

**AN IMMEDIATE MEASURES LAND
MANAGEMENT EVALUATION TOOL
FOR EMERGENCY THROUGH TO
RECONSTRUCTION POST-CONFLICT
SITUATIONS**

UN-HABITAT



Unedited version:

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Acknowledgements:

A mission was conducted to Kosovo from 19-31 October, 2003 by Clarissa Augustinus, Chief of the Land and Tenure Section, Shelter Branch, UN-HABITAT and Jaap Zevenbergen, an independent consultant based at Delft University of Technology, the Netherlands. The mission was initiated and funded by the Disaster Management Unit of UN-HABITAT. The report produced by the mission was peer reviewed by Paul van der Molen, Chair of Commission 7, Cadastre and Land Management, Federation of International Surveyors, and his invaluable suggestions were incorporated into the report.

The purpose of the mission was to review and assess the impact of the Kosovo Cadastral Support Programme against the primary objectives as articulated in the project document, as well as other UN-HABITAT activities in Kosovo with a view to:

- a. Extracting lessons on land management and tenure systems development in general through assessment of programme activities in respect to principles, processes and desired outcomes.
- b. Devising tools and procedures for the initiation of new land management and tenure programmes in post-conflict situations.
- c. Building broader tools for long term development of land management and tenure related programmes.
- d. Produce normative reports both for the KCSP donor support group in Kosovo, and UN-HABITAT's Disaster Management Programme, and Land and Tenure Section.

This report has been developed by a number of people using a range of sources. Firstly, it is based on experiences and lessons learned in Kosovo from the 2003 mission. Secondly, it has been further developed by Dan Lewis, the Kosovo Country Technical Adviser from 2000-2002 and now Chief, Disaster Management Unit, UN-HABITAT. Thirdly, lessons from Afghanistan, Somalia, South Africa, Uganda, Mozambique and Namibia have also been incorporated. The tool will be further refined over time as it is used in other post conflict situations. As it is likely that other post conflict situations will be less resourced than Kosovo, the pro-poor and affordable angle of this tool has still to be further developed.

This report is intended as a basis for UN-HABITAT to plan, resource and implement similar projects in future. It is also intended to be an immediate measures' land management evaluation tool for emergency through to reconstruction post-conflict situations, which considers the long term development of robust and appropriate land management systems.

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ACRONYMS

CBO –Community Based Organisation
CD –Computer disc
DMP –Disaster Management Programme
DPKO –United Nations Department of Peacekeeping Operations
EDM- Electronic Distance Measurement
EDP –Electronic Data Processing
GIS –Geographic Information System
GPS- Global Positioning System
IDP –Internally Displaced Person
IT –Information Technology
KCSP - Kosovo Cadastre Support Programme
LFA –Logical Framework Analysis
MOU – Memorandum of Understanding
NGO – Non Governmental Organisation
NSDI – National Spatial Data Infrastructure
UN –United Nations
UNDP-United Nations Development Programme
UNHCR –United Nations High Commission for Refugees
UNON –United Nations Office in Nairobi
UPS – Un-interrupted Power Supply

Introduction

The structure of the report consists of 3 major sections, namely emergency phase, reconstruction phase and conclusions. It is intended that the emergency and reconstruction phase sections form the immediate measures' land management evaluation tool. The key items or variables that are likely to need to be addressed are identified, however the prioritisation and configuration of the variables will differ between situations and countries. The conclusion draws together additional lessons and discusses the role of UN-HABITAT in future in such situations, indicating some of the adaptations that may be necessary in order to fulfil its mandate.

EMERGENCY PHASE

1. Place land conflict on core agenda of UN emergency operation

The Security Council resolution giving authority to the United Nations to undertake peace keeping operations in a country or territory should be written in such a way as to include the land problem, and even the land records, where this is a key part of the conflict. The conflict over land and property should then be integral to both the peacekeeping process, as well as form part of the peace keeping budget. Peacekeeping forces would have the responsibility of securing the land records as soon as possible, and protecting them from damage and alteration. Land related activities, which are often too politically sensitive for donors, would be ensured of financial support. Also, in certain circumstances, the UN peacekeeping forces would then be responsible for evicting criminal elements from public property. Most critically, the conflict over land and property would be formalised on the agenda of any interim government in which the UN had a role in the emergency phase.

UN-HABITAT should be brought in by UN New York and DPKO, as a specialised agency to:-

- Back up the peacekeeping operation.
- Undertake the restoration of the property system.
- Assist in the development of security of tenure in the country.
- Help to build law, order, stability and governance through these measures.

UN-HABITAT's role should be funded from the peace keeping budget, to ensure that this activity is a core activity.

In co-ordinating projects in countries in the emergency phase, UNDP assesses all projects in terms of their contribution to immediate peace and the stabilisation of the country. Proposals need to be written in terms of this framework.

Funding may be required from donors to fund projects during this period. Project proposals need to be formulated in terms of the emergency framework in regard to the cadastre, property rights, restoring land records, the development of a legitimate legal

framework and adjudication, the protection of women's land rights, and the need to show that early results can be delivered. Such early results include:- the handling of immediate land/property disputes, evictions, discrimination, the allocation of land use for temporary purposes, securing of the land records, supplying remotely sensed imagery (aerial photography and/or satellite photography) for de-mining, servicing and management of the emergency, supplying information to people who have lost their property rights, scoping the state of the land records, institutions and problems.

Some donors, under certain situations, may be open to funding of projects that will cover both the emergency and reconstruction period. Proposals should then be able to deliver outputs for both the emergency phase and reconstruction phase, with some outputs building from the emergency to the reconstruction phase. The development of land policy and the creation of a Stakeholders' Forum are not considered feasible in the first 12 months of an emergency.

Close links should be maintained with the UN peacekeeping structures through the emergency phase to ensure that they are fully briefed on the land and conflict situation.

2. Assess immediate land and property problems and user needs

As soon as the situation is sufficiently secure, one or more persons should visit the country/territory to assess the needs of the citizens in relation to land and property problems and security of tenure. This assessment should be made within the framework of the international human rights principles/conventions, particularly in regard to possible discrimination against women.

The type of land and property related user needs that are likely to be found are:-

- A need for immediate shelter where land is required for temporary occupation (e.g. returnees displaced by conflict).
- A need to rebuild houses which have been destroyed, or partially destroyed.
- The allocation of building permits to reconstruct destroyed houses, which permits need evidence of ownership of the land and agreement by the owner.
- Identification of abandoned houses/apartments and a management system to temporarily allocate these houses/apartments.
- Assistance to people evicted from their houses/land requiring evidence which shows their rights to the property
- Invasions of public land and property, which may be needed in the emergency and/or have symbolic value for the interim administration.
- Allocation of temporary land use rights for drawing water, harvesting etc.
- Allocation of temporary land use rights for peacekeeping/military interventions.
- Eviction of women, especially widows and children, by families from family property.
- Evictions and land/house invasions by one group against another group as part of the conflict.
- The informal and sometimes violent restitution of property taken during the conflict.

- Land information for the installation of services or the restoring of services.
- The theft and/or illegal alteration of land records describing users property rights.
- Emerging of previously unrecorded contracts and/or data, giving evidence of land rights, from parallel/informal structures.
- Minor warlords and/or gangs allocating land/properties –public or stolen from the rightful owners in terms of the registry records.
- People not having any security of tenure for one or other reason.
- A basic legal framework and administrative infrastructure to record disputes/claims, give information and/or assistance.

In addition to identifying user needs, a rough background of the country should be obtained in regard to land and property and the larger politico-economy issues. The country/territory and its land and property and conflict issues should be scoped as much as possible. This should serve as a context for addressing the user needs and even a rough guide can make a big difference to a land specialist with comparative country experience.

An initial institution mapping should be undertaken of land related institutions such as the surveyor general's or cadastral office, the (land) registry, the courts, municipal property offices, the national planning office, and the structure of government. This is an important aid to finding the land records and officials with knowledge, and for identifying the most useful point of intervention.

Information acquired should then inform the strategies and priorities adopted to address the situation, as well as the size and shape of the resource envelope (financial and human) needed. Due to the fluidity of the situation, it is very difficult to get an accurate early picture, especially in regard to the scale of a particular problem. It is possible that once more information is gained the initial analysis could change. Also, because of the fluidity of the operation and the need to deliver quickly, urgent matters will take precedence, and it will be almost impossible to structure and manage the situation. Instead it will be a matter of reacting to the situation.

3. Develop project proposal/s and obtain donor funding

UN-HABITAT is currently not a member of any of the UN based donor coordination bodies dealing with humanitarian issues. Consequently, the dispersal of humanitarian capital is entirely taken up by other UN Agencies. Further, UN-HABITAT does not currently employ a strategic resource mobilization plan lobbying bi/multi-lateral donors for necessary emergency deployment related to risk, disaster and post-conflict response.

Therefore, UN-HABITAT's Disaster Management Programme (DMP) has developed a strategic outline of activities which are relevant to the post-disaster/conflict agenda, and the DMP is actively pursuing resources and contacts within both the inter-agency fora, and with bi/multi-lateral donors.

Project formulation follows a set format for both the substantive and the financial elements; all field projects may benefit from project proposals that have successfully generated funding in the past, and these are available from DMP.

Institutional mapping, both for UN/NGO deployment and activities, and for those of donor representatives, is an immediate measure needed to ensure that project formulation processes integrate and generate support from both sectors, as well as the 'government' or counterparts.

4. Develop MOU/Grant Agreement with Government/UN

Where the counterpart/partner exists there is a need to establish formal agreement on the activities and methodology. This applies even when the partner is an occupying or custodial administration.

5. Emergency administrative procedures between field operations and UN-HABITAT

Given the need for rapid response to urgent needs in the fluid and often confusing immediate post-conflict (or disaster) period, it is not possible to follow the usual administrative procedures of the UN system and still achieve rapid results. UN-HABITAT and the United Nations Office in Nairobi (UNON) need to develop special administrative procedures to be followed in these field situations. Some of these already exist, and systems are in place within other UN Agencies (UNICEF, UNOPS, and UNHCR), and some have to be developed in the field in response to local conditions. These procedures should then become standard and all field staff should be trained in these procedures. The basic elements required are:

- Ready access to cash and cash reserves that can be deployed to purchase vehicles, security equipment and supplies, portable office equipment including computers and generators, cell phones, temporary accommodation, fuel, etc.
- Delegated authority to undertake procurement, recruitment of local staff, payroll for local staff, and establishing banking facilities either in-country, or nearby.
- Rapid recruitment of international experts and staff to undertake immediate measures planning, funding proposal formulation, and programme/project management.

6. Bring in core of international experts survey and registry

To initiate some of the earlier actions immediately after the conflict, a few core international experts will have to arrive as soon as possible in the post-conflict area. Their activities will initially focus on:-

- Retrieving and assessing the land records.
- Understanding the validity of the land records.
- Getting the registry and cadastral services to clients running again.
- Starting the land dispute resolution mechanisms.
- Informing the population of the above.

To undertake these activities will require expertise in the area of land records, both from the point of view of land registries, as well as cadastral registers and maps. The expertise for this ranges from legal-administrative to survey-technical and also includes an understanding of registration procedures, subdivision and consolidation, mapping and especially databases (IT). Depending on the country of origin, the experts should be land surveyors, cadastral staff, registry staff, specialised land lawyers/notaries/conveyancers or land administration experts. Although data recovery is very important in the first phase, there also needs to be expertise in the understanding of the legal side. This relates especially to issues associated with due processes mechanisms in regard to land and the assessment of legal evidence, to ensure that the value or worth of the legal evidence and data is correctly evaluated right from the outset.

Even though better results are obtained when these activities are undertaken as soon as possible after the conflict has ended, it is also important to have the reconstruction phase in mind from the outset. As much as possible, each step in the emergency phase in regard to land and property should also be creating building blocks for the reconstruction phase. This is because security of tenure rests on long term horizons.

International experts will be needed for the more holistic overview of the situation, as well as because of their independence from different groups who have been involved in the conflict. Local experts are necessary because of their knowledge of local procedures, likely storage facilities and the language. Their involvement is also a key building block for reconstruction.

7. Find the land records

Land and property related issues are often part, if not at the heart, of conflict, and therefore the land records are of vital importance:- to return to normality, for conflict management and dispute resolution and for the prevention of discriminatory or otherwise unfair practices. Finding the current land records is very critical in this situation (registry, cadastre, maps, possession lists, survey field records, text and graphic, digital backups, paper plans).

The land records can contain information that is in the interest of some parties, as well as information that is not in the interest of other parties. A dominant group losing power over an area might want to remove the land records with them when they withdraw, in order to have proof of the land rights situation, usually beneficial to them, which existed just before they withdrew from the area. They may also want to destroy earlier information from before their group was the major beneficiary of the system. Furthermore they might want to destroy copies of the up-to-date information to prevent the incoming group from being able to return to normality in land issues very quickly.

The group taking control immediately after the withdrawal of the previously dominant group is likely to have a particular set of strategies in regard to the land records that are still available. They may want to destroy the information on the situation just before their

arrival, which information was beneficial to the previous group. They might want to preserve older data from an earlier period, which data is beneficial to them. They also might want to alter the records they find in the land administration system in favour of their group. Such alternation may even be based on 'instant' tribunals, or on information coming from previously informal and/or parallel structures to government. Exiled or underground staff with appropriate skills might quickly take over the offices and land records, and either prevent abuse of the land records as much as possible, or actually be instrumental in changing the records to suit their purposes.

Any kind of group, or individuals, not in the position to do any of the above might either at random, or with foresight, destroy the land records, especially by burning down offices and storage facilities holding these records. Occasionally individuals or groups might remove land records from the offices or storage facilities and hide them, either with good or bad intentions.

Some of these processes can be prevented during the emergency phase. However to do so, the land records have to first be identified. Land records are usually found in a number of different places, depending on the institutional arrangements and regulatory framework in place. Certain records might be found at the courts or separate land registries. In some situations, these records can overlap with the textual part of the cadastre, which might be kept by a national, regional or local cadastral authority. Such an authority might be part of general fiscal or municipal structures, or stand on its own. The graphical part of the cadastre (boundaries) and the underlying survey documents might also be found at the cadastral authority offices or at a surveyor general's office or lands department. In some countries, certain private practitioners (notaries/conveyancers, surveyors) have (copies of) documents prepared by them before registration, but usually this will only cover certain cases within the area. This is why the institutional mapping exercise is critical in planning the recovery of land and property records.

The level of computerisation of the operations of land institutions is different in different parts of the world. Increasingly the textual part of the cadastre and/or the registry is being computerised. Occasionally the graphical parts will also have been computerised. Digital data is easier to copy, and there are likely to be copies of this data at specialised companies from the time of introduction of the computerised systems, or at specific back up facilities. Information from such sources is usually not up-to-date, but reflects the situation at a certain time (which can differ for different areas). Identification of digital copies or backups at EDP-companies will depend on local intelligence and/or the volunteering of such data by the companies.

In some countries the registry information may be stored on micro-fiche, on paper, or in electronic format, or all three, depending on the level and age of the information.

Unless the pre-conflict system is well documented, local experts are necessary to assist the international experts to identify all the different locations where certain subsets of the land records are to be found.

8. *Securing the land records –short, medium and long term*

Land records whose whereabouts have been identified should be secured as soon as possible. During the fluid, immediate post-conflict period it might be wise to physically secure the records. This should be done either by using security services to guard the premises where they are kept, or by moving them to more secure premises, such as international compounds. If records are available in digital form and the necessary equipment is still operational, a backup copy should be made and secured at an international compound. Where land records are in the hands of the group that withdrew taking the records with them, every attempt should be made to obtain these records.

Care should be taken in using local experts. While they can be independent professionals, they may also be involved with one of the conflicting groups.

As soon as feasible, an inventory of the newly secured land records should be prepared. This inventory should be signed by the persons who are in charge of keeping the records. Once the situation has become more stable, the inventoried land records should be returned to their original offices and/or storage facilities, unless a different (emergency) institutional structure has been put in place. Under certain circumstance it might be wise to make copies of the most vital land records (such as the title/land register, parcel/person indexes, cadastral register, cadastral index maps), especially when data manipulation cannot be ruled out. The copies should be kept by international staff.

Once a form of normality has returned, the updating of the land records should resume as soon as possible otherwise people will transfer their land outside of the land administration system. Good co-ordination and information flows should be established between the land records and the agencies dealing with land and housing dispute resolution. The records should be updated automatically or regularly in batches, to show the decisions made by such a dispute resolution agency. Routine technical processes/administrative procedures should be put in place as soon as possible and the professional handling of the records should be insured by introducing checks and balances into these technical processes/administrative procedures.

9. *Acquire high resolution satellite imagery and/or undertake aerial photography*

In many countries there is a lack of up-to-date large and medium scale mapping even prior to any conflict. The lack of this kind of mapping will have caused problems in many land related policy development, land management and land administration functions in peaceful times, and this will be exacerbated in a post-conflict phase.

Depending on the size of territory, the intensity of land use and the ratio between urban and rural areas, a strategy should be developed to create and/or update maps as soon as possible. This will be necessary for addressing user needs quickly, demining, rapid planning, land management and land use allocation. Increasingly improved and detailed satellite imagery is becoming available (such as Ikonos, Quickbird). This imagery may well quickly supply the kind of information needed for civil post-conflict administration.

Aerial photographic based products are useful for smaller territories and/or the (main) urban areas. Unless the terrain is very flat, this photography should be processed into orthophotos. However, flights to acquire aerial photography are only possible once the security situation has been sufficiently stabilised. Both airspace and airports need to be open. Also, safety on the ground should allow for the necessary field work to complement the photo-flights. In regard to fieldwork, mined areas are a particular problem which have to be addressed. Satellite imagery is not affected by the lack of safety and security in a territory/country.

The advantage of having detailed geographical or mapping information available shortly after the conflict is that, it can also provide proof of the land rights situation on the ground at the time of the photo-flights. The information will also show damaged dwellings and other structures, environmental degradation or pollution. It can be used to plan the reconstruction, and it can be used as a baseline to measure any future illegal construction.

Although this data is expensive, it can also become a source of income for the survey department/cadastral, as it is likely to be of interest to many other organisations for other functions such as:- de-mining, peace keeping in general, governmental policy development regarding spatial planning and land management, (re) construction and maintenance of transport links and utilities, and local activities such as urban planning.

10. Set up office to deal with disputes and start public campaign on land issues

Where the conflict has included land issues it is likely that there will be a demand from the users for the UN authorities to intervene in disputes. If there is a press operating, journalists will be asking for information from the UN authorities immediately. It will be necessary to set up a secure staffed office environment to accept disputes, claims and to supply assistance as soon as possible. Such an office will need a basic legislative framework in terms of the UN mandate in the country.

A number of activities will need to be done by the staff such as:- situational assessment of the legal position and the applicable international conventions, assessment of the type of violations happening, options for addressing the problems, reporting and claims process.

As soon as possible, reliable information should be given to the press (including radio and television) about peoples' land rights and their options if these rights have been/are being infringed. Information should be placed on bulletin boards, public notice sites, buildings which people are likely to visit to obtain help (e.g. UN offices). The public relations departments in government, parties and political movements should be informed of developments. As new information becomes available this should be disseminated.

Where appropriate, a campaign or media blitz should be arranged. This would involve a poster and information blitz that would require the creation of press kits, making public announcements, creating briefing papers for officials, and calling news conferences.

11. Identify and deal with disputes and prevent illegal occupation

When land is part, if not the core, of the conflict, and when there are population movements (IDPs, refugees, returnees), there are likely to be conflicts over the ownership and/or occupation of land and property. In an emergency phase many institutions are not functioning normally and therefore the normal monitoring and enforcement by the state institutions and the society, in regard to illegal occupations, is not functioning. With regard to land and housing *de facto* possession is often considered to be sufficient. Emergency situations create opportunities for the grabbing of land, use rights (e.g. mineral rights) and property, by the poor, the rich and/or criminals. Political patronage in regard to property is extremely prevalent during conflict in regard to those in power and/or those in the resistance forces. Especially in regard to the rich and criminals, this behaviour needs to be limited as much as possible, as it is very hard to solve the problem once the situation has stabilised.

Where discriminatory laws, regulations and policies have been implemented, either before, or during the conflict, this will have led to the infringement of rights of members of certain groups. Groups who have been previously discriminated against may, after a change of regime, try to get their revenge, or get back previously owned properties outside of the legal process. This may involve forcing out the current occupants and/or persuading the occupants/owners to sell under duress.

Dwellings that have been abandoned (when people fled and/or have taken refuge elsewhere) should not be left empty. These should be inventoried as soon as possible to prevent the invasion of abandoned properties, both by those in need and/or by criminal elements. The property rights of owners who had to abandon their properties should be respected and protected.

Where there is a shortage of dwellings because of conflict/other damage, these inventoried dwellings should be allocated for temporary occupation, within a basic legal framework. To acquire such a temporary occupation permit may require registration with UNHCR. The legal and enforced protection of an absent owner is often quite low. For this reason, people who fled or were forced out, are likely to be disadvantaged. Therefore, extra care should be taken to protect their rights in the immediate post-conflict period.

Also, it is possible that groups who were discriminated against never had access to any formal property rights and lived in informal settlements. During the conflict these informal settlements could have been burned to the ground and/or removed. These groups have no formal rights to the land or documentation to substantiate their claim to the land. In this situation, these groups will have great difficulties asserting their right/claim to land and property. Also they may not be able to claim housing reconstruction grants, as these generally require legal evidence of ownership/possession.

There is an urgent need to put mechanisms in place to deal with the situations described above in a proper, non-discriminatory way and with due process, without being overly bureaucratic. It is likely that innovative hierarchies of legal evidence will be needed, rather than following the normal civil law procedure system. To be able to deal with this situation a judgement as to the magnitude of the situation and different types of claims should be made.

An administrative structure will be needed to collect claims, inventory abandoned dwellings, allocate temporary permits, allocate building permits. It may be necessary to set up a specialised tribunal or claims commission to deal with the disputes and allocation of permits either because the:-

- Court structure is not functioning.
- Government structure is not considered to be sufficiently impartial in its administration of justice.
- Large number of cases involved will require special capacity to deal with them. Special (administrative) measures have to be in place to deal with a mass claims operation.
- Specialised hierarchies of legal evidence will need to be used in such cases.

In a post conflict situation the parties involved in a claim will require some form of mediation assistance to be able to reach a solution. Quick access to dispute resolution mechanisms is required. If possible, there should be two separate agencies, one for the allocation of building and other permits, and the other for the solving of disputes but with a joint set of guidelines and co-ordinated activities. The former should be as decentralised as possible. There should be clear guidelines about the relationship and the difference in functions between the courts and the tribunal for land disputes to ensure both legal clarity and the safety of court officials.

To allow members of all groups to make claims for infringements on their land rights, it might be necessary to facilitate the lodgement of land and property claims in neighbouring territories or even countries, where refugees are present. This is especially important where these groups cannot return to the area because of security considerations. Without this facility some groups in the conflict are likely to be seriously disadvantaged.

Careful monitoring should be undertaken to limit the infringement of disadvantaged groups' land rights during the physical reconstruction of damaged buildings. This is especially important when giving housing reconstruction grants or building permits. A wider range of legal evidence than usual about land rights and use rights should be applied if possible. Also, (potential) victims should be aware of where complaints can be safely lodged either before, or during, encroachment on their land rights.

Sometimes the early assessment of type and scale of claims proves to be incorrect once the claims are lodged. It is important to understand why this has happened as it may be an indication that:-

- Properties have been legally sold across the groups after the conflict, given that one group does not feel safe to return.
- People are used to selling their property between conflicting groups outside of the legal system. This is especially prevalent in countries where this was the norm before the conflict.
- People are trying to avoid the payment of tax by not making claims.

When a claim is settled and the present user/occupier of the dwelling or land is not awarded the right, an eviction order will have to be prepared. Ultimately, taking certain humanitarian considerations into account, evictions will have to be carried out. If the persons are unwilling to abide voluntarily by the eviction order, police or security services will be needed to complete this. Usually forced evictions will only be needed occasionally as they serve as a model to the society that eviction orders have to be taken seriously. If however, eviction orders are not enforced, few people will follow them voluntarily. The credibility of the entire dispute resolution process will be affected if eviction orders are not generally followed. The mandate of the international security forces should therefore include the assistance in evictions, where they are based on eviction orders from credible dispute resolution agencies. This is a key aspect of re-establishing government as a normal part of life and the rule of law.

In a post conflict situation where there are massive spurts of building taking place in peri-urban areas, especially of brick buildings, it is possible that land rights (public and private) are being infringed. The interim administration and the security services should act swiftly in this situation to assess whether this development fits within the basic legal framework that has been set up. If action is not speedy, the results become increasingly irreversible and may well contribute to frustration in the group(s) who have lost the conflict, and whose rights are being infringed. Such construction activities could also be seen as undermining the rule of law and civil society in general. Enforcing the breaking down of (nearly finished) constructions and evicting persons from such dwellings is harsh under any circumstances, let alone in a post-conflict situation where reconciliation is only starting.

Invasions of land and property should be monitored and prevented as much as possible. Immediate eviction after invasion is usually normal in most legal systems, but the appropriate authorities have to move very fast (often within one or two days).

In the medium to long term, the rules of prescription or adverse possession will need to be handled with sensitivity, especially when the period is short (5 or 10 years). If the prescription laws allow land rights to be claimed by those in occupation in a short time period, groups who have been forced out of the territory/country can lose their rights. Adverse possession claims should not be dealt with until the land dispute claims have been settled.

People should not be evicted and end up on the street. Co-ordination needs to take place also with organisations such as UNHCR. Care should be taken with ‘double occupancy’ claims where people who claim that they have no place to go if evicted, while they secretly have another dwelling somewhere else.

12. Assess the extent of completeness of land records

A thorough assessment of the completeness of the land records available should be undertaken. This should be based on the inventories of the land records that were initially made for the purposes of securing the records. The primary focus should be on obtaining an overview of the data as it was just before the conflict broke out. Although the type of overview data required will depend on the types of land records present, generally both administrative/descriptive data ("lists of right holders") and geographic/geometric data ("maps or plans") should be assessed. The key data includes the title or land register, data on parcels and/or person indexes, the cadastral register and cadastral index maps and/or registry plans or maps. The assessment should be done, taking into account the applicable records, area by area, according to the administrative/judicial units in place, such as cadastral units or municipalities. The main objective of the assessment should not be to make a statement that for example 58% of the data is present. Rather it should be to identify, per relevant unit, the most up to date overview data of the legal evidence still available.

If the overview data for a certain judicial unit is not available up to the time of the conflict, further assessments should be undertaken. This assessment should cover underlying documents and/or books/logs representing changes. These documents can be (certified) contracts, deeds or administrative decisions by local or central government bodies, as well as survey notes, field work and parcel plans.

It is likely that there will be large differences between different areas, depending on their location in the conflict and the actual level of conflict activities that took place there. However, there can be differences even between units kept in the same office. This can be a result of fires and/or the hurry in the stealing and/or deleting of data.

If, and when, possible the data that has been removed from the country/territory should be assessed. It is likely that only international experts will have access to this data. It is necessary to establish what data exists, if any was destroyed, and the likelihood of this data being returned to the territory/country. It may well be possible to have copies of the data returned.

Land records relating to certain periods, such as just before the conflict, during and just after the conflict, and earlier periods building up to the conflict, should be examined with a healthy suspicion. These are the records with the highest risk of being altered and manipulated. Examples of manipulation include:-

- Unusual numbers of transactions of a certain type in a short time, or even on the same day.
- Transfers between members of different groups in the conflict.
- Transfers from public, common or communal properties to private persons, often in the form of privatisation.
- Periods without, or with few, transfers. This may indicate that certain parts of the transaction records have been removed (e.g. pages taken out).
- A lack of transfers. If the overview data showing the situation just prior to the conflict is missing, and/or a new group has come to power.

The assessment of the different subsets of the land records is a critical step in being able to make a decision about the validity of the legal evidence of land rights, as well as to work out how to fix the land administration system in the medium to long term. It is also the key to being able to advise the courts, and other forums, responsible for any land dealings as to the most appropriate hierarchies of legal evidence that should be accepted. That is, based on this information, it should be possible to advise individuals, who are buying and selling land, on the security of those rights over that land. In post conflict societies it is likely that the hierarchy will have to be expanded beyond the conventional hierarchies used.

13. Assess existing institutions

Institutions associated with land rights and land use allocation and management tend to have long histories in a country/territory. These can be formal institutions such as a land registry or a customary group. Also, a variety of recorded legal evidence about land rights is often held by these institutions. There are also oral agreements that are witnessed and held by institutions/social structures within society, both at the group and household level (e.g. many agreements about rights to the land/house within marriage are oral agreements). An assessment of existing institutions needs to be made to identify:-

- The stakeholders in land.
- The institutions who are involved with land and those who are presently involved.
- Individuals and societies of professionals who have knowledge and skills.
- And find all the land records.

Institutions will include formal institutions such as the surveyor general's office, cadastral agency, land registry or court. They will be found at all levels of government including municipal level. They will cover land rights, land use and justice (dispute resolution), spatial planning and valuation/tax records. They can also be customary institutions, which in many countries are statutory, and customary land administration and courts can be common. They can also be informal institutions where the customary institutions have not been acknowledged by the state and/or where the institution has developed in an informal settlement outside of a customary framework. There are also religious institutions that are involved with land, and this is especially important in Islamic societies both in terms of land management and the inheritance of land.

Some of these institutions may only exist before the conflict and/or have been moved out of the territory/country. Some of them may be parallel structures that are in competition with the (previous) state structure, or parallel structures in competition with the existing state structure.

14. Assess the regulatory framework

To understand the situation comprehensively it is necessary to have a basic understanding of the regulatory framework. This includes policy, laws, regulations, administrative instructions, religious law, customary law, informal law and an overview of the tenure types. Primarily it is necessary to understand the regulatory and institutional framework in place just before the conflict started. However, it is also necessary to know the changes that have been made since then, either during the conflict or by the post-conflict administration. To do this local experts are required, especially in law and governmental policies. Experts are also needed in religious, customary or informal rule systems, if these systems exist.

The key laws and regulations that impact the land sector should be identified and translated. This also applies to basic documents describing policies and/or applicable rule systems, as far as they are documented. If no documents are available, they should be created, based on interviews with the relevant representatives (representing the tribal, informal or religious communities). The laws that are likely to need translation include the:-

- Civil and/or land code.
- Law on transactions in real estate and/or land.
- Law on land and/or real estate registration.
- Cadastre and/or surveying law.
- Subdivision and/or land use control law.
- Spatial or land use planning law.
- Law on transfer tax/stamp duty.
- Law on land and/or property tax.
- Land consolidation law.

Local experts should be interviewed to understand how land related activities (land delivery, land transactions, subdivision, planning, building permits, allocation of public land) were performed *de facto*. An assessment should be made as to what extent these activities took place in an extra-legal fashion, for instance through parallel structures. The law in action needs to be understood more than the law in the law books.

An overview of the different land tenure types and systems should be acquired. Any major differences between areas should be identified. The focus should not be only on ownership/freehold/property rights. It is possible that the majority of the land and/or dwellings are held under rights of use or possession, which might have restrictions on transferability. Also, land and/or dwellings might be held through customary, informal or religious rights, not found in the written laws.

In reviewing the laws, an assessment should be made as to whether they discriminated against certain groups. It is possible that at some point in the history of the country land transaction and/or allocation benefited certain groups more than others. This could involve subtle or blatant discriminatory procedures such as:-

- Rules that demand that (certain types of) transactions need to be approved by a certain authority before they are finalised. This might easily be used for discriminatory practices, by for instance blocking transfers from a member of one group to another group.
- The non completion of the technical process/administrative procedure. An assessment of land transfer activities (e.g. allocation and transactions) should be made to establish if they were completed by following the correct procedures for verification/ notarisation and recording/ registration, and whether this was complemented by the updating of the registry/ textual cadastre, and whether it included subdivision procedures, including surveys, preparation of plans and updating of the index/cadastral maps. This might be different between different areas (urban/rural, inhabited by different groups, very mixed areas) and between different countries.
- The reasons for having unrecorded transfers should be identified. Has there been a tradition of recording or registering land rights, or has registration been avoided? Did people try and avoid payment because of taxes and/or processing fees? Did people try and avoid the lengthy and uncertain procedures necessary to get permission for the transfer? Were the transfers in violation of regulatory legislation? Were the transfers unrecorded because of discrimination issues.

Understanding the regulatory framework at any depth is not easy and it may only be possible to construct it incrementally in steps. However, obtaining an increasing understanding is a prerequisite for several of the other steps that need to be taken during the emergency phase such as to:-

- Understand what has been going on, and is still going on, in regard for instance to what is legal, and what is unacceptable.
- Rate the validity of the land records.
- Construct hierarchies of legal evidence to give guidance on what is a secure land right.
- Design appropriate dispute resolution mechanisms.

It should not only be a ‘technical’ legal exercise, but also involve an understanding of the previous and present society, as far as it relates to issues of land and dwellings.

15. Deal with legal ambiguity

It is likely that the assessment of the regulatory framework will show legal ambiguity and contradictions. It is unlikely that there will be clear cut rules that have been applied and can still be applied in a post conflict situation. Special attention will need to be paid to

human rights issues, especially housing and property rights, property rights and access to dispute resolution mechanisms and due process. It is likely that local laws will have to be adapted and generic international laws introduced, hopefully only when necessary. Extensive lobbying for legal issues is likely to be necessary to ensure that they are sufficiently prioritised by those controlling administrative power.

It might be necessary to quickly revoke certain clearly discriminatory legislation, or to make certain adaptations to the pre-existing regulatory framework. In post conflict situations, where there are many foreign consultants, new laws from other countries are often introduced instead of first assessing and adapting the existing laws. Foreign laws:-

- Are harder to implement with local staff, as they will have a problem understanding them.
- Are likely to cause co-ordination problems and contradictions with pre-existing (and continuing) laws and regulations.
- Might not be accepted by local staff and/or (groups of) the population because it is considered alien to them.

As much as possible, new legislation should be drafted to explicitly fit the local circumstances in close co-operation with the local experts (or be drafted by local experts with international assistance). This will both improve the actual impact which the laws and/or regulations will have in the short term, and their sustainability in the long term.

Drafting laws and regulations is one thing, getting them approved by the appropriate institutions is another. This is always time consuming. It is necessary to spend time in lobbying these institutions ahead of time, explaining the drafts that they will need to approve, and why they should approve them. The time needed to do this should not be under estimated, especially when the constitutional framework itself is under development, or is complicated by a dual structure involving international administration. At the same time, often in these situations a careful assessment needs to be made as to when the 'time is ripe' for certain actions, both in terms of priorities and awareness of land issues.

Operations under the pre-existing regulatory framework, including administrative/technical operations, should be based as much as possible on the pre-existing situation in the emergency phase, but within a human rights framework.

16. Create flexible hierarchies of legal evidence and undertake adjudication

It is likely that flexible hierarchies of legal evidence will have to be created in the emergency phase using a range of legal evidence. These hierarchies will have to be created both for land market transactions, as well as dispute resolution. The hierarchies will have to go beyond the conventional use of the legal evidence in the land register and cadastre and/or other formal documents. Also, a framework of legal evidence may well need to be created which takes into account that documents have been illegally altered as a result of the conflict.

In many cases the normal legal way of thinking in regard to land records will have only a limited meaning during the emergency phase and immediately post-conflict. As already indicated, the land records might be missing, incomplete or lack currency. They might also only contain certain transfers, whilst other transfers took place outside the recording system. Some of the records may have been altered just before, during or immediately after the conflict. In general it will not be possible to rely solely on the land records to determine who holds which property rights. To a certain extent the situation can be compared in certain respects with a process of adjudication.

Adjudication is normally undertaken when land rights are brought onto a land register for the first time. Adjudication is the determination of rights in land. Based on all kinds of information available (official documents, other written documents, witness reports, etc.), a right holder is registered in the 'draft list'. This list is then put up for public inspection for a certain time (ranging from a few weeks to a few months). Objections can be made by right holders whose rights are not shown, or whose rights are listed under someone else's name. An attempt should be made as soon as possible in the emergency phase to insert adjudication into the technical process/administrative procedure. In the reconstruction phase it should be routine and a detailed explanation on adjudication and due process can be found in section 12 of the reconstruction phase.

Due process mechanisms, based on conventional adjudication approaches, should be inserted into the existing technical processes/administrative procedures associated with land market transfers in post conflict societies to ensure that people's land rights are being adequately protected. This due process mechanism should also be inserted into any sporadic or systematic transfer of data from manual to digital systems, or when deeds systems are moved to title systems. However, the design should be done in such a way as to facilitate mass conversions, otherwise the entire land market will be frozen for years. Too often when purely technical exercises are undertaken the land rights of ordinary people are lost as:-

- There is no due process mechanism.
- The committee responsible for adjudication does not meet.
- The due process mechanism is not designed to deal with mass claims.

In a conventionally operating land registration system it is likely that a rigid hierarchy of legal evidence is applied, tied to the law. However, in a post-conflict situation this should be replaced with a more flexible approach. Different types of legal evidence should be used. The weight given to each type of legal evidence should be determined by an appraisal of the characteristics of that evidence, taking into account the societal, legal and political situation before and during the conflict period. The types of legal evidence which should be used include:- possession lists, copies of cadastral plans, notarised contracts describing the transfer of real property, contracts on use of apartments, public housing records, building permits, permits of use, evidence of tax payments, utility bills and (oral) witness reports. A combination of sources of evidence (including some

secondary evidence) should be used. A single source of evidence should not be relied upon.

That is, other types of legal evidence, rather than just the land records, could play a key role in determining property rights. Not only should counter legal evidence to the land records be taken into account, it might even be negligent to accept the land records at face value (until proven differently) in certain cases or areas. If land records are taken at face value this may well benefit the group in power over other groups, especially those not presently in the area (e.g. refugees).

Rules of legal evidence should be developed which:-

- Are as far as possible non-discriminatory between the different groups in the conflict.
- Allow for the likelihood of previously unregistered transfer documents.
- Use other documentation such as utility or tax bills, information from customary, parallel or informal structures.
- Accommodate oral witnessing.

An appropriate hierarchy of legal evidence for disputed cases, where different persons claim the same land rights, should be used. This is important when people belong to different groups in the conflict. In these circumstances, the land records recordation should be critically assessed, taking special care in regard to documents signed by persons not presently in the area, especially when the power-of-attorney is used to transfer land rights away from absentee owners. Often proof that a person has paid utilities and/or taxes for a certain property is used to demonstrate use of the property. However, this does not prove what type of right they held (owner, possessor, tenant).

Measures in regard to land market transfers are likely to be needed to protect the rights of persons who left or were forced out of the area. This can include offices for the lodgement of claims located in other areas and/or countries. It may also be necessary to assist these persons to either object against a forthcoming registration of 'their' land right in the name of some else, or allow them some time to object even after the registration has taken place. This may take the form of a kind of qualified title. Such measures will make registration more difficult and act as an impediment to the revival of the land market.

There are often complications in the revival of a land market in a post conflict situation related to persons who have been killed or have gone missing. There is often a legacy of problems associated with the inheritance of land, which is exacerbated in post conflict situations, and land rights are often recorded in the name of a deceased person. The reasons for this are:-

- Discriminatory legislation.
- Often legislation for intestate inheritance differs from customary or religious rules.
- Bureaucratic procedures for the processing of a transfer upon inheritance can be too lengthy and/or costly and/or have to be done in the capital city.

- Evasion of inheritance taxes.
- Unsuitability (or even illegality) of the subdivision of the property between the heirs.
- A few heirs use the property, but more heirs live elsewhere (e.g. big cities, abroad), and still retain their rights. In this situation, it is difficult to register the correct situation and even harder to transfer the rights, especially where there are rules where all parties have to be present to sign documents.

In a post conflict situation trails of legal evidence and a flexible hierarchy of legal evidence need to be used both for dispute resolution and land market transfers. It is likely that this type of legal evidence would better fit a deeds registration system (preferably with a parcel based (cadastral) index), rather than a title registration system, which is based on the idea of indefeasibility of the main records (land book).

The best way of avoiding the development of a *de facto* victor's land register is by applying the approaches outlined above.

17. Create early management system for public land/properties

Post conflict situations create opportunities for land theft. This theft can be of land, housing and property left behind by private persons who have had to leave the area, as well as public land and buildings.

A range of building is likely to be undertaken in a post conflict environment. These can be:-

- Without the required building, or other, permits.
- Outside of the appropriate spatial and/or land use plans.
- On land not owned by those undertaking the construction.

Also, buildings previously used by currently dysfunctional public bodies or (state) enterprises may be invaded for (temporary) housing or small scale business purposes. In some situations they may also be invaded by criminal elements. It is likely that the (interim) administration will not to be aware of the exact location of the public land and buildings and might not be aware that the properties are being invaded. Even when the administration becomes aware that this is taking place, for instance when construction is taking place in road reserves, parks, or on sidewalks, squares or parking lots, it is often difficult to respond appropriately.

The most appropriate initial public property management system would involve:-

- Collecting data on public property and placing it on a simple data base.
- Ensuring that a basic legal framework exists to facilitate the protection of public property.
- Determine as soon as possible whether the construction or the occupation is illegal or in an illegal place.

- Notifying the constructor and/or user of their infringement. Request they stop construction and remove what is already there or vacate the building.
- If they do not comply, prepare a demolition or eviction order.
- If necessary, after the filing of the order, the appropriate authorities should physically remove the user and/or the construction. Usually a (specialised) construction company is needed for this, and the process might include (forcefully) removing the occupants. Security services might be needed to protect those executing the demolition order. Eviction orders against criminal elements might have to be carried out by the peace-keeping forces.

These types of land and/or property management functions should be carried out at the local level. The monitoring and notification should take place at local level as soon as institutional capacity has been (re) established. Depending on the socio-political make up of the local level authorities, it might be necessary to move the decision on filing an eviction, or demolition, order to a higher level of government at the request of the local level. The execution of the eviction order would have to be backed up by the police and/or security services.

If action is prompt and public in regard to illegal construction and/or occupation soon after the conflict the message to the public will be clear, and this will limit illegal construction and occupation and invasion of public land and buildings. Without prompt action it is unlikely that these illegal developments will be able to be dealt with and instead they will have to be regularised at a later date.

Where there has been an invasion of public buildings, any form of regularisation will be at enormous cost to the state. In regard to the invasion of public land by ordinary people, global regularisation strategies have been implemented and are being increasingly used as a routine tool in urban development.

18. Establish the extent of trained personnel available in the country/territory and their skill levels

Most activities related to the cadastre, land registration and land management are performed by persons with special skills and knowledge. The key areas of expertise are surveying, land law, planning, land economy, IT, valuation, land management and land administration. An assessment of the pool of knowledge and skills available is necessary to identify what kind of system can be quickly re-established and how many, and of what type, international staff are required.

A skills assessment has to be made to identify the numbers of people in each of the disciplines, as well as their levels of skills and knowledge and to what extent these skills are up to date in regard to global trends. The same assessment should be done for all groups involved in the conflict. It should also produce dis-aggregated gender figures. A basic assessment also needs to be done of the in-country education and/or training available in these fields, including type and levels. Sometimes certain education is not offered in the country, but many persons might have access to it in another country (or

might be actually studying there). Also, certain skill sets may be found in one ethnic group, which group has lost power, or is not acceptable to all sides in the emergency phase.

19. Assess equipment available

Land survey requires specialised equipment. This might not be available in the country, either because it has been looted and/or because it was not a modern surveying system in the first place and/or because the amount of equipment is insufficient. Old fashioned equipment requires more experts and/or other staff than more modern equipment. The type of equipment that will be needed will include:-

- Theodelites, EDMs and/or total stations.
- GPS equipment might be considered as well.
- Special read-out and adjustment software, which require a certain level of computer facilities.
- Computers for accessing and updating the (low level) database of land records.
- Computers with above average specifications to handle the (digital) satellite imagery and/or orthophotos.
- GIS applications.
- Networks, servers.
- Generators and UPSs (for unstable electricity supply).
- Radios for the transfer of data and the monitoring of transfers.

The computer hardware and software present should be assessed, especially with regard to their appropriateness for the tasks.

20. Increase number of international experts

The core of initial international experts should be expanded. Consultants should be recruited who have registry, survey, valuation, general land law, land policy development and IT experience. The consultants should be able to cover the whole range of skills sets needed from legal-administrative to survey-technical. Experts are also needed to set up modern financial and project management systems, manage public awareness campaigns, contribute to reconciliation, conflict management and dispute resolution, and understand the human rights framework and gender issues.

At an early stage after the first 12 months, the focus should be broadened to include land policy development and to place the project within a wider land administration and land management context. This will require experts in land economy, land use planning, land valuation and sector expertise (urban development, agriculture, regularisation of informal settlements, finance etc.), as well as political economy.

Some emergency phase consultants may be phased out and replaced with reconstruction phase consultants with skill sets for the medium to long term. In general, the type of

professionals involved in land related subjects are more tailored towards the reconstruction phase than the emergency phase.

21. Set up interim low level database

Quite early in the post-conflict period (administrative) property rights information will be needed for granting building permits, subsidies for the repair of damaged dwellings, monitoring land and dwelling invasion, temporary assignment of dwelling space for the needy. The supply of such information will also help restore normality to the land market (at least for undisputed properties).

If the land records have been stolen, misplaced and/or are in disarray, and there is no complete up to date overview data up to just before the conflict, a simple database should be created. This should be done anyway if the complete records are only available on paper, to assist with the rapid dissemination of information in this situation. A simple database of the key data should be created to be used for a range of different administrative functions, as well as for service delivery to the clients. It should be based on general spreadsheet software (Access or an equivalent package).

The quality of the data to be placed on the low level database needs to be taken into account. As already indicated, there can be the removal/theft of data sets, unrecorded contracts, parallel structures, discriminatory transactions, illegal or unfair processes and recordings which have occurred just before, during and immediately after the conflict.

In most cases there will be no alternative but to use the data, with all its limitations. In rare situations it might be possible to merge two or more data sets. This will involve the application of generic rules as to which data set will take precedence when there are differences in the data.

The first step in creating a low level database is to supply municipal level offices/structures with read-only CDs of the data in their area of responsibility. Computer equipment, including a printer and software should be supplied as soon as possible. Few opportunities exist for illegally altering data once the CDs are created through automated processes, or by employing non-cadastral data entry personnel.

The second step is an updateable version of the data, which should include logging functions showing the time of change to the data and the authorised user making the changes. This would allow routine land transactions to be recorded. The amount of time it will take and the cost to create such a database will depend on the completeness of the overview data and the level of computerisation before the conflict. An assessment should be made of whether the creation of such a low level database adds value to the post conflict situation. It should be constructed in such a way that it is a building block for a modernised registry and/or cadastral system in the reconstruction phase.

The third step, once the updateable version is being used, is the creation of a flexible hierarchy of legal evidence to be applied when transactions are processed.

Any land rights which are the subject of a land dispute and which are being dealt with by the land tribunal/courts should not be updated and/or changed within this low level data base. Once the dispute has been resolved this information should be placed on the database. Also, any transactions that remove land rights from persons not present in the area should be treated with additional caution. Any transactions which are considered to be suspicious should go through a sporadic adjudication process to ensure that due process has taken place.

Ideally all transfers in a post conflict situation should include some form of due process mechanism. However, this approach would probably lead to a freezing of the formal land market. For the same reasons, it will not be possible to undertake adjudication of all properties when setting up the low level database. This would mean a systematic adjudication process, which would take years to complete for a whole territory or country. Other mass dispute resolution approaches would need to be developed.

22. Interim low level database and gender

A quick assessment needs to be made of the relevant laws and regulations to ascertain if they make it difficult for women to have land registered in their name and/or to hold occupancy rights. This includes inheritance and marital property laws. Even where laws are gender neutral, it might be that tradition and/or practice favours men over women. Land and property that belongs to a family, and is considered the joint property of both spouses, or a family, is still often only registered in the name of the husband or senior male. Upon the death of the husband or senior male, widows may find themselves excluded from the property, as inheritance laws and custom might favour sons over daughters, and brothers over widows. Upon divorce, similar problems may arise.

The low level data base cannot solve these problems. However, the design of the data base should be done in such a way that it does not contribute to the problems. Where there is co-ownership/co-possession of spouses this should be recorded through the standard of reserving room for two persons per property (one and three or more should be the special cases). This should make it possible to obtain dis-aggregated data on male and female ownership at some point. Also, if this type of data is available digitally, it makes it possible to combine the data from the persons' register, which shows marital status, with the property data.

At a later date legal provisions should be put in place, which form part of the transfer technical process/administrative procedure, which prevent spouses from selling family property, without the permission of the other spouse. This legal provision should be created regardless of whether the property is owned by only one of the spouses prior to marriage, or co-owned.

23. Inter-relations and land information flows between land institutions

It is likely that at the outset of the emergency phase one internationally led team will deal with existing land disputes, securing and reconstruction of the land records, law, order and reconciliation in land and any other issues which arise. However, it is likely that there will be a separation of functions of this team over time. A separate agency will be created for managing claims and disputes, staffed by internationals. Alternatively this may well be placed either within the Judiciary or the Department of Lands, with additional capacity being built. A separate agency is likely to be created for the registry/cadastre. This may begin as a project, if no government agency already exists. It should be transformed into an embryonic agency as soon as possible. The allocation of building permits may take place within the agency for land disputes, but this function is better allocated to the municipal level.

It is likely that these institutions will diverge over time during the emergency and reconstruction phase, as the technical and legal individuals in each institution focus on the details of implementation rather than the overall picture. However, given the shared nature of the work, special efforts should be made to co-ordinate the different land agencies from the outset. This is necessary to share legal knowledge and interpretation and to formalise the land information flows between them. It is likely that because of the pressure of emergency work that this will not be an immediate priority, but if this is not done it can be less efficient in the short, medium and long term.

In this environment land dispute agencies are created outside of the registry/cadastre. However, the information and land records created by this agency should become part of the registry/cadastre preferably as cases are settled and/or at the end of the life of this agency. If the cases are not incorporated into the registry/cadastre the security of tenure of these cases will be limited and decrease over time. The dispute resolution agency and the agencies issuing building permits will also require land record information from the registry/cadastre throughout their operations.

24. Improve the land records

Start with the low level database as described in section 21. The administrative records (registry and/or cadastre) should then be further improved, where trustworthy information is available. This should have already been started in a systematic way with the creation of the updateable version of the low level database. From the point of the creation of the updateable low level database, the systems can only be improved sporadically, as each transaction arrives at the relevant offices. This will generally be in the form of persons wanting to transact a property right which they possess (or think that they possess).

As described under section 16, when people wish to transact their property rights it is not possible to rely solely on the registry and/or cadastre records. Other types of legal evidence also need to be used. Also, a check should be made to ensure that the property is not the subject of a claim at the land dispute agency or court. Best practice is where a caveat, or written instruction, is placed on the registry/cadastre records where a property

is subject to a claim. This approach relies on the proper use of consistent and unified property identifiers, and would benefit from computerisation.

An alternative for ensuring that properties, which are being dealt with by the dispute resolution agency, are not transacted is that, before transactions are registered by the registry/cadastral and/or courts, a check is made with the relevant courts and/or agencies for possible claims. This will burden every transaction, as well as the courts and land dispute agency, even when a few properties are subject to a claim. For these, and other reasons, the decision made by the courts and/or dispute resolution agencies should be processed in the registry/cadastral as soon as possible. Where properties (or parcels) are not well defined, or where the right holder wishes to transfer rights to only a part of his/her property, the survey records and/or cadastral maps will also have to be investigated during transactions.

If this is not done, there is a risk that yet another party will become part of the land dealing equation in that property. When the loser in the claim procedure sells his 'right' to an innocent buyer, and there is no mechanism for checking that there is a resolved claim, the new buyer could become another claimant with a reasonable claim.

Map reconstruction activities are also likely to be needed to further improve the land records. During the inventory and assessment of records, as described in sections 7 and 12, a picture should have been developed of the graphical overview data (cadastral (index) maps). There should be knowledge as to whether the survey records are available, how up-to-date they are, and their quality.

Map reconstruction is likely to be needed, unless the maps are more or less complete, both in area and time, and of appropriate quality. The reconstruction can be done using the aerial photographic material (described in section 9) as a base. New and/or additional equipment will be needed to do this work. The day-to-day work of boundary determination, resolution of boundary conflicts and requests for subdivisions should be undertaken first, prior to undertaking a time and resource consuming systematic project to create very good maps. In the same way as with the descriptive records, the focus should not only be on official documents, but also include other types of evidence (e.g. terrain features, (aerial) photos and even oral witnesses).

Subdivisions should be done responsibly to ensure that illegal development on public land and informal development outside the planned urban areas is limited. While surveyors can refuse to undertake subdivision in these situations, in an emergency phase this could force those activities even more into the extra-legal sphere. Good co-ordination is needed with the authorities responsible for urban planning and the management of public land. Ways need to be found to accommodate real, and urgent, needs for developable land, whilst preventing long term problems through the loss of public land and random development on the urban fringe.

Land office staff should to be well trained and have professional ethics. Safeguards should be built into the procedures to ensure quality. Mutations or changes in the land

records should be re-traceable. There need to be logs showing the time and user on computerised records. All changes to the records need to be based on the correct documents, which should be checked according to certain protocols. Both (a copy of) the underlying documents and the protocol should be archived, including identification of the date, time and processing officer(s). For certain steps a certain level of expertise is required, and it is better for two persons to sign the completed protocol before the change is finalised. Also, if one person creates the file, another person should be responsible for checking it and another for filing it, where possible. However, the right balance has to be found with regard to the time and resources needed to run the system and the need for expedience by the clients.

Aside from government, the private sector often has a major role in property rights transactions. Transactions are often supported by conveyancers or legal professionals (lawyers or notaries). Subdivisions are performed by private/licensed surveyors. When the government sector is under resourced, private sector professionals often might get access to large parts of the land records, to get data, perform searches and undertake checks. Measures need to be in place to prevent the private sector under these conditions from illegally altering the records, or removing them.

25. Translate existing laws and recall discriminatory legislation

The translating of existing laws and the re-call of discriminatory legislation should be an ongoing activity. While this should be done early in the emergency phase as indicated, this should continue in the latter part as well.

The entire legal framework should be examined over time to identify discriminatory laws. Such legislation should be recalled as soon as possible under the new or interim administration. Translation of the legislation and comparison with international human rights conventions, especially on housing rights and security of tenure, should underpin the conclusions reached. Infringement of the rights of the weaker groups in society should be noted, such as women and minorities, as well as membership of the 'wrong' group at a certain time in a post conflict society. Former injustices should be addressed.

Discrimination should also be monitored when state enterprises and assets are privatised, either prior to the conflict, during the conflict or after. When property is privatised and awarded to those who lease an apartment or are employed by an enterprise, the effects of earlier discriminatory rules in the allocation of dwellings or job opportunities (even mass firing) will influence who gains from the privatisation.

The effects of the earlier application of discriminatory legislation and the discriminatory implementation of legally neutral laws should be repaired as much as possible. If there are only a few cases the reparation can be dealt with through the claims system. However, both the person making the claim, and the person in possession, might have a reasonable case to be the right holder. Some kind of compensation may be required (e.g. money, government bonds, allocation right to unclaimed or reserve land or property). It is

likely that specific restitution legislation will be required. Experience in regard to this exists in Central European transition countries, as well as in South Africa.

26. Building blocks in emergency phase used in reconstruction

It should be noted that of the twenty or more key activities listed for the emergency phase above that the majority of these activities are building blocks for the reconstruction phase. A few of the activities are not building blocks and are only needed in the emergency phase, namely raising funds for the project for this specific phase and developing procedures within the UN specifically for emergency operations and liaising with other UN agencies specifically during the emergency phase. It is not recommended that this sector be treated as an emergency operation only. Rather, activities in the emergency phase should ultimately become foundations for the reconstruction phase. This is because of the nature of conflict and land, which is firstly often endemic in society and can be a key factor in conflict over decades. Secondly, land and conflict take years to solve, and there is no quick fix. Thirdly, projects are only worth starting if they go through to the reconstruction phase, up till the point at which the functions are taken over by a credible institution, otherwise the input is probably wasted. Finally, the land sector is so politically sensitive that it is better not to enter the sector at all if one does not enter it with sufficient resources.

BEGIN RECONSTRUCTION

1. Develop strategic action plan

The strategic action plan should contain the following:-

- Think before starting. It is better to have a good idea of what can be implemented prior to setting goals and designing activities. Time should be spent at the beginning setting up a practical strategic action plan that is capable of being implemented. In an environment where there are apparently overwhelming demands it is critical to identify priorities and what can be delivered in terms of the resource envelope (human and financial), given that this can be a expensive field in which to operate. The development of a work plan, along the lines in Annex 1., should be undertaken at a very early stage. It is of great importance to translate the different kind of factors found in the strategic action plan in a balanced way into activities in the work plan. The following six activity areas are usually found in a land administration work plan namely:- financing, information systems, legislation, management, organisation and technology. There is a substantial risk that the 'hard' activities of the work plan will receive more focus than the 'soft' issues when quantified indicators are part of the work plan, either as separate activities, or as clear components in one or more activities specified. 'Soft' activities are not easy to describe in terms of deliverables and measurable indicators, and are even harder to monitor and evaluate. Nevertheless the real impact in society and the long term sustainability of the project is based on the 'soft' activities.
- Prior to the development of such a plan, a rough scoping of UN and international agencies, government institutions and projects should be undertaken to assess which

land related functions are being undertaken, to ensure that gaps and overlaps are limited. Such a scoping exercise should also identify what co-ordination needs to be done in regard to UN and other agencies, and with government and donors' projects. Plans should then clearly identify the functions that will be undertaken, and the roles and responsibilities between the project and the UN agencies, especially those charged with governance functions in a post conflict society, and UNDP, and the methods of co-ordination.

- Planning and financial management is a key aspect of these projects as they are extremely resource heavy. These activities should take place in-country with knowledge transfer to local staff as soon as possible.
- A users' needs assessment -both agencies and ordinary citizens from all parties/groups. This should inform the prioritisation of work in terms of what is practical within the resource envelope.
- Setting up and staffing offices drawing on the local and international staff, who have also worked during the emergency phase. Development of a practical plan to employ individuals from all groups involved in the conflict.
- Deciding which land functions should be prioritised and which agencies should be set up. For example, is a cadastral agency a priority or should the registry records be prioritised? Should the agency to handle land disputes be separate from the registry, or from the Government?
- Reconstruction of cadastral records. Development of an aspect of the action plan specifically in regard to reconstructing the registry and cadastral records, including a scoping exercise to identify problems, the initial development of hierarchies of legal evidence to assess the value of the records, the start of discussions around the insertion of due process/adjudication mechanisms into the technical/administrative process and the technical options necessary to reconstruct the records.
- Working out, as best as possible, sequencing and timing (phases) of activities, knowing that everything will take longer than expected and that the legal aspects are likely to be the most delayed and the technical aspects are likely to be the easiest to perform.
- The development of immediate plans for the improvement of mapping (satellite imagery/orthophotos).
- Placing the strategic plan within a technical/legal policy framework by making key decisions in regard to certain approaches namely:- privatisation, land consolidation, land delivery, title deeds and/or other approaches to secure tenure, titles or deeds, systematic and/or sporadic approaches, unfinished pre-conflict legacies e.g. distribution of social ownership, pending court cases, type of cadastre (fiscal, legal, planning, technical), integration between registry and cadastre, cadastral accuracy. This also involves decisions in regard to the prioritisation of modernisation and/or the emphasis on post conflict issues, the link to reconciliation and/or holistic land policy development. This also includes identifying ways of mainstreaming UN-HABITAT principles into the plan such as decentralisation, good governance, gender, anti-discrimination etc.
- Approaches for the development or re-structuring of the institutional framework, especially in regard to moving from a project approach to an institution wide approach, placement of functions within government, decentralisation, allocation of

some functions to the private sector, running a UN-HABITAT programme in conjunction with the development of an institution.

- Capacity building plans – general management, technical, legal, conflict management, language. The transfer of knowledge and skills is a key area, and requires both intensive training and hands on experience.
- Approaches to build legal certainty and address the legal ambiguity that is part and parcel of post conflict situations.
- Enforcement options and approaches.
- Public and media campaigns to inform people about their land rights and responsibilities and developments in these areas.
- The identification of pilots and approaches concerning scaling up.
- It is likely that there will be a wide variety of stakeholders. The major stakeholders should be identified and ongoing meetings held with them to obtain information about users' needs and to keep society informed about the project. This is especially important in post conflict societies where there is lack of trust and a lack of structured information.
- Adopting, or developing, policy on affirmative action or quotas in regard to minority groups, groups in conflict, women.
- Risk assessments need to be made routinely because of the fluidity of the society and the penchant to alter the land records in this environment. Also, such societies supply new opportunities for corruption and even criminal behaviour. This needs to be taken into account in the plan, as well as in the monitoring and evaluation.
- The insertion of land policy development at an appropriate time, as well as the development of a Stakeholders' Forum.
- Monitoring and evaluation, both in terms of detailed activities, as well as the big picture of the land sector covering the project/agency and its linkages to, and role in, the land sector in a post conflict environment.
- An exit strategy for the project should be developed from the outset to include phasing out of internationals, phasing in of locals in which capacity has been built, mainstreaming of the project, sufficient financial and human resources to carry out functions which will maintain the peace in the medium to long term. It should also be structured in such a way so that the records from the agency set up to handle land disputes can be incorporated either from the outset or when the agency is merged into Government.

2. Develop work plans, activities, outputs, indicators and deliverables

Often the objectives for the project or programme are set during a Logical Framework Analysis (LFA) exercise. This LFA forms the basis for the strategic action plan, in which the objectives are translated into prioritised, sequenced and phased actions. This forms the base for the overall work plan of the project or programme, which should include an overview of the estimated time of each activity, milestones, and a plan for the project period.

Annex 1 contains the list of activities from the overall work plan of the Kosovo Cadastre Support Programme (KCSP). Based on this work plan, a number of conclusions can be drawn:-

- The critical path of activities needs to be worked out. Activities that need to be completed before others can be started need to be identified.
- There should be flexibility in activities and timing of these activities. Developments may well take place more quickly than expected in post-conflict areas, which means that priorities might need to be re-thought during the running of the project or programme.
- A key aspect of the work plan should be the attendance of numerous meetings. This is for the transfer of information, the acquisition of information, but most importantly for the building of trust within the society.
- The technical activities, related to reconstruction and/or computerisation of the land records, boundary maps and other geographical data sets, should be clearly identified as sub-activities. Quantifiable deliverables can be defined for such activities. Benchmarking and indicators can be drawn from the experience of numerous comparable projects.
- Wherever possible, measurable indicators should be identified and quantified. Activities for which it is not possible to create measurable indicators should not be left out of the work plan. Output and outcome indicators should both be used to facilitate both process and product.
- There is a difference between a work plan for a post-conflict country, and other countries in the region, which otherwise are in a similar stage of development (like post-communist transition or post-dictator developing countries). Activities do not merely relate to modernisation, but more importantly they relate to reconciliation and the restoration of law and order.
- A work plan is a general summary and not an exhaustive list of the detailed activities that need to be carried out.
- Projects or programmes usually run longer than one year. The overall work plan for the whole period should be broken down into yearly work plans. This gives the possibility for reprioritisation, incorporating lessons learnt and/or tailoring to ongoing developments.

3. Create efficient and transparent administration and budgeting

An efficient administration in regard to all aspects of administration, budgeting, planning and financial management is vital to the success of the operation and to the reputation of UN-HABITAT in this environment. This is because swift and decisive action is expected in a post conflict environment, and also because of the high level of activity of a number of international organisations. This means that there are high expectations, fairly close monitoring and quickly developed negative attitudes. New rules and regulations of UN-HABITAT and UNON should specifically allow for emergency/reconstruction field operations. Donor support can be lost if there is inefficiency in this area. In the competition between international agencies in this type of environment, slow

administration has undermined the ability of UN-HABITAT to generate new funds and better position itself to deliver on its mandate.

The registry, and especially cadastral surveying and mapping, are resource heavy activities that also require expensive staff. They are also highly specialised operations. The planning and financial management of these kinds of projects needs to be done in-country and cannot be done from Nairobi. Those in charge of in-country financial planning and management, especially in this environment, need to work in close co-operation with the project manager with the specialised knowledge and skills, and share responsibility.

It is critical that this type of project is delivered in as transparent a manner as possible, to ensure that capacity is built among local staff and partners in such activities as planning and budgeting. This approach will enable the management team to assess the affordability of the design (including equipment), which in turn links to cost recovery issues, which links to the financial sustainability of the institution in the longer term.

Also, without this arrangement it is not possible to obtain an overview of the total budget, activities and expenditure of the operation, including budgets and activities of all donors – which approach is considered standard operating practice by donors in this field.

In these types of operations, because of the fluidity of the society, activities identified in a work plan may have to change over the year. A mechanism should exist whereby agreed activities and budgets can be revised in a structured way during the year using the standard operating procedures for budgets and activities outlined above.

Procurement should be done in a transparent local knowledge building way, to avoid later problems, where the local institution will not know how to undertake this critical activity. Part of procurement, also in this environment, is the development of an asset register. Given that the assets from the project will become part of the assets of the government institution being created, the assets should not be registered in the UN system in such a way as to make the transfer of these assets administratively problematic.

Part of standard operating procedures for donors in post conflict societies is to get the land institution/s to the point where the management team have created and managed a structured and transparent budget which is linked to a Strategic Action Plan and programme activity lines. This makes monitoring easy and also ensures sustainability in these types of operations. It is a goal that should be reached prior to the departure of UN-HABITAT from a post conflict operation, otherwise the land rights protected by such an institution will be jeopardised.

4. Set up Steering Committee for project

As soon as possible set up a Steering Committee for the project. It should consist of management responsible for the project (technical, local, UN-HABITAT), politicians under whose mandate the project falls (UN agencies, local), donors involved in the

project. The role of this committee is likely to change over time as it is moved from a project to a stand alone institution and/or as reconstruction proceeds and government becomes fully operational. It should also change relative to UN-HABITAT's role, as the agency exits from the operational activities and focuses on big picture monitoring and evaluation and land policy development. It is likely that the Steering Committee could try and behave like a management board for the embryonic institution and/or that the political agendas of the different political players will be brought to meetings, and this aspect will need diplomatic management.

Such a Steering Committee should also have a responsible Secretariat. It is also likely that this committee will have some responsibility for the management of resource persons (short term consultancies). It is possible that such a Steering Committee could also be used to manage a Stakeholders' Forum for land policy development, but its composition might have to then include additional persons representing other Stakeholders.

5. National reconciliation

To ensure sustainability in the land sector, when conflict is land related, national/territory wide reconciliation in regard to land needs to be addressed. While this mostly involves activities at national/territory level, the land sector has a crucial role to play. A Stakeholders' Forum should be set up as soon as the time is ripe to undertake land policy development. The project should contribute directly to the negotiation process between groups where land is a core reason for the conflict.

6. Create Stakeholders Forum, including civil society to develop land policy

It is likely that land policy will not be able to be developed in the first 12 months of the post conflict phase. However, given its central importance to the reconciliation process, a land policy process in the form of a Stakeholders' Forum, should be started as soon as the country/territory is ready. This is because to manage land at least three elements should be present:- information about the land, clear policies on how it should be managed, and the participation of everyone with an interest or stake in the land. Stakeholders are interest groups or dependent groups i.e. categories of people or institutions who share a common interest in a piece of land, be it an individual plot, the territory of a community, a natural conservation area of a region or a country.

The Stakeholders' Forum should be inclusive and not exclude certain stakeholders, otherwise it will not be possible for all the decision makers involved in the conflict to reach consensus.

Stakeholders who should be involved include the:-

- Different parties to the conflict, including the peacekeepers.
- Representatives of minority groups.
- Public sector – Central Ministries and Departments of Finance, Lands, Agriculture, Community Affairs, Health, Education, Forestry, Urban Planning, Transport, Justice,

Local Governance, Housing, Environmental Affairs, Public Works, Mines, Planning, Central Statistics, International Co-operation, Representatives of regional government, Representatives of local authorities, both urban and rural, Deeds/Titles Registry or Record Office, Valuation office, Surveys, Mapping, National Land Information System, government utilities, government research institute.

- Specialised land tribunals or agencies to deal with land disputes and/or the privatisation of state land/socially owned land.
- Embryonic government institutions dealing with land.
- UN agencies.
- Government institutions dealing with land at all levels of government.
- Representatives of customary authorities (formal or non-formal).
- Representatives of informal settlements.
- Representatives of religious institutions, where they have a land management role.
- Private sector - Utility companies, Developers –formal and informal, Professional association of surveyors, Professional association of planners, Professional association of lawyers/notaries, Professional associations of valuers, Financial institutions, Private sector research institutions.
- Representatives of NGOs and CBOs, including women's groups.
- Donors/development partners, bilateral and multilateral co-operation organisations.

The exact mix will vary between situations and countries as not only will the functions of departments differ, but also there will be a difference as to which functions are carried out by the public and private sectors (formal and informal), and this will also change over time.

At national level, there should be a Steering Committee heading the Stakeholders' Forum. It should be composed of representatives from government and key stakeholders' groups.

The Stakeholders' Forum should:-

- Contribute to any peace talks between warring/conflicting parties where land is a major area of conflict.
- Develop land policy.
- Oversee the development of the land market and land management institutions, as they change over time from emergency to reconstruction.
- Ensure that the land issue is a core part of the reconciliation process by also involving the key politicians as stakeholders and/or keeping them informed. This is a critical component of such a forum, given that power relations are often the greatest institutional problem in the land sector, and land management/administration systems fail to get off the ground more often because of institutional problems than because of technical problems.
- Create a vision for a land management/administration system, which should build ownership of the system cross sectorially, and across the groups involved in the conflict, and facilitate the sharing/exchange of experiences.

- Guard a client perspective. The focus should be on the end user (citizen) when designing policies and procedures and allocating responsibilities to different institutions.
- Identify and advise government/UN on reducing over-lapping responsibilities across government departments in relation to land functions, information flows and/or the technical processes associated with land. This should assist in building law and order and a stable land market, reduce gaps and duplication and institutional conflict.
- Address both centralisation problems, as well as the institutional fragmentation problem. This should be done by, among other things, creating good partnerships between different institutions both vertically and horizontally.
- Address the problem of land management conflicts and advise on solutions. This approach should mean that a range of stakeholders previously excluded from such forums could now be included.
- Create sustainable systems by building capacity among local staff through training, and by putting in place the requisite work incentive programs, to combat the low pay, low motivation syndrome.
- Design any future changes in the land management/administration system in a gender sensitive way.
- Formulate guidelines for undertaking Users' Requirements Assessments. An assessment of user's requirements should be undertaken and/or commissioned at a very early stage by the Stakeholders' Forum, to establish the users' requirements. It should be an ongoing exercise that continually monitors the needs of the users.

7. Ongoing large scale public campaigns

An ongoing relationship should be developed with the press (including radio and television) and reliable information should be given to them routinely about peoples' land rights and their options, if these rights have been/are being infringed. Public relations departments in government, parties and political movements should be kept routinely informed. As new information comes available this should be routinely disseminated.

Information booklets/pamphlets about peoples' land, housing and property rights should be developed and disseminated. Sensitisation campaigns should be an ongoing exercise.

Campaigns or media blitzes should be arranged regularly. This would involve a poster and information blitz that would require the creation of press kits, making public announcements, creating briefing papers for officials, and calling news conferences. Wherever possible, issues should be high-lighted which facilitate reconciliation in the society in regard to land.

8. Prioritisation of post conflict framework for activities

In post conflict societies in the land sector dispute resolution mechanisms are a critical component, as critical, if not more critical, than the land record reconstruction and/or development. These two activities have to be linked as soon as possible.

It is likely that the territory/country does not have a modern land registry and cadastral system. In undertaking the reconstruction of the registry and cadastre it is important to remember that for sustainability, the post conflict issues have to be dealt with as an ongoing primary issue, rather than just focusing on the modernisation issues. This is often difficult to do.

Firstly, international advisers often come with approaches and business plans that fit with non post conflict societies. Secondly, technical/legal people often focus on the micro level detail rather than the big picture, as this is where project implementation takes place. Thirdly, the urgent rather than important approach that dominates the emergency phase also has a major influence on the reconstruction phase as many of the same personnel remain in the field after the emergency. This can mean that the important 'soft,' hard-to-achieve activities, such as land policy development linked to reconciliation are not prioritised, and instead technical implementation is prioritised, no matter how unsustainable given the potential for renewed conflict. This is often strengthened by the way projects are set-up, designed and evaluated, with a strong emphasis on quantifiable deliverables. Sight should not be lost of the big picture namely, reconciliation, conflict management and dispute resolution mechanisms in regard to land, appropriate land policy development, credible hierarchies of legal evidence and the production of credible sustainable land records.

The question should be continually asked, 'how trustworthy is the information whose handling we are now modernising?' Attention should also be paid to incorporating safeguards in the modernisation design, with regard to traceability of changes being implemented (date, time and user), as well as cross-checks.

The modernisation process should be undertaken to reach the wider objective of sustainable peace, law and order, and this should be the means to the end, and not the end in itself.

9. Setting up pilots

In the registry/cadastral field many activities are quite complex to implement and have to be carefully adapted to the specific variables present in the country/territory. Activities are extremely dependent on pre-existing and local circumstances and available capacity. In many situations it is not possible, even with the combination of international experts and local experts, to create a work plan which can be implemented at national/territory level without first piloting the activity.

Therefore, most types of activities should be tested in pilot projects first. Outputs from the pilots can include:-

- Improved operating procedures.
- Manuals for directing work.
- Procedures customised for certain cases.
- In some situations, a rethink of certain base assumptions.

- A demonstration effect to convince stakeholders (and possibly donors) of the benefits of the activity.
- Opportunities to build capacity in local staff, including management tasks.
- Opportunity to build capacity in local staff to train other local staff when the activity is scaled up.
- Opportunities to assess the capability of local staff to manage work by appointing local staff members as project leaders of the pilots.
- The monitoring of the successful transfer of technical and management skills.

The selection of pilot areas is very important for cadastral work and property registration activities. The characteristics of the terrain and land use patterns have a large impact on cadastral work. There can be large variations in the underlying tenure systems, especially in regard to customary, religious or informal land holding patterns. In post-conflict situations there are also likely to be large geographical variations in the physical and social damage caused by the conflict, and its impact on different groups. The pilot projects should represent the different areas as much as possible. They should be capable of replication. Conclusions drawn from the pilot should be rigorously assessed prior to replication to other areas. Pilots can be used to target areas that need to be addressed first for a range of reasons.

10. Getting the legislation passed and legal clarity

If land has not been put at the core of the UN peace keeping mission it is likely that changes and/or the development of the necessary regulatory framework will be extremely time consuming, difficult and slow. Land is a highly politically sensitive subject, even in non post conflict societies. Politicians, whether they are local or UN representatives, and many donors, will want to avoid the issue if they can. This means that the technical activities are given support much more easily than any legislative changes that are linked to high level political activities.

Also in post conflict situations there are likely to be layers of authorities who have to approve the law such as:-

- The local Assembly of Representatives.
- Followed by the local UN legal office to ensure that the law is not discriminatory.
- Followed by final approval from UN New York to ensure that other groups involved in the conflict are not discriminated against.

This can take an enormous amount of time. Also, it is possible that the original draft created by the experts has been re-drafted without referring back to the individuals who will have to implement. This itself can cause major problems in implementation once the law is finalised.

For this reason it is likely that the regulatory framework in a post conflict society will not be supportive of many of the activities which should be carried out in the reconstruction phase. Also, it is likely that there will be a large degree of legal ambiguity and lack of

clarity about the placement of functions and responsibilities within government and at different levels of government, also in the court structure. In carrying out land related functions, there will also be a lot of competition between government agencies, project institutes set up to carry out projects, parallel structures of conflicting groups, NGOs, and/or the informal private sector, all jostling for space and opportunities.

Also, given that any changes to land registry and cadastral laws are extremely complex processes, not only to get the law passed, but also to get it implemented, it is likely that there is insufficient local capacity in this area. Also, it is likely that international staff will try and introduce laws from elsewhere. This means that legal contradictions will be introduced and/or the drafting of the law is so weak that it is open to a range of interpretations. This in turn will affect the ability of the courts to make clear judgements on what are people's land rights in specific situations.

Land sector project managers need to position themselves very carefully in regard to this. They need to keep constantly up to date with the latest laws and interpretations. They also need to have frequent meetings with those in power, who will lobby the laws through the process, to keep them up to date, and to also keep putting land at the top of the agenda. Land sector project managers will also need to guard against doing the technical stuff which is easier in this environment, rather than focusing on the legal/political outputs which are difficult to achieve.

There should be close liaison with any agency set up to handle land disputes. This agency is likely to have land lawyers who can give interpretations of the law, as well as the latest test cases. It is within the interests of such an agency to make this information available because as they settle the disputes the information should be recorded in the land registry/cadastral. Also, if and when this land dispute agency is merged into the Government, many of their records will form part of the registry/cadastral records. This agency should also reach agreement with the embryonic registry/cadastral about what forms of legal evidence will be accepted for transactions, and what hierarchies of legal evidence are being used, so that these can also become part of the registry/cadastral technical process. Co-ordination between the land dispute agency and the registry/cadastral will improve legal clarity and land market efficiency.

11. *Continually assess the validity of the land records*

Most of the items under this section should have been started in the emergency phase (see especially sections 12, 16, 24 in the emergency phase). However, it is likely that some of the steps have not been completed, or only the first level building blocks have been put in place.

Knowledge about the claims process will improve over time. More will be known about the types of claims that can be made, the type of claims actually being made, and the scale of the different types of claims, together with some indication on how the courts/tribunal are settling these claims. This can be a valuable input into the

development of the hierarchies of legal evidence and the routine land transactions' administrative procedures/technical processes. This information might lead to:-

- The modification of certain operations in the registry/cadastre.
- The return to normal operations in certain undisputed areas, after claims have been settled and the results recorded.
- Detailed sporadic adjudication being undertaken on some properties which have already been transferred.

In addition to this, there should be continual monitoring of transactions and transfers that are being processed. Some discriminatory practices might still be ongoing, which could disadvantage absent or vulnerable groups. Monitor all operations from the standpoint of under represented groups. Monitor to prevent corruption and nepotism, especially if the economy is weak and the social situation unstable.

Liability and accountability should be developed. Generally there are different institutions involved in the technical processes/administrative procedures which produce secure tenure, such as the registry, the cadastral agency, the courts and/or the private practitioners. Institutional liability for information should be clarified over time. The situation should be avoided where the different institutions involved in transactions rely on each other's data, and refer to each other in the process, but none of them are verifying the data. If the institution undertaking the certification of contracts relies on the registry/cadastre data, and the registry/cadastre relies on their certification, the system is closed, yet the faults in the system will be perpetuated.

When data that has been removed or stolen is returned, a range of activities will have to be undertaken namely:-

- There is the possibility that this data has become partly outdated due to transactions that have taken place since the conflict, either by the seller recorded in the currently available records, or by someone else. Also a claim may have been settled by the dispute resolution agency in a way which is contrary to the records which were removed.
- Conflict management will have to be undertaken as different information from these records might rekindle conflicts.
- Depending on how these returned records were held, there might also be a risk that the records have been illegally altered.
- The hierarchies of legal evidence in use might have to be re-thought, and may change from area to area.

In general land records that have been removed lose much of their value within a few years, as land market operations continue. If these records are returned after a number of years they should be treated as a secondary source of legal evidence rather than a primary source.

12. Create administrative procedures containing due process

The technical processes/administrative procedures used in a stable situation are necessary but not sufficient in a post-conflict situation involving land. Due process and/or adjudication mechanisms have to also be included in the technical processes/administrative procedures to protect the land rights of:-

- Those who have been forced to abandon their property because of the conflict, especially if they have been forced to move out of the country/territory. These people's rights have to be protected against the invasion, the falsification of documents and/or use of false intermediaries/middle men.
- Individuals whose land records may have been illegally altered.
- Individuals whose land records have been lost/removed.
- IDPs and refugees and returnees, some of whom might not be able, or willing, to abide by conventional rules.
- Individuals whose property transfers were previously done in secret because of discriminatory laws.
- Individuals whose property transaction was started but not completed, either because of discriminatory procedures, or because of the conflict.
- Individuals caught up in double sales, where the same land has been sold more than once, because of a lack of information by the buyers and/or post conflict conditions.

Two key mechanisms have to be used, namely, firstly increasing the range of legal evidence used to assess the right of individuals to property and land. This mechanism is described in detail in section 16. of the emergency phase above. The second mechanism is the development of due process and/or adjudication mechanisms.

An assessment needs to be made of the land records and the conditions in the country in regard to land disputes and the scale of the disputes in the land market to ascertain the extent to which due process mechanisms need to be inserted into the administrative procedures/technical process. It may be necessary for every land registration to go through a process of adjudication. The adjudication procedure should:-

- Allow for alternative legal evidence, aside from that held in the registry/cadastre, such as unregistered and/or unverified documents of sale, documents/permits issued by appropriate authorities, bills from utility companies (telephone, electricity).
- Include a check for any outstanding claims, especially of persons not resident in the area.
- Include a notification system that the land is being registered and/or transferred (e.g. bulletin boards, newspapers, websites).
- Be sporadic rather than systematic.

The registration of the transfer should not be finalised for a certain period. This would allow persons whose land rights have been illegally altered to claim against the 'soon to be registered right' for say a period of 3 months. If the period is too long it will limit the operation of the land market, including mortgages. A balance has to be found.

Adjudication is a common step in first registration or land titling, but is not often associated with subsequent land dealings in a conventional system. When a system of land registration is introduced for the first time ‘first registration’ or ‘land titling’ is one of the key operations undertaken, as it is fundamental to the initial compilation of the registers. It is critical when no real system of land registration exists. When little written documentation exists, a careful procedure is necessary to inventory all relevant interests that exist and these are entered in the register. During this process of adjudication particulars of all rights and liabilities in a parcel are ascertained and determined conclusively. In some countries adjudication is used upon conversion from an ‘old’ to a ‘new’ system during cadastral reform.

Often the courts, or a special land tribunal, play an important role in finalising the results of the process. Adjudication tends to be slow and expensive. To avoid this, an administrative procedure is introduced, where claimants who are not satisfied with the preliminary register can make objections before an ‘adjudication committee,’ before they appeal to the court.

There are two methods of adjudication, namely systematic and sporadic adjudication. Sporadic adjudication has two variants, namely obligatory and voluntarily. Systematic registration is where an authority declares a certain area a registration district and inventories all boundaries and rights village by village, or neighbourhood by neighbourhood. This is relatively slow and initially very costly to government. Sporadic adjudication is more useful for a post conflict situation where a registry/cadastral is available.

The publicity given to the sporadic adjudication process is much less for one property than when a whole village or neighbourhood is systematically adjudicated. Individual property adjudication increases the risk for land rights holders. In some situations, boundaries have to be sporadically adjudicated as well, which requires the consultation of the adjoining neighbours. The right itself has to be proven as much as possible by evidence supplied by the parties themselves. Written evidence is preferred, but if it is not available, sworn statements by the land right holder, supported by local (and/or customary) officials, is usually accepted as well.

Conventionally people enter a sporadic adjudication process voluntarily at the point when they are intending to buy, sell, inherit or donate property. Adjudication is obligatory for registration in certain cases, such as for example when a sales contract is involved. This approach should be taken in a post conflict situation and a wider range of documentation, including but going beyond registry/cadastral documents, should be used (see section 16 of the emergency phase).

Where possible, a public site inspection should take place. There should be a balance between what is affordable and the protection of the land rights of those who are not present in the area. Lists of (proposed) transactions should be posted in several places, such as municipal offices, refugee camps, on websites. A check should be made during

the sporadic adjudication process that no claims have been made on the property at a relevant court or with a special land claims tribunal.

An additional safeguard is to work with the registration of deeds, in which counter claims are never totally ruled out. Another option is to start with qualified or provisional titles, that can still be challenged until they become full titles (e.g. after 3 to 5 years).

In short, in a post conflict situation there should be:-

- Adjudication inserted into selected land market transfers administrative procedures. This selection should be based on a big picture evaluation about what is happening in the land market in regard to disputes and illegal operations. Adjudication should be obligatory.
- This adjudication should be sporadic and not systematic.
- It should include public notice in a number of places and a site inspection where possible.
- It should use registry/cadastre legal evidence as well as other evidence of land rights.
- A deeds system should remain in place, rather than convert to a title system at an early stage.

While good arguments are usually made by technical people that systematic rather than sporadic adjudication should be undertaken, it is too costly and slow in an emergency, and probably also in the reconstruction phase. Systematic adjudication should only be undertaken where the registry/cadastre hardly exists, or where the proprietary situation has been changed extensively (by for example, restitution, discriminatory processes, privatisation or almost complete redevelopment after destruction in the conflict). Systematic adjudication should be considered when all claims have been settled and the system is fully able to cope with the day to day demands of the land market. Up to that point sporadic adjudication should be an option for anyone wanting to transact land, prior to the start of the systematic operation. That is, restitution should not wait until the systematic adjudication has been completed, but should be done as a sporadic administrative procedure.

13. Create adapted technical processes/administrative procedures which are transparent to the users and gender sensitive

Technical processes usually include tens, if not hundreds of steps, involving many levels of government and different agencies. The processes are usually not transparent to the user. Changes to the technical processes/administrative procedures should be used as an opportunity to involve a range of stakeholders, to ensure that a more simple and sustainable process is developed. Best Practice in this situation is that all the key agencies involved in land delivery and/or transfers (including inheritance), together with users' representatives, and especially women's NGOs, should re-think the technical process. The new process should also be transparent to the users, be user friendly and make the completion of transactions possible at a decentralised level.

14. Link the development of legal certainty about the land records to administrative procedures

An improved standardised hierarchy of legal evidence should evolve after test cases have been undertaken. Public court and land tribunal decisions should also support the development of a more robust hierarchy of legal evidence. An administrative protocol should be developed for cases that re-occur. The administrative protocol should:-

- Include a form with a list of relevant types of legal evidence that should be assessed and/or verified.
- Also include for common standard cases, a decision diagram, based on a number of linked questions relating to the available legal evidence.
- Give clarity on which institution and which person(s) within that institution are entitled to make formal decisions.

It is likely that in some cases it will not be possible for staff to prepare an administrative protocol for the case, as some cases will be unique and specific. Such cases should be decided by the appropriate person. The person should use their experience and expertise and take the philosophy behind the hierarchy of legal evidence into account. In all cases the decisions, which could be regarded as a form of sporadic adjudication, should be open for appeal to an appropriate court or tribunal. The best approach is firstly to have access to "administrative appeal" to a special adjudication committee or similar institution, keeping the costs of legal representation low. Ultimately an appeal to an appropriate court or tribunal should be possible.

15. Get offices running and delivering information to clients and allow land market to operate

It is likely that the land market will start operating fairly quickly after the emergency and it is important for law and order that these activities are performed within as structured a framework as possible. Land offices should be re-opened to the public and services delivered to the clients as soon as some order has been restored to the main records. Also, the land office information is likely to be required early on for the verification of land rights of those seeking housing reconstruction grants for the reparation of damage to their dwellings.

Information from the records should be supplied wherever possible, but the problems with incorrect information, because of potential fraud and the alteration of records during the conflict, should be taken into account. The legal status of the records should always be made public to those using the land registry information and it should be made clear:-

- That the information might be incomplete in regard to certain times in history.
- That certain transactions might have been taking place outside the register.
- That other types of evidence aside from the registry/cadastral evidence should be used as well when dealing in land.
- Alternative appropriate hierarchies of legal evidence are in use.

Some form of adjudication procedure should be applied when processing land transactions (buy, sell, donate, inherit) between different parties. Properties with a claim pending which is lodged with the land tribunal should be clearly identified in the land records. Clarity should be obtained as soon as possible about which of the institutions involved in land transactions (notaries, courts, registries, municipalities, survey offices and/or cadastral authorities), is accountable (guaranteeing) for the information they are making available to the public. It should be clear who is verifying what information and which institution is only taking responsibility for the storage of the information. It is likely that in this phase information is being passed between institutions without being verified or guaranteed, which introduces huge risk into the land market.

Checking, or verification, should not be overly complicated and bureaucratic, otherwise it will stifle land transactions and limit the re-emergence of the land market, or force many transactions into the informal sector. A deeds system of land registration is better adapted to this situation. It allows the parties who are buying and selling the land to reach a decision on the risk, without it being necessary for the government to guarantee the outcome. Buyers can sometimes assess risk better than the authorities by using local knowledge.

If a title system is in place, provisional or qualified titles should be introduced, to allow possible owners/holders of land, who have lost their rights, to make a case in court, prior to the final indisputable registration of the land right in another person's name. In this way the risk to the state and/or the individual will be decreased.

16. Supply/purchase equipment

In addition to the initial equipment acquired in the emergency phase, other equipment and software will be needed to implement the project namely:-

- The number of computers should be increased, including computers that are capable of handling software for the processing of spatial data images and/or geographic information systems.
- A range of software is required, such as operating systems, general office software, software to process and adjust survey data from total stations, as well as GPS data as it is processed into GIS data, and spatial data image processing software. The software should be licensed in the name of a permanent entity in the country itself, and not the project, a consulting company, a donor, or UN-HABITAT.
- Servers, networks, generators and UPSs should be acquired. The latter is important to prevent damage to the equipment from poor electricity systems.
- Digital spatial data scanners and plotters (in larger sizes such as A2).
- A large amount of survey equipment, to implement project activities and to support the land market. This should include at least GPS and total stations. Depending on circumstances, such as the availability of equipment, the training level of staff, the availability of electricity, less 'high tech' equipment may also be needed.

- General office equipment for efficient operations, such as functioning and sufficient telephones, fax machines, photocopiers.
- Access to the internet for email and the world wide web.
- Vehicles. Much of the activity of a survey office takes place in the field. Without transport, activities are limited.

All the equipment should be placed on an asset register as soon as possible after procurement. The asset register should be in the name of a permanent entity in the country itself, and not the project, a consulting company, a donor, or UN-HABITAT.

17. Develop routine land information flows

The land records form only one part of the wider land administration system. Parcel based overview data (cadastral data, both descriptive and geographic) is used by other government organisations dealing with land development, such as planning, construction and maintenance of roads and other trunk infrastructure, utilities, and housing.

The cadastral data of the local offices should be shared with other institutions such as:-

- Local government.
- The central cadastral office, so they can supply a base for the relevant statistical analysis used in, for example, land policy development.
- Statistics Bureau – via the central office.

In addition to this, land information should flow in both directions. This allows both the sharing of data and the identification of mistakes. As soon as possible, core data sets should be identified for each type of data. This core data should be kept up-to-date and as correct as possible. It is possible to have different institutions responsible for different data, providing there is clarity about who holds which function. In the medium to long term, a detailed analyses of all data sets will need to be made, and the core collector of each type of data identified. These data custodians, together with the users of the data, should outline a strategy to develop a national spatial data infrastructure (NSDI).

18. Introduce land taxation using land record information

Land supplies a relatively easy to identify and sound tax base. Governments in a post conflict situation are likely to need revenue, and land tax can be an important contributor. Generally, local governments are responsible for collecting land tax, and they keep a significant proportion of the revenues.

To raise land taxes, information is needed about who is the owner or occupier of the property, where the property is, as well as information about the value of the property. The roots of numerous cadastres can be traced to land/property taxation systems. The information held by the cadastral office has to be transferred to the taxing authority, about who holds the rights, the size of the land parcel, where it is located, and in some countries, the value of the land. In general short term leases are not registered and this

information will have to be acquired elsewhere by the taxing authority. Also, information about unregistered properties will have to be separately collected.

Land information flows between the cadastral offices and the taxing authorities is critical for a number of reasons namely:-

- In many countries with vast tracts of unregistered land, tax receipts are used as primary legal evidence of land rights when there is a land dispute, or when the land is adjudicated for first titling.
- If land tax is levied on an owner who no longer owns the land, he/she will complain. This will help to keep the registry/cadastral current, as it will indicate where land has not been registered.

19. *Ongoing monitoring of the land market*

To ensure that land grabbing is limited and that there is no victors' redistribution of land via the registry/cadastral, analytical records summarising land market activities need to be kept. This needs to be done both for the formal and informal land markets. The goal should be to collect rough statistics about what is happening in the land market to better judge the credibility of the register/cadastral and manage risk over time.

This might involve:-

- Classifying the different types of transactions coming through the registry.
- Monitoring transactions that are registered outside the formal structure. This could mean working with parallel structures and/or using local knowledge.

If this is done successfully the credibility of the land institutions will be increased because rumours, exaggeration of the credibility of the registry, or down playing problems in the land institutions, will be better managed. This should contribute to the reconciliation process, the restoration of law and order and an efficient land market. If there is no clear land policy and/or strategy about how to deal with land disputes and other land issues in this phase, such monitoring will not be effective.

20. *Continue to reconstruct land records*

The reconstruction of records consists of two phases. The first one (described under emergency phase) consists of combining (and where possible making available in digital form) the post conflict data. This data may have only limited value in certain areas, or for some types of properties.

In the reconstruction phase, the reconstruction of the land records will tend to be focused on adjudication, due process, making administrative procedures routine, as well as the creation of hierarchies of legal evidence. This should be done sporadically when land is transferred. Documentary evidence of land rights should use the registry/cadastral data

and go beyond it to include other types of documents. The weighting of the legal evidence will depend on the hierarchies of legal evidence used.

The system should be designed in such a way that it also keeps the history available online, as this makes it easy to retrace past transfers, claims and/or decisions. Monitoring of data on ethnicity and/or group land transfers may also be done if this can be done simply. It should not be so arduous as to burden the system. It should be noted that inconsistencies in land records can develop for a number of reasons, not always related to corruption and/or the illegal alteration of the records.

21. Reconstruct records in such a way that women's land rights are clearly identified as such for the purposes of monitoring

Gender inequality in regard to the ownership and control of assets is a major contributing factor to low productivity, low growth and the feminisation of poverty. Improving the gender balance in regard to assets such as land can have a major impact on both economic growth and poverty alleviation. There are additional reasons why it is important in post conflict societies to try to restore stability, particularly for women. After conflict, many women are left widowed and at the same time are the sole bread winner for the family, including children. In many post conflict situations they lose the land and property rights held by their dead spouse, often to his family. This exacerbates their poverty. In post conflict situations, women's land rights are extremely vulnerable and need to be protected by the land administration system, both for human rights and for economic development reasons.

One of the first steps to improving the gender balance and protect these rights is to create land records which make it possible to identify women owners, co-owners and/or holders of land/property. Any new digital database which is set up should have its architecture designed in such a way as to reserve fields for the names of women owners, co-owners or holders of land. The standard case for designing the database and any kind of relevant forms should be that a right is in the name of two persons (two spouses). Without such information it is not easy to protect women land right owners/holders. The technical process/administrative procedure should be set up in such a way as to obtain this information and also to protect these women from the land being transferred (inheritance, sale, donation) without their knowledge. Even when only one spouse is the owner of the land, the other spouse should have to agree on the selling of the land/property, at least in cases where it concerns the family dwelling. The introduction of such provisions can only be achieved by putting them into law. Further strengthening could be achieved by having (computerised) links with the persons' register regarding marital status, if and when it is available in a digital form.

22. Institutional strengthening in the medium to long term

As it is likely that the institutions of government need creation, re-creation and or restructuring, including decentralisation, this needs to be factored into the medium to long

term plans. Institutional strengthening is a key factor to sustainability. It will involve aspects such as:-

- Capacity building –general management, technical, legal and accountancy.
- The development of budgeting and planning capacity.
- Creation of credibility within government and with users.
- Management of the institutional change over time – creation of new institution, merging of institutions, spinning off of functions, decentralisation, involving the private sector, building institutions with new staff and/or staff of all groups.
- Merging of independent agencies created because of post conflict.
- Mainstreaming of projects into Ministry functions (addressed below).
- Merging of parallel structures.
- Setting up working relationships with other line function Ministries and/or Independent Government Land Commissions set up to deal with land disputes.
- Correct assignment of land functions within government (addressed below).

23. Move from project to institution building

For sustainability, projects need to be designed in such a way that their activities will be mainstreamed into the institution as soon as possible. Projects are created in emergency situations to deal with specific issues within a specific context. If they continue as projects into the reconstruction phase they will suffer from the problems associated with projects undertaken during development. These problems include;-

- An inability to scale up.
- The use of ad hoc procedures. In the land sector this is very problematic as routine procedure is one of the keys to supplying security of tenure.
- The activities cannot be replicated, because the amount of resources used in the budget are not available at scale, both in terms of number and skill level of human resources and the amount of money used by the project. This is a common problem in land projects.
- Level of staff salaries above national wage for job undertaken.
- Only viable because it is isolated from the main regulatory framework. For example, a project can have road widths and plot sizes that differ from the law, but any attempt to scale up as it is confronts the law.
- When projects are run inside and separate from Ministries it is difficult to main stream, as they do not follow similar procedures in regard to government in regard to staff recruitment, salaries, promotion, access to equipment, procurement, routine and procedure.
- Projects often build capacity outside of government structures. This means that it is not possible to transfer functions to government if government has no capacity.

Approaches need to be developed in the Strategic Plan to move from project based to programme/institution based as soon as possible.

In some situations projects are created for demonstration purposes. The project is used to develop new systems that are mainstreamed into government, or to adapt existing systems. This type of project, if mainstreamed correctly, can then be easily scaled up. This approach can be successful with pilots in the land sector. In the medium to long term donors like to support approaches which build into the country, and especially the government's own systems, be they legal, governance, planning etc.

24. Re-assign/create land functions

It will be necessary to move from the emergency phase of operation in regard to functions of government to the reconstruction phase. Without this there will be no sustainable land administration. It is likely that this aspect is extremely unclear in the emergency phase with functional duplications, gaps, competition over which agency/level will undertake the work, criminal activity, parallel structures, autonomous institutions outside of government, projects operating separately from, and/or inside government departments, to lack of clarity on subsidiarity. All this has to be incrementally sorted out and land functions clearly allocated to specific institutions (including the private sector) and/or persons within the institutions.

It will involve:-

- The creation of the necessary institutions within a government such as a land registry, surveyor general's office, agencies undertaking valuation, dispute resolution, allocation of public land, policy development etc., as well as mechanisms for co-ordination and co-operation between them.
- The finalisation of the structure of government in regard to national, provincial/state and local government level, together with a broad policy direction as to which functions will be situated at which levels of government and the relationships between these levels (subsidiarity).
- Agencies set up for the emergency phase as stand alone operations outside of the government will have to have their functions and records merged into the appropriate government departments.
- Projects will need to be streamlined into departments, including staff and assets and their knowledge. This will also involve the modernisation of the government procedures to incorporate knowledge from the project.
- The functions of government in regard to land will have to be correctly assigned to ensure that the work can be done, that there are no critical path gaps in the technical process/administrative procedure path.
- The allocation of land functions should not be done serially in terms of policy, law, regulations, administrative procedures. Rather, it should be done by designing an appropriate useful functioning land administration system and then linking this information over time into the policy, law, regulations. This is to avoid the notion that one is working with a clean slate. Instead the design should be incremental and systematic, building on what is working.
- The allocation of functions in a modern state is likely to also involve functions being undertaken by the private sector, including the NGO sector.

To be able to do their work, officials and the private sector will need to be trained and correctly resourced. Capacity building for these purposes is a major aspect of preparing for sustainable land management in a country. Without this aspect there will be no routine operations and conflict over land will continue.

25. Scaling up from pilots

Due to their complexity, many activities have to first be undertaken as a pilot (see section 9 in the reconstruction phase above). The pilot will provide lessons from which:-

- National/territory wide approaches can be developed, taking into account differences between areas.
- Manuals and procedures can be developed with national/territory wide application.
- Trainers can be trained so that they in turn can train sufficient local staff to carry out the activities at scale.
- Characteristics can be identified that will prevent scaling up to national level, and which will require the setting up of additional pilots first.
- It will be able to identify the resource envelope needed (human and financial) to scale up to national/territory level.
- Public campaign material can be created for distribution when scaling up to national level.

26. Set up inter-ministerial land committee

Land is cross cutting. Land is required by numerous sectoral agencies in order to deliver on their mandates. An important part of restoring law and order in a country relates to the management of land use allocation. Where there is little structure and order it is likely that line function/sector ministries will allocate land use rights outside of usual procedures. The Ministries of Forestry, Tourism, Local government, Mining, etc can increase the conflict over land in post conflict societies because they award over-lapping land use rights to the same parcel of land. It is critical to set up an inter-ministerial land committee to start to deal with these issues.

Another role of this committee would be to keep line function ministries informed of developments in other ministries. Also, often land is dealt with in separate compartments, where each agency attempts to maximise its output. Yet land delivery and land management/administration are undertaken through the activities of a range of agencies. One of the roles of such an inter-ministerial committee would be to obtain an overall view of what is happening in government, in regard to land outputs achieved for the users, and identify gaps and duplication. They should have a key role in the assessment and re-assignment of land functions, within government, and across agencies, as the country moves from the emergency to the development phase. Another key role for this committee would be the development of land policy to both address the conflict in the long term, and to create sustainable human settlement development by streamlining land delivery.

27. Moving from reliance on international staff to local capacity

In many, but not all, situations international staff will be required. An assessment should be made of the capacity of the local staff and only where necessary should international staff be hired. They may be hired for their technical or legal skills and/or because they are a neutral presence that will prevent any abuse of the land administration system in the early stages. In the land field it can happen that international staff become entrenched and that the project has no end. It is important to instil in the international staff that their time is limited. This is key to the transfer of knowledge and management responsibility, to local staff in the land sector.

The registry and surveyor general's offices and land law is extremely complex and difficult. Transfer of responsibility to local staff should not be done without sufficient training and capacity building (addressed below) and should be done incrementally from the outset. It is necessary to ensure that such training is done in a way that it covers all the groups who were party to the conflict and that no group is excluded.

28. Integrate excluded staff into the institution and update their capacity

Professional staff, because of their skills, often leave a country in conflict and find work elsewhere. In general, professional skills in the land sector are not readily available and this is made worse during times of conflict. Also, in some situations, the professionals who have been responsible for the registry and surveyor general come from only one of the groups in the conflict. In this situation the other group/s have not received training or held positions of responsibility. Given that land sector training takes years, this is particularly difficult to address.

Staff in exile need to be identified, encouraged to return, and also trained if possible. Capacity building (addressed below) of this category of people will improve sustainability.

29. Build capacity

Capacity building is of major importance from the very start. Different types of capacities need to be built namely:- institutional, management, technical, legal and conflict management. Capacity building includes:-

- Knowledge transfer from international to local staff throughout the project, which means they should work together as much as possible. This is likely to require language training early in the project both for the locals and internationals.
- Content training in law, surveying, IT and management.
- Training of local staff in financial, personal and strategic processes and decision making, also through their involvement in this work.
- Study tours for senior management and local specialist experts to find out how things are done elsewhere. This should cover not only technically advanced countries, but

also countries in a similar situation, or a few stages ahead of the present post conflict country.

- Sustainable capacity building through the development of in-country education. The level of technical sophistication of the processes being developed should be matched by the in-country study programs. Conventionally law and land surveying/geodesy education is not inter-disciplinary, whereas a broader training is better for the land sector. Programs should be also set up for the technician and vocational level, as much of the routine work does not require academic training.
- Strengthening in-country education, which is as important as the more *immediate ad hoc* short course training.
- General management training for the middle and top officials in the land sector, both at central and municipal level.
- Conflict management and dispute resolution training. People in the land sector need this training for two reasons. Firstly, where conflict is associated with land, people working in this sector find themselves having to assist in the resolution of conflict, whether it relates to land allocation, planning approvals or supplying information for the resolution of conflict by other bodies. Secondly, such people also need to resolve personal disputes with members of other groups (e.g. ethnic/religious) in the working environment. Such conflict training should firstly focus on giving these people the skills to be able to work through these situations. Secondly, such training can also assist in changing attitudes, so that people can become more objective and work for the good of the country rather than just for the group with which they are associated.

30. Enforcement of legal transactions and dispute resolution decisions

The enforcement of decisions is critical for the credibility of the land institutions and sustainability. Enforcement:-

- Has to be done with an understanding of options at different phases.
- Could be initiated by the military (including peacekeepers) in the early response stages to prevent the invasion of public and private land.
- Should envisage any attempt to evict ordinary and poor citizens as a last priority, and therefore needs to be complimented by a humanitarian temporary shelter programme that meets both the needs of the vulnerable, and the land/property owner.
- Should rely on operating courts and police where they have credibility, and where they do not, must consider impartial external processes and mechanisms.
- Should go hand in hand with provisions for the enforcement of court/judicial orders and planning approvals.
- Should sanction corrupt officials by (for example) suspending them from work and pay if possible, or bringing charges of trespass.
- Should be done through capacity building, at all levels, in regard to both skills and attitudes, also by introducing professional ethics.
- Should integrate a persistent information/public awareness campaign to inform the users on what is legal and illegal, and what sanctions are applicable.

31. Regularising extra-legal housing developments

During conflict and in the emergency phase the rule of law breaks down and there is usually wide spread abuse of the allocation of land and use rights, and both private and public land and property is stolen and/or invaded. This invasion or theft is done by ordinary citizens who find themselves in a desperate situation, as well as elites looking for commercial opportunities to exploit, and criminals sometimes linked to Mafia type operations. A key part of the reconstruction phase is to restore land and property management and land use management which is central to law and order. Part of this reconstruction may include:-

- A land commission to deal with land disputes and the enforcement of these decisions.
- The removal of criminal gangs from public land and buildings.
- Requiring elites who have stolen public/private land to pay the value of the land/property to the government/private person whose rights have been infringed.
- The restitution of the property to its original owner.
- Compensation awarded by the state to the new owner and the awarding of the property to the original owner.
- Compensation awarded by the state to the original owner and the awarding of the property to the new owner.

An additional part of the reconstruction phase is likely to include the regularisation of developments that took place in the emergency phase. These developments would include:-

- Commercial property developed outside of the spatial plan.
- Residential developments that do not fit the existing spatial plan, or are outside of any spatial plan.
- Informal settlements which had been demolished during the conflict, to which claim is now being laid, which settlement did not fit the spatial plan, or was outside the spatial plan.
- Emergency buildings constructed by the peace-keeping forces outside of any spatial plan, or which do not fit the spatial plan.

To regularise these developments it is likely that:-

- A political decision will have to be made about the illegal developments in general, and about which developments in particular are allowed to remain.
- New participatory planning laws will have to be developed, so new spatial plans can be developed which take this situation into account.
- Planning regulations will have to be created specifically for regularisation, rather than green fields developments, with new planning norms such as site sizes etc.
- Professionals will have to be trained to be able to undertake regularisation.
- Adjudication of occupancy claims and existing land rights will have to be done. Particular care will need to be taken during adjudication that groups who have been

forced out of the area, and women, do not lose their rights during this process. Care should be taken in regard to adverse possession laws in this regard.

- Where necessary, agreements concerning compensation will need to be reached with private and public land owners who have lost land.
- The cadastral and registry information will have to be altered to fit the new layouts and to represent the new legal picture.
- A form of valuation may be required before the land readjustment can be done, in particular where compensation schemes are implemented, and especially if claimants are to lose land for the provision of roads and services.
- Intensive institutional strengthening will need to be done within government, all stakeholders involved and in the affected communities.

32. Deal with *de facto* rights versus *de jure* rights and limit a victors' registry

The *de jure* or legal situation only has a limited meaning in a post conflict society. This is because:-

- There is likely to be large scale informality and/or sales outside of the register.
- The *de jure* may have limited legitimacy because of discriminatory laws and practices.

Against this background, it is unwise to use the general legislation regarding prescription/adverse possession to regularise informal land rights/claims. This would be risky because:-

- Absentee land right holders might lose their rights very easily.
- There might be problems with the kind of proof needed to show that the *de facto* rights holder has exercised his/her rights during the required period. It is harder to have secure proof when there is physical destruction of dwellings, large scale movement of people, land records which have been removed and the biased recollections of persons.

Satellite imagery or aerial photography of the area might be useful to assess adverse possession claims, if it is taken directly after the conflict.

Against this background prescription:-

- Periods which start before the conflict should be avoided.
- Should be frozen during the time of the conflict.
- Should ideally only start in the post conflict period.
- Should if possible require special legislation which deals with a range of associated issues, such as the revoking of discriminatory decisions, restitution, privatisation etc.
- Should be linked to the sporadic adjudication procedures described above.

33. *Regular big picture monitoring and evaluation*

An overview of the whole land sector, as it relates to tenure security, should be undertaken regularly, or at critical times of change. Given the fragility of the peace in many post conflict societies, it is important to see to what extent the project is contributing to a sustainable peace process, or whether it is just about fixing the technical aspects in an unsustainable fashion because larger events will over take it in due course. An overview or big picture evaluation needs to be done because:-

- The land sector is characterised by agencies that operate in an isolated fashion and separate from each other, such as the registry, or the cadastre, or the courts, each operating within their own framework. Projects are normally linked to these separate agencies and therefore monitoring and evaluation is usually also done only in terms of these isolated compartments. An overview is required to ensure that duplication and gaps are limited.
- Post conflict societies are characterised by large scale institutional change. The only way to assess where the land sector, and the registry/cadastre, fits into the wider society, and whether it is delivering into user requirements, is by undertaking an overview monitoring and evaluation assessment. Such an assessment has to include the technical/legal aspects, the larger political–economy framework, as well as the needs of the users within a post conflict society.
- Conventionally when registries and cadastres are modernised, even in a post conflict situation, the people involved become focused on the technical and legal details of getting the job done. In this situation, key issues relating to human rights and sustainability can get lost such as:- social justice, reconciliation, the needs of the poor, women’s land rights, land redistribution, whether the systems serve the majority of people or only the middle class, and the accessibility and affordability of the system to the majority of the population.
- It is only by undertaking an overview evaluation that it is possible to assess whether UN-HABITAT principles are being mainstreamed (e.g. gender, decentralisation). In this way the social impact on society and its future can also be assessed.
- Such an assessment makes it possible to produce a better risk assessment, a key factor for projects in this environment. This is critical to ensure that the registry/cadastre will have credibility to all parties, and not be perceived as a victors’ registry because it is entrenching discrimination of one group against another. It is also important in regard to the assessment of corruption, and especially large scale corruption and/or corruption linked to criminal activities.

34. *The development of robust and appropriate land management in the long term*

Land management is the art or science of making informed decisions about the allocation, use and development of the earth's natural and built resources. Land management includes resource management, land administration arrangements, land policy and land information management. It extends from the making of fundamental policy decisions by politicians and governments to routine operational decisions made each day by land administrators such as land surveyors, valuers and land registrars. Land management is both the science and art that

is concerned with technology, the people who use it, and the organizational and administrative structures that support them.

Undertaking land management is a complex task that is made even more complex in a post conflict society. Robust land management depends on political will and a focus on building the systems that are key to land management –including technical and governance, over long periods of time. A rule of thumb is that it takes 25 years to build such a system.

CONCLUSION

Recommendations: Land administration in a post conflict situation

1. It is vital to have some rudimentary services, related to land transactions, operational early on in the post conflict period.
2. Monitoring and regulating the use of properties of absentee right holders has to start as soon as possible, to avoid new conflicts and prevent the raising of expectations that could lead to evictions later.
3. Monitor and prevent the invasion of public land and properties and illegal constructions as much as possible, to prevent the development of unsustainable urban (fringe) areas and evictions and/or demolitions later.
4. Land sector problems do not look extremely urgent in the short term, but their long term effects are large and costly. The land sector needs to be prioritised early on in the post conflict period. This is not easy to do, as there are many urgent issues on the agenda of the authorities in a post conflict situation.
5. The restoration and modernisation of land records should not be viewed as an end in themselves in a post conflict situation. Instead, they should be viewed as a means to an end, which is reconciliation, the development of appropriate land policy, an effective and efficient land market and the creation of a set of land records which has legitimacy with the majority of the population.
6. Activities related to the land records should not be undertaken in isolation, but co-ordinated with other parts of the land management/administration system.

Recommendations: UN-HABITAT's role in a post conflict situation

1. In terms of UN-HABITAT's mandate regarding land and shelter, contribute to the immediate post conflict (UN) administration.
2. In the emergency phase, identify needs based on UN-HABITAT's mandate, develop appropriate projects, interest donors, assist in project design, project management, monitoring and evaluation and risk management.
3. In the reconstruction phase, UN-HABITAT should play a role until a stand alone state land institution exists which can undertake its own project management and implement a Strategic Action Plan. A key aspect of this is planning and financial management.
4. Ensure that the land issue is placed high up enough on the agenda, especially in regard to legislation that needs to be passed.

5. Undertake big picture monitoring and evaluation of the land sector projects/donors and land functions, to improve co-ordination between projects and with the (UN) administration.
6. Ensure that stakeholders are involved in the process and that the project is not just product focused.
7. Contribute to starting the debate on a wider land policy framework to encompass issues such as gender, equity, decentralisation etc.
8. Assist in the development of mechanisms for enforcement.

Recommendations: Capabilities needed in UN-HABITAT to play a role in a post conflict situation

1. Have access to the main players in setting up (security) operations and (UN) administration for a post conflict situation.
2. Build capacity in UN-HABITAT to have sufficient qualified staff available in Nairobi, also for backstopping field staff.
3. Efficient appropriate administration for a post conflict operation.
4. Have a fee structure that makes it possible to attract the required specialised short term experts.
5. Build capacity in international technical staff about UN-HABITAT's principles prior to their entry into the field, as well as how to behave as a UN person working within UN structures.
6. Build capacity in UN staff in regard to working with UNON.
7. Be taken seriously by other (UN) international organisations in the country.
8. Land is complex, resource heavy, high risk for international institutions, and takes a long time to deliver tangible results. This is exacerbated in a post conflict environment. Unless well prepared, UN-HABITAT should not engage in the land sector in this situation, as doing half the job will be worse than doing no job at all.

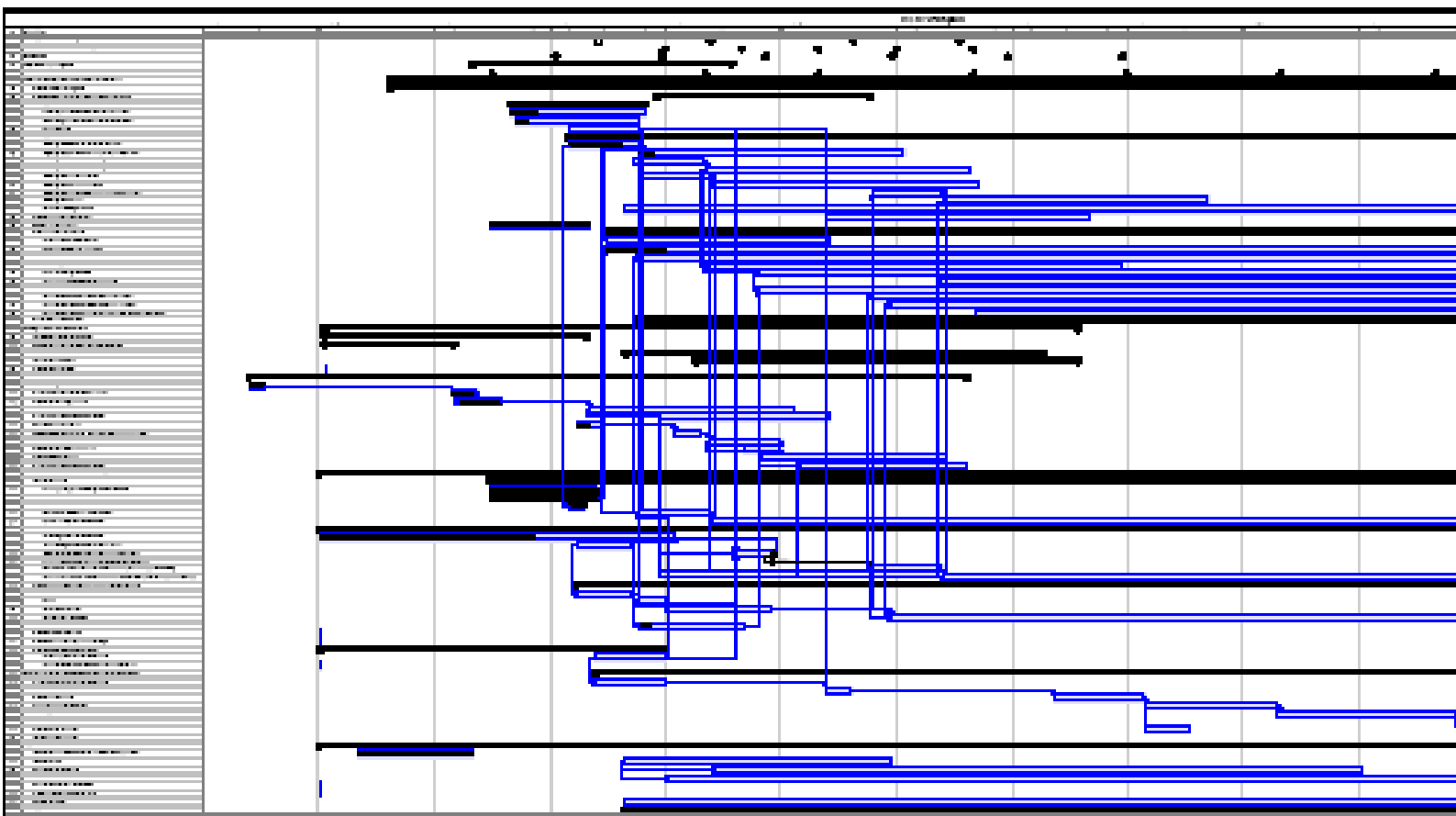
ANNEX 1: WORK PLAN

This is a Kosovo Cadastral Support Programme work plan. It is linked to the diagram below indicating which activities should take place at which time period.

ID	Task Name
1	Steering Committee meetings
6	Cadastre Reference Group meetings
12	EO Reports
19	Work plans and programs
27	Public Information
37	Capacity and organization for cadastral activities
38	Kosovo Cadastral Agency
63	Development of systems for finance etc. at MCOs
66	Strategies
67	IT strategy (development and implementation)
68	GIS strategy (development and implementation)
69	Model Strategy
70	Training
71	Training of Trainers (Computers/RO-DB)
72	Training of MCO and KCA staff(Computers/RO-DB)
73	Training of trainers for surveying/equipment
74	Training of MCOs staff surveying/equipment
75	Training of trainers Interim DB
76	Training of MCO staff Interim DB
77	Training of trainers Orthophotos and scanned plans
78	Training of MCO staff
79	Carry out training at MCOs
80	Modernising Cadstre Archives
81	Specify etc. equipment
82	Municipal Cadastral Offices
83	Computers delivered to MCO
84	RO DB possible to use at MCO
85	Interim DB possible to use at MCO
86	Surveying Equipment delivered to MCO
87	MCO Surveying possible
88	Control points established and updated
89	Cadastral procedures in use at MCO (developed)
90	Orthophotos and scanned plans in use at MCO
91	Connected Plans and Textual data in use at MCO
92	Management and administrative procedures in use (developed)
93	Study tours and Seminars
97	Homogenous reference network
98	1st order network for Kosovo
102	2nd and 3rd order network for 3 Municipalities
105	2nd and 3rd order network for 3 Municipalities
108	Transformation Data

111	Connection to EUREF
112	Orthophotos
113	Aerial photography mission with kGPS for priority 1 area
114	Delivery of aerial photos and Q control
115	Measurement of pass points
116	Orthophoto production
117	Delivery of orthophotos and Q control
118	Preper specifications etc.
119	Aerial photography mission with INS(?) for prio 2 and 3 areas
120	Delivery of aerial photos and Q control
121	Measurements of pass points (?)
122	Orthophoto production
123	Delivery of orthophotos and Q control
124	Reconstructed cadastral information in digital form
125	Textual Cadastre
126	Evaluate and modify existing system and data
127	Prepare RO-DB
128	Manual for RO-DB and Interim DB
129	Pilot MCOs - Interim DB (update data)
130	MCOs - Interim DB (update data)
131	Cadastral Plans etc.
132	Scanning of Cadastral Plans etc.
133	Vectoraising some Cadastral Plans (Pilot)
134	Transformation of first Cadastral Plan to Orthophoto
135	First scanned Cadastral Plan transformed to Orthophoto
136	Pilot MCOs - Orthophoto and scanned plans, vectorising and updating
137	Selected (All) MCOs - Orthophoto and scanned plans, vectorising and updating
138	Connection between Cadastral Plans and Textual data
139	Pilot connection
140	Model
141	Guidelines (Manual)
142	Operational connection
143	Development of cadastral procedures at MCO
144	Develop central back-up
145	Develop DB for buildings and dwellings
146	Demands and wishes from users
147	Collecting of demands and wishes
148	Cooperation with users and relevant projects etc.
149	Model for the future cadastral and land information system
150	Collecting of user demands and wishes
151	Pilot Study
152	Deepened Pilot Study
153	Objective and demand Study
154	Modelling of the system and the maintenance of the system as well as the procedures
155	Develop cadastral and land information system and procedures

156	Real Property Valuation
157	Implementation, start-up
158	Legal framework
159	Inventory and analyses of present laws and regulations
160	Inventory etc 2
161	Proposals of regulations
162	Proposals of instructions etc
163	Preparation of public information
164	Coordination with HPD/HPCC etc.
165	Advices to MCOs
166	Training system



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