national, and subnational levels and include national and subnational government bodies; United Nations agencies and other international organizations; international and domestic nongovernmental organizations; the private sector; and the media. Each group of peacebuilding actors deploys its own tools, and there are a growing number of tools to integrate the peacebuilding efforts of different types of actors.

A post-conflict period typically begins after a peace agreement or military victory. Because a post-conflict period is often characterized by intermittent violence and instability, it can be difficult to pinpoint when the post-conflict period ends. For the purposes of this book, the post-conflict period may be said to end when political, security, and economic discourse and actions no longer revolve around armed conflict or the impacts of conflict, but focus instead on standard development objectives. Within the post-conflict period, the first two years are referred to as the *immediate aftermath of conflict* (UNSG 2009), which is followed by a period known as *peace consolidation*.

According to the United Nations, "Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development" (UNSG's Policy Committee 2007). In many instances, this means addressing the root causes of the conflict.

There are many challenges to peacebuilding: insecurity, ethnic and political polarization (as well as marginalization), corruption, lack of governmental legitimacy, extensive displacement, and loss of property. To address these and other challenges, peacebuilding actors undertake diverse activities that advance four broad peacebuilding objectives:*

- *Establishing security*, which encompasses basic safety and civilian protection; security sector reform; disarmament, demobilization, and reintegration; and demining.
- *Delivering basic services*, including water, sanitation, waste management, and energy, as well as health care and primary education.
- *Restoring the economy and livelihoods*, which includes repairing and constructing infrastructure and public works.
- *Rebuilding governance and inclusive political processes*, which encompasses dialogue and reconciliation processes, rule of law, dispute resolution, core government functions, transitional justice, and electoral processes.

Although they are sometimes regarded as distinct from peacebuilding, both peacemaking (the negotiation and conclusion of peace agreements) and humanitarian assistance are relevant to peacebuilding, as they can profoundly influence the options for post-conflict programming. Peacemaking and humanitarian assistance are also relevant to this book, in that they often have substantial natural resource dimensions.

Successful peacebuilding is a transformative process in which a fragile country and the international community seek to address grievances and proactively lay the foundation for a lasting peace. As part of this process, peacebuilding actors seek to manage the country's assets—as well as whatever international assistance may be available—to ensure security, provide basic services, rebuild the economy and livelihoods, and restore governance. The assets of a post-conflict country include natural resources; infrastructure; and human, social, and financial capital. Natural resources comprise land, water, and other renewable resources, as well as extractive resources such as oil, gas, and minerals. The rest of the book explores the many ways in which land and other natural resources affect peacebuilding.

* This framework draws substantially from the *Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict* (UNSG 2009), but the activities have been regrouped and supplemented by activities articulated in USIP and U.S. Army PKSOI (2009), Sphere Project (2004, 2011), UN (2011), UNSG (2010, 2012), and International Dialogue on Peacebuilding and Statebuilding (2011).

of knowledge (see sidebar), which offers better hope of understanding and addressing land issues following conflict.

Although land and property issues may be at the center of many civil conflicts or may emerge during conflict, they are most often addressed somewhat generally in peace accords, or through subsequent national legislative reforms. In other words, an understanding of how land and property rights issues play out at the individual, household, and community levels is rarely a standard component of the peace-process “packages” developed with the assistance of the international community. Thus, one of the primary goals of this book is to provide such understanding, which can then be integrated into such packages.

A peace accord or a military victory may broadly resolve an armed conflict, but the implementation of peace accords (or the creation of new structures associated with victory) raises new issues related to land and property rights. As noted earlier, the stresses of armed conflict often deprive civil institutions of both legitimacy and the ability to function effectively. This is especially the case where land or property rights played a significant role in causing or perpetuating conflict.⁵ A *de facto* institutional vacuum may lead, in turn, to uncertainty in property relations that can not only significantly undermine agricultural recovery, economic opportunities, and food security, but can also intensify identity-driven disputes over areas gained or lost during the conflict by particular ethnic, religious, or otherwise defined groups. Although a peace process can attempt to reconstitute statutory and customary property administration institutions, ensuring that these institutions (1) are viewed as legitimate and (2) have the capacity to identify and resolve land and property rights issues may be elusive goals.

But the problem is yet more complicated. A peace process that attempts to address only pre-conflict land and property issues risks sidestepping the volatile problems that can develop *during* armed conflict. Such problems, which often become most significant at the close of conflict, can drive the post-conflict situation in new and unexpected directions, and thereby undermine the peace process. Examples include the emergence of black markets in land, animosity sparked by the perceived unfairness of restitution or redistribution, and intensified ethnic, religious, or other identity-related tensions over land. Even conflicts that did not initially have a land or property component can be complicated by the spatial nature of land- or property-related actions that occur in the course of conflict; examples include ethnic cleansing, the use of land rights as tools of belligerence,

⁵ Although the terms *land rights* and *property rights* can be used interchangeably in legal parlance (Black 1990), the meanings are distinct as used in this book: *land rights* and *land tenure* refer to social relations regarding rural lands, whereas *property rights* refers to rights that are associated with immovable property, usually in urban or peri-urban areas. Generally speaking, the term *territory* can refer either to an official jurisdiction that has not yet become a state or a province of a country, or to a land area that has been historically linked to certain groups (for example, ethnic or religious groups). In this book, however, *territory* is used to refer to a subnational portion of a country that is politically or culturally distinct from the rest of the country.

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and the exploitation of land-based resources (such as diamonds or timber) to fund conflict.

TENURE SECURITY

Security of tenure is one of the most important objectives of land administration, not only in post-conflict situations, but also in the context of ordinary development. The development or restoration of a coherent system of land management can revitalize the credibility of government institutions and promote the rule of law: moreover, authoritative guarantees of tenure security have proved to be particularly important in ensuring investment in and productive use of land resources (World Bank 2003). The achievement of tenure security for internally displaced persons and refugees has also been identified as a key means of addressing conflict-related displacement (Williams 2011b).

At its most fundamental, tenure security concerns the predictability of property rights. While it is often assumed that such security implies ownership of private property, homes and lands can be occupied or used in a variety of ways that are deemed “secure”—through rent, leasehold, freehold, conditional freehold, transient rights, and a number of other collective and communal arrangements. While private property ownership is the form of tenure security that is most familiar and widespread in the developed world, it is only one of many forms of tenure that are capable of providing security.

Legal security of tenure—and its attendant positive economic and social benefits—is derived from (1) a set of rules that are clear, known to those who are affected by them, and justiciable, and (2) a legitimate administrative framework, which may be traditional, statutory, or customary (UN-HABITAT 2001). In essence, households and communities enjoy tenure security when they are protected from involuntary removal unless exceptional conditions apply, and then may be removed only through known, objective, nondiscriminatory proceedings that meet procedural requirements and are reviewed by an independent body (UN-HABITAT 2001).⁶ The precise form that tenure takes is less important than the degree of security conferred through the clarity and effectiveness of the applicable rules.

In post-conflict environments, however, tenure security can be both highly complex and highly uncertain. In post-conflict Rwanda, for example, policies that forced several parties who claimed the same property to share the land violated constitutional protections but were implemented nonetheless, out of sheer expediency (Bruce 2013*). In other cases, including post-conflict Liberia, both statutory and customary rules and institutions intended to provide tenure security have been discredited, giving rise to conditions of radical insecurity, in which neither legitimate replacement norms nor institutions exist (Corriveau-Bourque 2011).

⁶ The cross-cultural applicability of the concept of tenure security is evidenced by the breadth of support for its inclusion in the UN-HABITAT Agenda (UNGA 2001, 2002a, 2002b).

THE PROSPECT OF RENEWED CONFLICT

As noted earlier, after the end of armed conflict—especially prolonged civil conflict—affected populations quickly begin to seek access to land and land-based resources. Given the number of people often involved in conflicting claims, access to land and resources can quickly become a predominant concern. In El Salvador, for example, the vagueness of the 1992 peace accords with regard to local land tenure contributed to conflicting expectations; ultimately, land became a sticking point in the peace process, delaying demobilization and impeding the implementation of the land-related measures envisioned by the accords (Corriveau-Bourque 2013*). After the end of Mozambique’s civil war, confusion about the resolution of land tenure disputes undermined the peace process (Unruh 2002). And in Iraq, since the 2003 invasion of the Allied Coalition, the unresolved property claims of displaced persons have fueled ongoing insurgency movements (Stigall 2013*), in a scenario similar to that seen in a number of other conflict-affected countries.

In countries subject to recurrent conflict, land tenure can play a significant role in the nature of conflict. In Somalia, for example, sections of the 1973 Unified Civil Code that abolished traditional clan and lineage rights to the use of and access to land and water resources led to significant grievances and ultimately contributed to the civil war (Hooglund 1999; Sait 2013*). In Liberia, land management continues to be contested and problematic: mismanagement of the dualistic system that regulated statutory and customary approaches to tenure led to widespread land grabbing and to the transfer of land to foreign companies through concessions, fueling the social tensions that had preceded the conflict (GRC 2007). And by 1990, when civil conflict broke out, the legal mechanisms for acquiring land deeds, especially in areas under customary regulation of tenure, had become controversial (Corriveau-Bourque 2011). In Afghanistan, tensions over the control of land administration reflect the ongoing reluctance of local communities to submit to central government control (Stanfield et al. 2013*). In Iraq, the issue of whether property claims can be adjudicated under domestic law has called into question the legitimacy and capacity of the judicial system as a whole (Stigall 2013*). Finally, in Latin America, rectifying the inequitable pre-conflict distribution of land was often fundamental to revolutionary goals (Bailliet 2003; Barquero 2004).

ARMED CONFLICT AND CHANGES IN LAND TENURE

Armed civil conflict profoundly changes relationships among people—and, because land and property rights are a system of rights and obligations governing human relationships, tenure arrangements can change rapidly during conflict. Violence, displacement, the destruction of property, battlefield victory and loss, and food insecurity, as well as the breakdown of property-related institutions and norms, significantly alter land use, settlement patterns, and production systems.

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In essence, armed conflict reconfigures the network of social relations upon which all land and property rights systems depend, often yielding deeply problematic social relations regarding land. One of the most acute examples of such difficulties is in the Middle East, where Palestinians who sell land to Jewish individuals or interests are potentially subject to a death sentence (Unruh 2002).

The conflict-related reconfiguration of social relations is virtually inevitable after civil war and other internal armed conflicts. Physical displacement may be the first and most dramatic step toward the transformation of land and property rights. Displacement changes, ends, or suspends existing rights and obligations regarding land and property, especially where the basis of a claim depends on physical occupation or social position. In Afghanistan, for example, attempts to restore tenure security after rights and obligations had been put on hold or disrupted by dislocation face significant difficulties (Alden Wily 2003). In many areas of the world, social position depends on location. Thus, in Liberia and Sierra Leone, for example, displacement weakened established social hierarchies, undermining the authority of traditional leaders and creating opportunities for rivals to take their place. Displaced chiefs and other local leaders not only ceased being leaders in their new locations but found upon their return that their positions were no longer recognized or had been occupied by others.

As displaced people attempt to access or use land and property in new locations, competing claims can lead to tensions and other problematic outcomes. In post-conflict Mozambique, for example, migrants, largeholders (those who hold large areas of land), and local customary groups clustered in agronomically valuable areas, where substantial incompatibilities in the groups' approaches to claims, land use, and land access created obstacles to the peace process (Hanlon 1991; Minter 1994). In Somalia, as civil conflict intensified in the early 1990s, certain areas of the country were claimed by nomadic pastoralists under clan-based, transient-access rights arrangements; by small-scale agriculturalists relying on customary rights of occupation; by large-scale land interests accessing land under the aegis of state-sanctioned statutory instruments; and by armed groups seeking access and control through force (Unruh 1995).

Displaced persons often develop greater political awareness while away from their home areas—which may lead them, on their return, to challenge post-conflict authority structures and sources of legitimacy. Such challenges have the potential to broadly reshape social relations and increase political tensions. Roman Krznaric has observed, for example, that Guatemalan refugees exiled in Mexico developed greater political awareness than those who stayed behind (Krznaric 1997). While in Mexico, the refugees had the opportunity to advance certain interests—such as those of women, and of members of lower socioeconomic strata—that had been suppressed in Guatemala.⁷ In addition, some sectors of the returning Guatemalan refugee community developed organizational capacity and

⁷ It is worth noting that the increased political awareness affected different groups of refugees in different ways (Krznaric 1997).

appropriated and used a transnational language of rights (including both human rights and refugee rights) (Krznaric 1997).

In addition to changing land-related social relations, violent civil conflict reduces the power and penetration of state law in affected regions. Early in a conflict, general insecurity, the illegitimate diversion of resources by armed actors or opportunistic parties, the occupation of territory by opposition groups or by populations that are sympathetic to them, and the destruction of land records may cripple or render inoperable the state's land and property administration institutions in certain areas; at the same time, statutory rules may become unenforceable or readily subject to corrupt use.

Perceived injustices in the state's pre-conflict administration of land rights can also undermine the legitimacy of the state, both before and during conflict. In the run-up to the conflicts in Liberia and Sierra Leone, corruption and discriminatory land policies and practices that targeted specific groups had produced deep distrust among large segments of the population, who saw the state as having little legitimacy with regard to land rights (Richards 2005). Such views can range from simple disappointment in the state, to distrust of the state, to outright hostility toward the state. Such hostility can be especially powerful where a state has engaged in mass evictions, land alienation, corruption, or intervention in agricultural production. Such actions are particularly likely to cause grievances when they (1) discriminate against members of particular ethnic or religious groups and (2) lead to displacement. A sense of injustice regarding land and property can become especially problematic if it combines with other grievances that are not necessarily related to land, further decreasing the state's influence and legitimacy. As described at length by Stathis N. Kalyvas, the merging of land-related and non-land-related issues can lead to both acute and long-lasting conflicts (Kalyvas 2006).

When the social fluidity associated with conflict creates opportunity for aggrieved segments of the population to act, the land and property arrangements that result may be very different from those that preceded conflict. In Darfur, for example, Arab pastoralists were encouraged to take over the land of neighboring groups; moreover, they viewed such actions as legitimate, in light of their sense that they had historically been discriminated against with respect to the distribution of both land and political power (O'Fahey 2008).

For many in conflict-affected settings, identity can be (or can become) powerfully and intricately bound up in perceived rights to specific lands. Ethnic identity, in particular, may be linked to conceptions of land, homeland, or territory (Green 2013). When armed conflict is under way, some groups—particularly ethnic, religious, or linguistic groups that have been historically dislocated from their original lands, and that may have immigrated to urban areas—will seize the opportunity to advance the goal of self-determination, which can eventually become a prominent feature in the conflict and in the subsequent peace process. In such a scenario, the parties to a conflict will often assert entirely contradictory claims to land. In Darfur, for example, various parties to the conflict had differing

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definitions, concepts, and views regarding land, intensifying the intractability of the conflict and rendering land issues even more difficult to address in the course of negotiating the two peace accords that have been signed to date (Unruh 2012a).

THE EMERGENCE OF ALTERNATIVE TENURE APPROACHES

Civil conflict is fueled, in part, by perceptions of legitimacy and illegitimacy. When perceptions of legitimate authority change, the emergence of new social arrangements is almost inevitable. Such developments are particularly relevant to land because claims to territory and associated resources are based primarily on notions of legitimacy and authority. For example, some land claims may be asserted on the basis of historical occupation and supported by oral histories that are derived, in turn, from myths about how various peoples came to exist in the world and to predominate in a particular region (Comaroff and Roberts 1977). Such claims can gain renewed strength during conflict, when the notion of returning to territory from which a given group departed or was expelled, recently or long ago, can gain prominence. In some cases, conflict is viewed as a unique opportunity to regain ancestral lands before peace is consolidated. The return of the Turkmen (who had been relocated under Saddam Hussein), to Kirkuk, Iraq, during the 2003 war, is an illustrative case (HRW 2004).

With wartime ideologies and aspirations still fresh in the minds of many, disappointment in a newly reconstructed post-conflict state can manifest itself in the development of alternative local regimes for land and property. Jocelyn Alexander has noted, for example, that after the war of liberation in Zimbabwe, a grassroots reaction against the state emerged with regard to land and property (Alexander 1996). Local distrust of the state continued even after the insurgency won independence in 1980, because local chiefs who had been allied with the previous Rhodesian administration were deliberately excluded not only from the reconstituted state but also from its efforts to establish land policies.

Where there is ongoing conflict with no accord or clear victor, the substantial reduction (and sometimes complete loss) of state power can lead to a search for alternative sources of order. Such was the case in Somalia, with the emergence of sharia courts—and, arguably, in Afghanistan, with the emergence of the Taliban. Both the sharia courts and the Taliban implemented their own enforcement mechanisms, including those that applied to land and property rights (Unruh 2002; Sait 2013*).

Finally, in the wake of conflict, important features of land and property rights systems may be abandoned, either because conflict has rendered dispute resolution mechanisms unworkable, or because local inhabitants believe there is little point in adhering to rules that others are not following. In Liberia, for example, in the absence of fair land administration and viable, legitimate customary and statutory institutional arrangements for land dispute resolution, tenure systems suffered marked degradation, and wartime approaches—in which tenure was supported by rule of the gun—emerged (Richards 2005).

LAND LAW REFORM

Land-related legislative changes mandated in a peace process and encouraged by the international community are intended to capitalize on a window of opportunity by (1) addressing grievances related to land administration, (2) promoting social change, and (3) aiding in post-conflict recovery and reconstruction. In both Liberia and Sierra Leone, where the inability to gain access to land had led many young men to join insurgent militias, post-conflict legislative changes were specifically designed to address the authority wielded by chiefs and elders, who had traditionally maintained their power—in part—by preventing young men from gaining access to land (Richards 2005).

Legislative changes can be profoundly out of step, however, with the emerging realities of land and property in post-conflict situations. New or modified legislation is typically superimposed on customary rights and obligations that can be stronger or more binding than the new or revised laws, given (1) the questionable legitimacy of a government that may have been associated with only one side of the conflict, (2) the general weakness of post-conflict governments, and (3) the lack of governmental capacity to implement and enforce the new or modified laws. In addition, relationships created and maintained during conflict to regulate property, land, and territory may be significantly stronger than any new norms that emerge in the context of a fragile peace and a war-weakened state. The relative strength of customary norms in comparison to new statutory law can be particularly pronounced among semiliterate, war-weary populations, and where mechanisms for disseminating and enforcing new laws are weak or nonexistent (Unruh 2002).

Nevertheless, the disconnect between legislative changes and reality is usually temporary and can subside as the state strengthens its capacity to effectively and legitimately assert itself. Moreover, a state that engages with or absorbs preexisting or conflict-derived arrangements regarding land, property, and territory is more likely to succeed in gaining legitimacy and authority. If the state attempts to outlaw such arrangements, the effort to use legislation to change social relations may fail or have unexpected outcomes—such as the creation of a black market in land—that can undermine peacebuilding.

In post-conflict Angola, the rapidity with which the government moved forward with recovery led to problematic reforms of the land law. As Allan Cain describes in this book, the haste with which Angola's post-conflict land law was formulated may explain its subsequent failure: in what was perhaps the quickest production of new land legislation in any post-conflict country, a draft of the new legislation was released in July 2002, just a few months after the official end of the conflict (Cain 2013*).

In light of the short time that had been allotted to revise the law, the Portuguese lawyers who guided the drafting process had simply imported numerous components of Portuguese land law; as a result, the new law failed to address the realities, needs, and problems of the post-conflict Angolan population (Cain 2013*). Although the government did invite public consultation on the 2002

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draft, it was unrealistic to expect meaningful input: in addition to the fact that the population was suffering from ongoing food insecurity and impoverishment (and therefore unlikely to be able to focus on public policy issues such as land legislation), the consultation also occurred before the return of displaced persons, and therefore failed to obtain adequate information on the intersection of the new law and the land problems that emerged during and after the return of the displaced.

Liberia, in contrast, has spent years attempting to develop a process that will yield a viable land law. Although there may be some value in passing or amending land laws sooner rather than later, Liberia does appear to be better off than Angola: not only is the process that Liberia has undertaken much more inclusive, giving voice to different sectors of society, but the Liberian government is also making a genuine effort to address serious land problems.

In sum, it is not necessarily better to create a post-conflict land law quickly, and doing so is arguably worse if the law fails to address post-conflict problems—which is extremely difficult to do within a short time frame. The lack of a land law years after the end of a conflict can be managed, as long as the populace sees that an inclusive process is under way, and careful use is made of other legal instruments, including decrees and legal rulings, to deal with large problems or categories of problems.

URBAN AREAS

Post-conflict property issues in urban and peri-urban areas deserve particular mention. Conflict-affected people whose homes have been destroyed, who are fleeing fighting in rural areas, or who are simply seeking food and services that are no longer available or reliable in their region of origin often occupy land plots, homes, and commercial properties on the fringes of urban areas, fueling the growth of squatter communities. Following conflict and before the identification or preparation of areas for resettlement, attempts to bring order to urban areas often involve evictions. When the users of such property make claims to remain there on the basis of current occupation, the threat of significant unrest arises. After the conflict in Liberia, for example, properties in and around Monrovia were occupied by squatters. The government's inability or unwillingness to evict the squatters led the original landowners to threaten eviction (Williams 2011a; Unruh 2009).

INTERACTIONS BETWEEN EFFORTS TO RESOLVE TENURE ISSUES AND OTHER PEACEBUILDING ACTIVITIES

In post-conflict situations, the potential for adverse interactions between the resolution of tenure issues and other components of peacebuilding underscores the importance of dealing effectively with land and property rights. In Afghanistan, for example, the interaction of land rights and road reconstruction has led to land grabbing and increased violence, both of which threaten peacebuilding gains.

The land grabbing has its origins in large-scale dislocation, the increasing value of land close to roads (and the failure by planners to properly understand the impacts of road reconstruction in land value), and a governance environment in which both corruption and violent conflict (including the widespread use of improvised explosive devices) are pervasive (Unruh and Shalaby 2012).

So far, neither the Afghan government nor the international community has been able to manage the problem of widespread land seizures. All nine provinces where the percentages of government-seized agricultural land are highest lie along the largest road rebuilding project, known as the Ring Road. In three of these provinces, between 80 and 90 percent of the land area has been subject to land grabbing (Helmand, 90 percent; Nangarhar, 80 percent; and Nimroz, 80 percent); in three other provinces, more than 100 percent of the land has been grabbed (Baghlan, 110 percent; Kandahar, 111 percent; and Logar, 190 percent)—indicating that the land has been grabbed repeatedly (Reydon 2006).

A broad trend toward large-scale acquisition of agricultural land also has important implications for post-conflict situations, as the growth of commercial investment (frequently encouraged as part of peacebuilding) intersects with land issues. Countries such as Cambodia have provided early indications of the risks attendant upon development schemes that promote foreign investment through long-term land leases and concessions established without consultation, compensation, or even adequate notice for local residents (Williams 2013b*). Concerns about such actions have led to an ongoing policy debate that has questioned the potential benefits of such investments (including jobs, revenues, and the transfer of skills and technology) and revealed the associated risks (such as corruption, the expulsion of subsistence farmers from their lands, and the exhaustion of the soil) (Cotula et al. 2009; von Braun and Meinzen-Dick 2009; Zagama 2011; Deininger and Byerlee 2011). Human rights advocates, such as Olivier De Schutter, have long expressed concerns about this trend (De Schutter 2011); and recently, many development practitioners have questioned its risks as well, particularly with respect to post-conflict or otherwise fragile countries. But the phenomenon shows no signs of slowing down in the near term—as is indicated, for example, by reports that nearly one-tenth of the land in South Sudan had already been promised to investors before the country's independence (Deng 2011).

Angola serves as an example of the problematic intersection of land rights recovery and landmine clearance, two peacebuilding priorities that occur on the same lands, at the same time, and for the benefit of the same people, but are undertaken separately. In Angola, this intersection led to land grabbing, lack of access to areas adjacent to mined and demined areas, corruption in land administration and markets,⁸ and obstacles to the return of refugees and internally displaced persons (IDPs) (Unruh 2012b).

⁸ Corruption in land administration usually relates to fraudulent claims (altered or false deeds and titles), whereas corruption in land markets has to do with transactions involving deception, coercion, or bad faith (including selling the same parcel of land multiple times).

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Post-conflict Sierra Leone exemplifies the sometimes negative interactions between the post-conflict priorities of reconstituting land rights and ensuring food security. In this case, landholding lineages retained their rights to land within chiefdoms but were worried that renting out land for agricultural purposes to IDPs, excombatants, and migrants who were willing to farm it might lead the renters to make permanent claims on the land. The fear was so great that many lineages did not allow renters on their land at all—leaving a significant portion of the population lacking secure rental access to land and creating large-scale unemployment in rural areas. The enforced idleness of a great deal of arable and previously cultivated land also led to extreme food and livelihood insecurity in both urban and rural areas (Unruh 2008).

The interaction between multiple land tenure regimes, each of which may be unproblematic on its own, can exacerbate tensions in post-conflict situations. In particular, tensions over land rights between pastoralists and agriculturalists in a number of conflicted-affected countries—including Afghanistan, Somalia, and Sudan—highlight the need to manage such interactions better and more deliberately after conflict (Alden Wily 2013; Stanfield et al. 2013*; Flint and de Waal 2008; Markakis 1993).

ADDRESSING THE CHALLENGES

The twenty-one chapters in this book examine the critical role of land and property in post-conflict peacebuilding, describing experiences in seventeen countries (see figure 1) and drawing on the experiences of many more. The twenty-five authors of these chapters include practitioners, field researchers, policy makers, and scholars with firsthand experience in the countries and regions they write about. Some chapters examine specific countries, including Afghanistan, Angola, Bosnia and Herzegovina, Burundi, Cambodia, El Salvador, Indonesia (Aceh), Iraq, the Philippines, Rwanda, Sudan and South Sudan, Tajikistan, and Timor-Leste. Others take a more thematic view, examining issues such as titling, legal and institutional reform, laws and policies, land registration systems, Islamic and customary law, land and property restitution, land conflicts and conflict resolution, peace negotiations, post-conflict displacement and reintegration, and international standards and the role of the international community.

The book is divided into five parts. Part 1 consists of two chapters on peace negotiations. The first examines Sudan and South Sudan, and the second the Philippines and Mindanao. These two chapters describe the challenges and opportunities presented by various approaches that have been used to address land issues through peace negotiations; they also highlight the complexity of including land issues in peace negotiations and the difficulties involved in implementing negotiated resolutions.

The six chapters in part 2 explore various aspects of managing the return of refugees and displaced persons, who often number in the hundreds of thousands or even millions. Two chapters examine frameworks that have been used to address

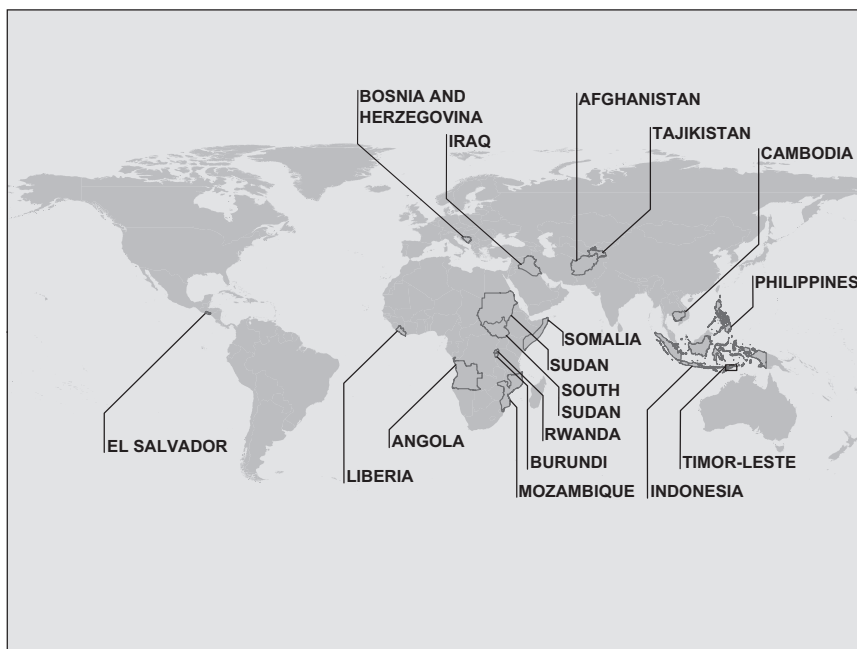


Figure 1. Post-conflict and conflict-affected countries from which lessons have been drawn in this book, either through case studies or broader thematic analyses

displacement and dispossession of land and property, and four chapters examine specific experiences from Angola, Bosnia and Herzegovina, Iraq, and Rwanda.

Part 3, which consists of seven chapters on land management, explores measures that can provide consistent leverage in resolving conflicts and managing the problematic and often volatile land-related issues that emerge in post-conflict situations. Among the tools and techniques examined in part 3 are those that have been used to strengthen capacity for protecting housing, land, and property rights; resolving land disputes; building cooperation; and engaging in fair and sustainable land relations in post-conflict situations.

Although tools and techniques for managing land in post-conflict situations are essential, they must be backed up and given legitimacy by legal means. The five chapters in part 4 focus on laws and policies, emphasizing the importance of revising land and property laws after armed conflict in order to ensure a durable peace. The chapters explore land disputes; legal pluralism, including customary and Islamic law; and approaches to developing, revising, and implementing land-related policies and legislation capable of addressing housing, land, and property rights.

Part 5, a concluding chapter for the entire book, distills the lessons of the previous chapters, placing them within the broader context of the literature on

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post-conflict land management and reform. The book emphasizes the importance of aligning land and property interventions with other peacebuilding priorities; to this end, such interventions must be assigned priority and sequenced so as to reflect the lessons of past experiences.

Taken together, the chapters in this book offer a wide-ranging look at both successes and failures in efforts to address land and property rights in post-conflict situations. As the chapters illustrate, the onset of peace may add new urgency to the efforts of many rural resource users to claim or reclaim their rights to land. Wartime experiences involving land may also merge with land-related causes of conflict, increasing competition and confrontation over land. With an institutionally debilitated and war-weary state unable to provide effective, legitimate recourse for claimants, such competition and confrontation can spark a return to armed conflict. But as the contributions to this book also illustrate, appropriately targeted and supported interventions can become powerful deterrents to the resurgence of conflict.

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