

Cambridge University Press & Assessment  
978-0-521-88823-3 — Housing, Land, and Property Rights in Post-Conflict United Nations  
and Other Peace Operations  
Edited by Scott Leckie  
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**PART**

**I**

**INTRODUCTION**

## 1

**United Nations Peace Operations and  
Housing, Land, and Property Rights in  
Post-Conflict Settings\***

From Neglect to Tentative Embrace

Scott Leckie

The rather imperfect track record of United Nations peace operations in post-conflict peacekeeping and peacebuilding initiatives, combined with the emergence in recent years of several new institutional arrangements within the UN, such as the new Peacebuilding Commission, have led various observers to suggest the need for improved policies on how to best address the many complex challenges that confront the UN and other institutions in keeping and building a sustained peace in countries emerging from conflict.<sup>1</sup> Some have called for the development of policies to address the restoration of the rule of law, the judiciary and transitional codes of criminal procedure, while others have sought to improve UN peace operation performance by addressing the unintended consequences of these operations.<sup>2</sup>

\* This chapter draws from an earlier paper prepared by the author at the request of the UNHCR entitled *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework*, published in the *Legal and Protection Policy Research Series* by the Department of International Protection of the UNHCR in March 2005 (PPLA/2005/1).

<sup>1</sup> See, for instance, *Honoring Human Rights – From Peace to Justice: Recommendations to the International Community* (2000) (Alice H. Henkin, ed.), Aspen Institute Justice and Society Program, Queenstown, MD; *Brahami Report – Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects* (A/55/305–S/2000/809) 21 August 2000, United Nations, New York; Inter-Agency Standing Committee (2002), *Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action – Programmes & Practices Gathered from the Field*, IASC, Geneva.

<sup>2</sup> Hansjörg Strohmeyer (2001) “Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor” in *American Journal of International Law*, vol. 95, p. 46. See also *Unintended Consequences of Peacekeeping Operations* (2007) (C. Aoi, C. de Coning, and R. Thakur, eds.), UNU Press, Tokyo.

This book, by contrast, explores a series of challenges found within all conflict and post-conflict settings, but which have only recently begun to receive the structural attention they deserve. Namely, this volume examines how and the extent to which various UN and selected other peace operations have (or have not) incorporated housing, land, and property (HLP) rights competencies within the design of the operations concerned, and in the implementation of the relevant peace agreements involved. In so doing, it provides an overview of some eleven (mostly, but not exclusively, UN-led) peace operations carried out from 1990 onward, including operations in Cambodia, Kosovo, East Timor, Solomon Islands, Bougainville, Afghanistan, Burundi, Rwanda, DR Congo, Iraq, and Sudan. An additional chapter addresses the local housing impacts of UN peace operations and what could be done to reduce these in future UN peace operations. The concluding chapter lays out a series of proposed policy reform measures designated to promote consistent and comprehensive approaches to HLP policy-making in the design and implementation of all future UN peacebuilding and peacekeeping operations.

To achieve this latter aim will neither be easy nor necessarily straightforward. Historically, HLP issues – though clearly apparent in every conflict – have not figured prominently in the post-conflict activities of the UN or in the peace processes that invariably precede them.<sup>3</sup> Of the seventeen UN peace operations currently underway (which includes missions led by the Department of Peacekeeping Operations [DPKO], the Department of Political Affairs [DPA], and the Peacebuilding Commission), none were designed to ensure systematic attention to HLP issues and have the human and financial resources in place to effectively address HLP concerns in a comprehensive manner. While *some* past UN missions (including those rare cases when the UN exercised transitional governing functions, such as those in Kosovo and East Timor) developed capacities for addressing *some* HLP challenges, most such missions either did not address these issues at all, or did so in an ad hoc, partial, and short-term manner. While there is now growing momentum from many UN agencies, civil society groups, and national governments to change course and begin to more systematically enshrine HLP competencies in these

<sup>3</sup> See Scott Leckie and Deborah Isser (2008), *Peace Processes and Housing, Land and Property Rights: Tips for Peace Mediators*, U.S. Institute for Peace, Washington, DC.

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operations,<sup>4</sup> the traditional failures to address questions of housing, land, and property have left an indelible mark in many countries that could arguably have been far better served following their respective conflicts if the difficult HLP challenges facing the international community had been treated without such trepidation.

The recognition by the international community that HLP rights are critical elements in post-conflict peacebuilding is, at the same time, steadily on the rise.<sup>5</sup> And yet, although sporadic attempts have been made to address these issues within post-conflict settings, HLP questions are still generally excluded from the central planning objectives of peacebuilding, most publications on post-conflict peacebuilding still ignore questions relating to HLP rights, and of the nearly twenty UN peace operations currently in place, employing more than 90,000 soldiers, police, and civilian personnel, no more than a small handful of staff are involved in any HLP activity. All of this is despite the fact that HLP issues arise in every conflict and constitute challenges facing all countries engaged in post-conflict recovery. Bridging this gap will be a major challenge in the years to come.

**The Ubiquity of HLP Issues in Conflict and Post-Conflict Environments**

No conflict, notwithstanding its nature, or how small or short in duration it may be, is without some degree of crisis within the housing, land, and

<sup>4</sup> See, for instance, USAID – Office of Conflict Management and Mitigation (2004), *Land and Conflict – A Toolkit for Intervention*, USAID, Washington, DC. “People have fought over land since the beginning of recorded history. Population growth and environmental stresses have exacerbated the perception of land as a dwindling resource, tightening the connection between land and violent conflict. Land is often a significant factor in widespread violence and is also a critical element in peace-building and economic reconstruction in post-conflict situations” (p. 2).

<sup>5</sup> It is interesting to note that while official UN responses to HLP concerns in post-conflict settings are relatively new, the 1991 civil society initiative resulting in the *York Charter for Reconstruction After War* was ahead of its time in advocating for the HLP rights of those affected by conflict. The charter outlines nine entitlements of the civilian noncombatants suffering from war damage to their physical environment: (1) The restitution of his/her property or the equivalent. (2) The right to recover his/her personal possessions from an abandoned home. (3) The right to an appropriate temporary shelter. (4) The right to be consulted over the form of reconstruction. (5) The right to draw on skilled help in reconstruction where needed. (6) The repair and reconstruction of his/her dwelling in an ethnically sympathetic manner to standards no less than previously and with appropriate hygienic facilities. (7) The re-establishment of the local community in a manner no less adequate than before. (8) The provision of a means of livelihood and workplace. (9) The provision of essential community facilities in terms of medical support, water and fuel supplies, and drainage and waste disposal.

property spheres. Indeed, HLP rights issues are present in all conflicts and post-conflict settings, and their management by those engaged in peace efforts can often be decisive in determining the extent to which peace is sustained, and the degree to which measures of remedial and restorative justice are enshrined within post-conflict political and legal frameworks. In all conflicts, housing becomes scarce as homes are destroyed; available housing is often occupied by persons with no legal rights to do so; ownership and tenancy disputes between competing parties often emerge and turn violent; and, generally, the housing, land, and property sectors become a source of tension and instability. With habitable housing and land as two of very few assets available to people in post-conflict settings, problems of illegal occupations, squatting, and exploitative rent increases are common to all post-conflict settings. A brief sampling of some of the more prominent HLP challenges that emerge in countries enduring or emerging from conflict reveals the extent to which these concerns are indelibly linked to conflict and post-conflict recovery, including:

*The return of refugees and internally displaced persons* – Returning refugees and internally displaced persons (IDPs) are increasingly recognized as possessing housing, land, and property restitution rights to recover and repossess their original homes,<sup>6</sup> but which are routinely

<sup>6</sup> See, for instance, the 2005 “Pinheiro” *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, which expand and clarify further the restitution rights of all refugees and displaced persons. See, in particular, principles 2 and 10: *Principle 2. The right to housing and property restitution*: 2.1 All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal; 2.2 States shall demonstrably prioritise the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution... *Principle 10. The right to voluntary return in safety and dignity*: 10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including on physical, material and legal safety issues in countries or places of origin; 10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations; 10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue

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infringed, resulting in refugees and IDPs being unable to repossess and re-inhabit their habitual homes and lands in the aftermath of conflict.<sup>7</sup>

*Secondary occupation of housing, land and property* – The secondary occupation of housing, land, and property by persons without official rights to do so is common to all post-conflict situations, and can cause considerable tension in the aftermath of conflict.

*Residential HLP destruction and damage* – All conflict results in massive property and asset losses, and the large-scale damage and destruction of housing and land resources.

*HLP disputes* – As refugees and IDPs seek to reclaim their original homes, as lower income groups seek to find places to live, and as well-connected or otherwise powerful opportunists attempt to take advantage of the breakdown in law and order, serious HLP disputes can emerge, many of which can result in violence and greater insecurity.

*The absence of impartial housing dispute resolution mechanisms* – Post-conflict peace operations generally face a nonexistent, malfunctioning, or seriously overburdened judicial or dispute resolution system, leaving victims of HLP abuse without recourse to HLP remedies.

*Pre-conflict ownership and tenancy disputes* – Longstanding, pre-conflict HLP ownership and tenancy disputes can re-emerge in the post-conflict period and require resolution. In some instances, no clear title may have ever existed to the land or dwelling in question, while in others several people may place competing claims on the same piece of land or house.

*Discriminatory HLP laws* – Pre-conflict legal frameworks may discriminate against certain ethnic groups, women, and others and will require reform to ensure equal access to HLP resources and rights.

*Abandonment laws* – UN and other peace operations will also often face the consequences of arbitrarily applied or otherwise unfair housing abandonment laws that may lead to the arbitrary and illegal loss of rights over

durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property; and 10.4 States should, when necessary, request from other States or international organisations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons.

<sup>7</sup> See Scott Leckie (ed.) (2003), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, Transnational Publishers, New York.

homes and lands and which will often require formal reversal through the enforcement of restitution decisions.

*The destruction of ownership and tenancy rights records* – The confiscation or outright destruction of housing, land, and property titles; local housing and property cadastres; property registries; and other official records giving proof of ownership, occupancy, tenancy, and other residential rights accompanies most conflicts and complicates the implementation of restitution and other remedial measures.

*Mid-conflict housing privatization* – What were previously public/social housing resources are sometimes privatized during conflicts while occupied by secondary unauthorized occupants, often complicating restitution and other post-conflict HLP initiatives.

*Homelessness and landlessness* – The combination of conflict, displacement, destroyed housing, the absence of the rule of law, a dysfunctional economy, and other factors often lead to considerable levels of homelessness and landlessness within post-conflict environments.

*Insecure housing and land tenure* – In many conflict settings, within the private rental sector the legal position of tenants can be tenuous, and leave them open to harassment and threats of arbitrary eviction. In other instances, lower income neighborhoods, in particular informal settlements, may not possess recognized legal security of tenure rights despite having adverse possession rights based on long-term habitation.

*Abandoned housing, land, and property* – As people flee conflict and related human rights abuses, they are forced to abandon their housing, land, and property. Consequently, depending on the timeframe that peace operations arrive in post-conflict situations, they are likely to encounter a considerable number of abandoned properties that may require management and regulation by peace operations.

*Unadministered public/social housing units* – Public or social housing resources in post-conflict countries are often unadministered in the aftermath of conflict, given the absence of government and official bodies holding such responsibilities. In some post-conflict settings, the amount of social housing will be negligible, but in others it can be considerable and may require proper administration and management.

*The lack of appropriate land administration frameworks and policies* – Many countries emerging from conflict do not have effective land administration frameworks and policies in place that provide security to land

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users and clear regulatory arrangements that are both fair and equitable. UN peace operations can play a major role in improving and restoring the land administration framework.

*Land grabbing* – The arbitrary acquisition of housing, land, and property through land-grabbing is commonplace in post-conflict environments and requires the attention of UN peace operations;

*Parallel HLP systems within a single legal jurisdiction* – In many conflict countries in recent years, particularly in Africa, customary land arrangements govern some of the territory concerned, while statutory laws are in place elsewhere. Balancing customary and statutory HLP laws, within a rights-based context, is increasingly seen as another vital ingredient in building long-term peace.

As even this rudimentary elaboration of some of the key HLP issues arising in post-conflict environments clearly reveals, housing, land, and property challenges will arise in all such settings, and invariably involve much more than the most common peace operation response to HLP concerns – the emergency shelter provided by a tent or plastic sheet. The HLP challenges facing all post-conflict societies, in fact, are so extensive and so important in facilitating the emergence of sustainable peace that it remains remarkable that these issues have still yet to find a structural place within all UN peace operations.

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 that will invariably face the UN and others seeking to build long-term peace. The Universal Declaration on Human Rights; the Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; and many others all recognize formulations of HLP rights. Taking fully into account the manner by which international human rights laws treat housing, land, and property rights and incorporating these into the post-conflict policies of the UN is a fundamental challenge facing the international community in post-conflict peace operations.<sup>8</sup>

<sup>8</sup> See, for instance, how housing rights norms are elaborated under international human rights law as set out in “General Comment No. 4 on the Right to Adequate Housing” (1991), adopted by the UN Committee on Economic, Social and Cultural Rights.



To date, however, most attention to and perceptions of how and in which conditions people live in post-conflict settings – their housing, land, and property rights – have been reduced to the construction of refugee or IDP camps, the distribution of tarpaulins, or programs to restore refugee property rights – in other words, *shelter* approaches, rather than more comprehensive HLP approaches as evidenced by the various HLP manifestations of the conflicts listed above.<sup>9</sup> While these and other contributions are key aspects of the broader HLP rights equation, they address only a small portion of the numerous HLP *rights* concerns that can occur during complex emergencies, post-conflict reconstruction, and nation-building.<sup>10</sup> While a variety of reasons may explain this approach,<sup>11</sup> there remains a pressing need to ensure that whatever policies are pursued by UN peace operations within a given post-conflict operation are – at a minimum – not outwardly inconsistent with human rights laws (in particular the existing treaty obligations or national laws relevant to the country concerned), and that such policies

<sup>9</sup> A great variety of reports outline what the international community should be doing to better address the needs of people mired in acute emergencies or post-conflict circumstances, however, few address housing issues in anything other than a peripheral way. *Growing the Sheltering Tree* provides one of the better prescriptions by addressing both “shelter and site planning” as well as the need for “preventing and responding to arbitrary expropriation of property or discriminatory property laws” (Inter-Agency Standing Committee (2002) *Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action – Programmes & Practices Gathered from the Field*, IASC, Geneva). Most documents fail to go as far as this, and none adequately address housing *rights* concerns in an integral manner.

<sup>10</sup> That the international community rarely even uses the term “housing,” let alone “housing rights,” and instead uses the terms “shelter” or “property” to describe responses to the daily living conditions and housing issues confronting affected groups does not help. While apt in many ways, the term “shelter” itself assists in maintaining a reductionist view of HLP rights where all housing issues are reduced to either the provision of plastic sheeting or the restoration of property rights to returning refugees. HLP rights concerns are far broader than this.

<sup>11</sup> It appears that a combination of factors have inhibited the development of such policies in the past. Some of the key factors include a lack of understanding of the issues by the UN administrations involved; the reluctance of local political actors with vested interests in housing or land to support such initiatives; the perception by the UN that the HLP rights challenges facing them are simply too large to address; the complexities, scale, and historical nature of the problems involved; the financial costs associated with systematically addressing these problems; the perception that addressing these rights could potentially reignite the recently ended conflict; the lack of major donor support for encompassing approaches to housing, land, and property rights; and many others.

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are implemented in a consistent manner throughout all post-conflict operations undertaken by or supported by the United Nations.<sup>12</sup> The track record in this regard is far from perfect, but nonetheless more substantial than is commonly known.

Since 1990, UN and other major peacebuilding operations have been active in a range of countries including Western Sahara (MINURSO), Cambodia (UNTAC),<sup>13</sup> Guatemala (MINUGUA), El Salvador (ONUSAL),<sup>14</sup> Haiti (MICIVIH),<sup>15</sup> Georgia (UNOMIG), Mozambique

<sup>12</sup> Indeed, housing, land, and property issues are extremely complex and often difficult to resolve, let alone grasp, by UN and other peace operations. For instance, one author outlines the complexities in Bosnia-Herzegovina in the following terms: “The dilemma is extensive because of the massive scale of displacement, and because of the amount of land and assets involved. Secondly, it is complex because of the legal uncertainty which resulted, not only from the unlawful occupation of many homes by people without legal title; but also from the fracturing of a formerly socialist legal system created as part of a much larger state; as well as from the widespread destruction or dispersal of many pre-war land title records. Thirdly, the property question is sensitive for several reasons. From a personal perspective, displaced people forced to leave homes, villages, jobs and people which were central to their lives, were also traumatized by the loss of all of the physical and psychological security which a ‘home’ entails. Economically, property issues are sensitive because land is one of the few valuable assets left in a country whose infrastructure, industry, agriculture and other income sources were shattered. Moreover, questions of return and repossession of property were politically charged, because control of territory was a major part of the rationale for which the war was fought. By seeking to restore people to their homes, and thus reverse the effects of ‘ethnic cleansing’, the peace process could threaten the interests of those who had brought about the violence in the first place, and might foreseeably do so again” (Garlick, M. (2000) “Protection for Property Rights: A Partial Solution? The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) in Bosnia and Herzegovina” in *Refugee Survey Quarterly*, vol. 19, no. 3, pp. 66–67).

<sup>13</sup> See Chapter 2.

<sup>14</sup> ONUSAL’s activities were limited to monitoring some land issues and labour rights. See Brody, R. (1995) “The United Nations and Human Rights in El Salvador’s Negotiated Revolution,” *Harvard Human Rights Journal*, vol. 8, p. 153.

<sup>15</sup> “The [mandate] intentionally omitted economic, social and cultural rights. In a country as poor as Haiti, the choice had a serious impact on the daily work of the Mission’s human rights observers and frequently was a source of their frustration. The embargo impoverished already desperately poor Haitians. While human rights observers sought information about civil and political rights, the Haitians providing the information often had no money, food or medicine” (O’Neill, W. (1995) “Human Rights Monitoring and Political Expediency: The Experience of the OAS/UN Mission in Haiti,” *Harvard Human Rights Journal*, vol. 8, p. 111). In Haiti, one field team piloted a conflict resolution project addressing land conflicts and devoted one observer to monitoring land-related cases before the land courts, however, this was far from systematic. See also C. Granderson (1996) “Institutionalizing Peace: The Haiti Experience,” in *Honouring Human Rights – From Peace to Justice* (Alice Henkin, ed.), Aspen Institute, Queenstown, MD, p. 227.