

CONFLICT AND HOUSING, LAND, AND PROPERTY RIGHTS

Housing, land, and property (HLP) rights, as rights, are widely recognized throughout international human rights and humanitarian law and provide a clear and consistent legal normative framework for developing better approaches to the HLP challenges faced by the United Nations and others seeking to build long-term peace. This book analyzes the ubiquitous HLP challenges present in all conflict and postconflict settings. It will bridge the worlds of the practitioner and the theorist by combining an overview of the international legal and policy frameworks on HLP rights with dozens of detailed case studies demonstrating country experiences from around the world. The book will be of particular interest to professors and students of international relations, law, human rights, and peace-and-conflict studies, but will have a wider readership among practitioners working for international institutions such as the UN and the World Bank, non-governmental organizations, and national agencies in the developing world.

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Cambridge University Press
978-1-107-00506-8 — Conflict and Housing, Land and Property Rights
Scott Leckie, Chris Huggins
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A HANDBOOK ON ISSUES, FRAMEWORKS,
AND SOLUTIONS

SCOTT LECKIE

Displacement Solutions, Geneva

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CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
 One Liberty Plaza, 20th Floor, New York, NY 10006, USA
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia
 314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi - 110025, India
 79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107005068

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First published 2011

First paperback edition 2013

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging in Publication data

Leckie, Scott.

Conflict and housing, land, and property rights : a handbook on issues, frameworks, and solutions / Scott Leckie, Chris Huggins.
 p. cm.

Includes bibliographical references and index.

ISBN 978-1-107-00506-8 (hardback : alk. paper)

1. Postwar reconstruction. 2. Postliminy. 3. Refugees – Legal status, laws, etc. I. Huggins, Christopher. II. Title.

KZ6785.L43 2011

341.6'7-dc22 2010043980

ISBN 978-1-107-00506-8 Hardback

ISBN 978-1-107-63604-0 Paperback

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For those who believe in the promise of HLP rights

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Opening Note and Acknowledgments

The authors of this handbook have been active in the field of housing, land, and property (HLP) rights and conflict since the Balkan wars of the 1990s. Since that time, we have worked in a range of countries enduring or emerging from conflict, including Albania, Bosnia-Herzegovina, Burma, Burundi, Cambodia, DR Congo, Georgia, Kenya, Kosovo, Nepal, Palestine/Israel, Rwanda, South Africa, Sri Lanka, Sudan, Timor Leste, and elsewhere. Based on these field experiences and work by others throughout the growing field of HLP rights, we have prepared this book to provide a wider public with the lessons learned over the past two decades about how HLP rights issues are intimately linked with conflict in a multitude of ways.

This handbook is designed to assist students, academics, field researchers and consultants, NGO advocates, UN officials, local and national government officials, and others to better grasp the wide spectrum of issues that comprise HLP rights within the context of conflict and postconflict peacebuilding.

The complexity of the issues involved and their invariably unique local manifestation and characteristics are core elements of HLP processes that have led to these issues often being placed outside the central causes, consequences, or cures of violent conflict. However, after decades of only peripheral attention by peace-makers and those engaged in acts of nation building and reconciliation following wars, in recent years, there has been a very discernible advance in the global seriousness accorded to HLP issues. This has resulted in a far greater understanding of how HLP abuses can lead to conflict, how the deprivation of HLP rights is an inevitable outcome of every violent conflict wherever it may occur, and, finally, how addressing and resolving HLP issues must form a key piece of the larger peacemaking and peacebuilding frameworks.

In putting together this book, we have reviewed hundreds of books, articles, reports, and media analyses of the vast array of HLP issues linked to conflict. Although we draw on many of these in the chapters that follow, we could only place excerpts of a small cross section of these within the book itself, though we have included a

reasonably extensive bibliography at the end of each chapter for use by those seeking greater degrees of detail on the issues concerned.

We have designed the book to be user-friendly, thought provoking, and accessible. In addition to overviews of the key themes and excerpts from works on HLP rights, we have included questions for discussion and contemplation at the end of each chapter. Several practical exercises designed to promote creative, concrete, and solution-oriented thought for eventual practical application to real-life HLP challenges in the field are included as well.

We hope this book is useful to readers and that it at least partially answers the key questions concerning HLP rights and conflict. We would be very grateful to receive any comments or critiques that would make the book more readable, user-friendly, or comprehensive.

The editors are grateful to a wide range of people and institutions that helped bring this book to fruition. We would like to first thank the Swiss Federal Department of Foreign Affairs, in particular Pietro Lazzeri, for providing the funding required to complete this work. We are also thankful to our publisher, Cambridge University Press, in particular John Berger who has been a solid supporter of work on HLP issues for several years.

We are humbled and honored to have been able to work with many extraordinary colleagues throughout the world, and for the wisdom and insights provided to us by the many victims of HLP abuses in conflict zones in Africa, Asia, and Europe with whom we have been fortunate enough to exchange experiences over the years. We acknowledge all of your unique contributions to our understanding of the HLP themes addressed in this book in indescribable ways. We are also deeply appreciative to all of the authors from whose various landmark works we were able to excerpt.

Special thanks are due to Dan Lewis of UN Habitat who is not only a great human being at the forefront of UN action in support of HLP rights, but someone who was also kind enough to prepare the excellent foreword to the book. Additional thanks are owed to Ezekiel Simperingham, who assisted greatly in bringing the book to fruition.

Finally, to Sheila and Siddhartha in Ottawa and Kirsten and Pali in Rye, we hope you know we couldn't have done it without you!

Scott Leckie
Chris Huggins

Foreword

Dan Lewis

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Recognizing individuals' rights to housing, land, and property (HLP) seems one of those elephants in the room that no one mentions – for good reason. However, in the relative quiet of our own homes, classrooms, and offices, where these rights are taken for granted, and even in the chaos of a camp for displaced persons off in the Darfur hinterland, the understanding that, after human life, these represent the majority of loss for every displaced person has been limited. Even less understood is the recognition that not finding the means to address these losses is a critical component undermining sustainable peace – globally.

In late 2003, following a critical review of several postwar initiatives to address restitution of lost HLP rights, a small cadre of very diverse professionals began a campaign to raise awareness and build momentum for the integration of housing, land, and property rights protection and restoration into the UN system and across the international humanitarian aid community. At the same time, several institutions, led by Sergio Paulo Pinheiro, the UN Special Rapporteur on Housing and Property Restitution from 2002 to 2005, began work on what in 2005 would be a seminal outline of principles, now referred to as the Pinheiro Principles, defining rights and obligations of states to address losses of these rights through unlawful or arbitrary means, followed by expanded work by the Internal Displacement Monitoring Centre on monitoring compliance with the 1998 Guiding Principles on Internal Displacement. Finally, by late 2008, following the UN's Humanitarian Reform Review process, the Inter-Agency Standing Committee representing all major humanitarian agencies recognized the gap in humanitarian coordination caused by displaced populations' loss of housing, land, and property rights and assets as a primary barrier to durable solutions to humanitarian crises, and established several cross-cutting fora to address these issues.

Progress? Certainly. The challenge now is to expand what remains a very small professional community with the vision and skill to correctly outline and begin to address the plight of those in particularly protracted displacement situations,

whether as refugees or internally displaced persons (IDP). Focusing solely on land rights, for example – the range of professional expertise involved in addressing land tenure, land use, adjudication, dispute resolution, and administration – all elements of building secure rights of occupancy and use already spans from the lawyer to the surveyor, the politician to the farmer, and the planner to the village elder. Organizing, programming, and resourcing HLP-based interventions demand a combination of all of these and more when considering the built environment and criminal and civil justice systems.

There is new dialogue emerging looking at a finer weave of threads resulting in displacement and loss of rights that demand additional areas of expertise – the need to draw both the scientific and political communities into discussions of displacement due to sea level rise in small island states; and the plethora of intrastate secessionist agendas in former Yugoslavia, Georgia, India, Sudan, and most recently in the Catalan areas of Spain, to name only two diverse vectors of displacement, ultimately with the same consequence for displaced families.

Further, in postconflict environs, the operational terrain is highly politicized, often criminalized, and frequently driven by victors or elites at the expense of displaced and otherwise disadvantaged populations. This is not simple stuff – and worse, it is never quick.

However, failure to act – as seen in many past and recent situations (e.g., Nepal, East Timor, Colombia, Kenya, Uganda, Sudan) – inevitably leads to increased risk of renewed conflict as people, frustrated by inability of their government to address their plight, take matters into their own hands. There are cases (Myanmar, Chagos Island) where even without open conflict – for example, where forced displacement of certain populations either as a consequence of “development” projects or for other, less transparent, reasons – an early intervention could avert conflict. Of course there are others (Bosnia and Herzegovina, Kosovo) where restitution programming has produced durable solutions, and these have consequently proven a good learning platform for new approaches, dialogue, and advocacy.

According to the UN High Commissioner for Refugees, there are currently 34 million “people of concern” (refugees, IDPs, asylum seekers, and stateless persons) in seventeen different regions around the world. At the same time, there are only one or two operational interventions (e.g., DR Congo, Colombia) that recognize the need for strategic incremental engagement and the importance of building confidence of stakeholders, that a range and hierarchy of rights exists in different places and times, understand what a soft-systems approach is, and think long term while acting short term.

This book leads the reader through the issues, past the legal resources, across several case studies of best and not-so-good practices, and into the staging area for

action. I encourage those studying in this important field to engage fully and to contribute to a new professionalism integrating the multiple strands of technical and social interventions that support the (re)acquisition of defensible rights to HLP for those without the capacity, the willing participation of their own governments, or the financial means to do so on their own.