

Pre-emptive and Advanced Techniques for War-torn Land and Property Rights Reacquisition

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Abstract

The enormity of civilian population dislocation during armed conflicts, and the importance--yet difficulty--of reattaching people to lands and properties subsequent to conflict, presents large challenges for peace-building and recovery. Land and property restitution significantly influences the prospects for social, economic, livelihood, security and political recovery. Both the international legalities concerning housing, land, and property (HLP) restitution, and the logistical ability of the international community to physically return people to locations of origin are robust. However the national HLP tenurial arrangements that are able to legitimately and legally reattach lands and properties to their rightful owners, renters, and occupants, as well as recognize specific rights, reconnect groups to homelands and provide tenure security, continue to be highly problematic. This is particularly the case where no HLP documents existed prior to dislocation. The lack of recognized forms of evidence or proof of ownership, membership, occupancy, or rent is in most cases a primary problem in quickly and effectively restituting HLP assets. Deriving restitution programs for doing this after a war ends is an expensive and protracted endeavour--with the prolonged nature of the process often creating additional problems. This article describes ten techniques for deriving, protecting and using forms of evidence attesting to HLP claims early in a conflict, as opposed to subsequent to a conflict. In several ways this may result in a certain pre-emptive effect on some forms of dislocation.

Keywords: Land, property, rights, war, restitution, dislocation, evidence, proof.

1. Introduction

The scale of civilian dislocation during armed conflict and the repercussions on the conduct of wars and virtually all aspects of recovery has provoked much in the way of land and property restitution efforts in recent decades. As of 2012 there were approximately 41.7 million refugees and internally displaced persons (IDPs) in the world (UNHCR, 2013; IDMC, 2013); with the 2012 rates of internal displacement the highest on record (Brookings, 2013). Such dislocation, whether the result of populations fleeing the effects of war or part of purposeful objectives of ethnic cleansing, secondary occupation, expropriation, battlefield strategy,¹ control over high-value resources, or land grabbing, is a pervasive and acute aspect of today's conflicts, their conclusion and recovery (Fay and James, 2009; Leckie, 2009). International community participation in the return of IDPs and refugees to areas of origin after a war (and during war in a number of cases²) is a high priority, costly, time consuming and complicated endeavour that puts great pressure on governments, donors, NGOs and local

¹ Such a strategy includes emptying productive lands of their occupants so that opposing forces are not able to resupply themselves off of locally procured agricultural produce--a common feature of developing country wars (Unruh and Bailey, 2009).

² Darfur, Colombia, Afghanistan, and Iraq are a few recent examples.

communities participating in recovery (Jaspars and O'Callaghan, 2008; Leckie, 2009; Zevenbergen and Burns 2010). Early and effective return of dislocatees can be seen (and promoted) as a sign that a war has in fact ended, or that a peace process is a success and economic recovery has begun. On the other hand failure to effectively return and reintegrate dislocatees can be seen (or used) as an obstacle to a viable postwar political process, or as a reason not to participate in mediation talks or other conflict resolution efforts (PoE, 2009).

The on-the-ground technical problems with reclaiming and re-accessing housing, land and property (HLP) in a war-torn context particularly when a war has lasted a long period of time, are numerous and daunting. There are problems involving multiple and overlapping claims, use, and occupancy of land and property by squatters and others; destroyed and damaged lands and properties; abandoned HLP assets with no way to distinguish which are temporarily unoccupied vs permanently abandoned; sectarian or ethnically cleansed areas; repeated waves of short and long-term displacement often involving different occupants and claimants at different times over the same lands; seizing of HLP assets by opportunists taking advantage of the lack of documentation and weakened legal and institutional environment; groups and individuals seeking redress for perceived past wrongs such as being evicted from lands, recently or long ago; lack of documentation or their destruction and fraudulent alteration; coerced or other forms of 'bad faith' transactions which can be formalized in land records, at times followed by repeated 'good faith' transactions; and a change in those that are in power nationally and the subsequent coercion and manipulation of land records (eg., Leckie, 2007, 2003; Pantuliano, 2009). The inability to quickly deal with these problems results in large volumes of dislocatees after a war that continue to roam the country, join the ranks of the postwar disgruntled, and can be easily recruited into subsequent nascent insurgencies, or engage in banditry.³

While the UN and international donor operated return and reintegration programs can logistically bring a significant number of people back to areas of origin, they cannot themselves provide the legal basis or tenurial mechanisms (statutory, customary, or hybrid) which will legitimately reattach lands and properties to their rightful owners, recognize and ensure specific rights, reconnect groups to homelands, or provide tenure security--these usually being the purview of a government and/or customary leadership. However the capacity of a postwar government and customary actors to design and implement programs or engage in processes which provide for large-scale return and re-access to lands and properties (including who is the rightful owner), is usually quite low even with significant outside assistance. And there can often be distrust of the government and customary sectors because they occupied one side or another in the war (Pantuliano, 2009). At the same time, the experience of a number of post-conflict countries demonstrates the real urgency of developing policies and programs which are able to attend quickly and effectively to displacement-related land and property issues (e.g., Fay and James, 2009; FAO et al, 2007; Toal and Dahlman, 2011; Leckie, 2007; Isser and Van der Auweraert, 2009). In an effort to fill this vacuum the international community has put great effort into attempting to provide the international legal conventions to encourage HLP restitution. Leckie (2007) summarizes 240 international, regional and national statutes and judicial decisions that seek to attend to HLP restitution issues; and notably the Pinero Principles (FAO et al, 2007) have emerged as a set of standards in legal approaches that 'should' be applied to facilitate restitution. But despite the urgency, the international legal basis, and the very significant

³ For example the UN noted that well after the end of the Liberian war, "[t]housands of disarmed former fighters from Liberia's 14 year civil war are still roaming the country without training or reintegration into society, threatening Liberia's chances of future stability" (IRIN, 2007). And Sierra Leone has experienced significant ongoing problems in this regard (ICG, 2004; Unruh, 2005a).

contributions to peace, food security, and economic recovery that effective HLP restitution makes, technically and legally re-attaching returnees to their lands and properties through a viable land tenure system⁴ continues to be among the most significant challenges (e.g. Wiley, 2009; Fay and James, 2009). This is primarily due to the difficulties dislocated populations have in regaining or re-establishing rights to their lands and properties by way of proving previous occupancy, use, access, rent or ownership with forms of attestation (evidence, proof) that work in a war-torn setting (Unruh, 2006). Particularly problematic are cases where many different interests are at work simultaneously, and institutions (customary and statutory) have been crippled or destroyed. Frequently HLP documents were never possessed by dislocatees in developing countries to begin with, because lands and properties are held under customary or other forms of informal tenure. In cases where documents did exist prior to a war they can be destroyed due to the targeting of such documents during the conflict as part of a military-on-civilian strategy (e.g. Toal and Dahlman, 2011; Marquardt et al, 2002, O'Fahey and Tubiana, 2006; Todorovski, 2011). In addition, existing documents are often rendered virtually meaningless as the magnitude of fraud in HLP matters surges in an unstable institutional and legal environment (e.g. Unruh, 2009; Toal and Dahlman, 2011).

Approaches are needed that can induce the rapid reacquisition of HLP assets not only for dislocated populations, but also serve those who may become dislocated. The central questions become, what in terms of effective forms of evidence can be used subsequent to (or during) a war to legitimately and legally provide attestation for claims, and facilitate rapid re-access and reacquisition of lands and properties? Despite the difficulties of war-torn settings, are there techniques that are able to reach back into the livelihoods of dislocated populations and how they interacted with local physical and institutional landscapes⁵ to derive legally meaningful and locally legitimate forms of evidence which can attest to belonging in areas of origin? And importantly, how can aspects of what already goes on in the mix of property rights relations and dislocation, be used to support such techniques? To date the academic, policy and practitioner literature are largely lacking in attending to these questions. This article briefly describes ten techniques to working with this problem in order to establish and use effective forms of evidence for current and potential dislocatees, both prior to the end of a war and immediately after⁶. For some of the techniques described, there can be a certain 'pre-emptive effect' with regard to some HLP problems with respect to dislocation. Subsequent to a description of the specific techniques, the larger repercussions that the overall approach could potentially have on conflict and recovery are discussed.

2. Methods

The present work is based on author's experience working on conflict affected HLP rights issues in: Liberia, Sierra Leone, Somalia, Angola, Mozambique, Uganda, Ethiopia, Kenya, Sudan, East Timor and Colombia: and with bilateral and multilateral donors on a variety of multi-country programs and policies. In addition, a review of the academic, donor, and practitioner literature was conducted. While the article makes linkages between the

⁴ War-torn tenure systems are usually crippled, destroyed, or changed due to conflict; and even if intact, are often not well functioning and fair, and will not be designed for postwar tenure issues.

⁵ 'Landscape in this article is intended to signify the assemblage of social, cultural and physical elements and their interaction within an area, as commonly applied in human geography (e.g., Johnston et al 2002).

⁶ This article deals primarily with the very important first step of recovery--land and property reacquisition, and not the subsequent restoration of livelihoods and benefit streams.

HLP discourse and the land administration discourse in the literature, it is more aligned with the former, while acknowledging the important role that the latter plays in the topic (e.g., [11] Zevenbergen and Burns 2010; [16] UN Habitat 2007).

3. HLP Restitution: Evidence and the Dislocation Process

The following briefly describes the techniques for attempting to advance the HLP restitution process in war-torn settings. While not all of the techniques are applicable in all situations, at the same time their tailored application to specific country circumstances may hold significant potential. In this context the descriptions here are more generic than country specific, although country examples are provided. Several of the techniques are complementary such that they could enhance each other or achieve certain cost savings.

3.1. Refugee and IDP camp registration

There exists in many cases a significant opportunity to engage dislocated populations quite soon after they become displaced. This can be done in order to define, gather and record a variety of evidentiary documents, descriptions and statements that connect individuals and groups to specific lands, locations, and properties. As IDPs and refugees arrive at camps operated by the international community they must undergo a registration process in which they are asked questions by camp personnel regarding where they are from, how many are in the family, the nature of their dislocation, area of origin, etc. (PCWG, 2009).⁷ Unfortunately such information is not shared with an HLP restitution process. While the provision of such information as it exists would be valuable (PCWG, 2009), it would be especially useful to ask incoming IDPs and refugees more about their HLP situation that they just left during this reception process, in order to record evidence for claim that would assist in their return and reintegration subsequent to the end of hostilities. In addition, quick HLP surveys within camps subsequent to reception would also be valuable in recording additional information to be used as evidence. Useful information could include, precise locations of origin; living arrangements and residential rights; specific land tenure arrangements (i.e. forms of ownership, access, share-cropping, rental); the nature of customary, statutory and communal rights; specific farming and pastoral rights; history of transactions of lands and properties; boundary descriptions; and land and property secondary occupation or destruction. In a specific example from Guatemala, refugees and IDPs showed up in camps with very little, but what they often did arrive with were a wide variety of 'pieces of paper' attesting to their presence in their area of origin. These included water, electricity and school documents and receipts (Ottelengi, 2009). Delville (2003) notes the value of such informal 'pieces of paper' in securing land rights more generally. In a similar vein Williams (2009) notes the potential role that humanitarian organizations working in areas of dislocation can play if they are able to assist in recording the extent and location of land and property holdings of dislocatees as they depart their areas of origin.

Much more in-depth and detailed questionnaires could also be given to camp inhabitants by specialist teams moving between camps in order to assemble detailed corroborative evidence.⁸ Such a questionnaire could record specific information at the household level regarding abandoned land and property including, a detailed

⁷ Often such information is gathered even before dislocatees enter camps, as humanitarian organizations and the UN encounter them as they flee and prepare to take them to camps (Wade, 2013).

⁸ This would of course cost more than the approach noted above where refugees and IDPs provide evidence as they arrive, but given the cost savings and quicker HLP resitution that would result, would be worth the effort.

description of properties; legal basis of ownership or use (statutory or customary); the circumstances under which it was abandoned (Williams, 2009); specific rights of land resource use for forests, grazing and water; specific locations of grave sites; traditional ceremonial locations; and other forms of customary, location-specific evidence attesting to presence in and knowledge of an area in the pre-dislocation period. Such an in-depth exercise could easily include cognitive mapping of lands and properties.⁹ Such maps can be easily and quickly hand-drawn on paper, a chalkboard, or even in the soil and then digitally photographed. The role of cognitive maps as evidence is significantly compelling, especially when it corroborates other evidence. Cognitive maps produced by local populations have been used for a wide variety of purposes, including natural resource management projects (e.g. Jones et al, 2011), as a legal tool (e.g. Hjortso, 2005), in conflict assessment (e.g. Giordano et al, 2012), and as legal evidence for populations in land claims many decades after their dislocation (e.g. Hart, 1995). Figure 1 illustrates cognitive mapping for a local community at risk of displacement in Colombia. The challenge in such recording of in-depth evidence is then organizational--maintaining the ability to attach evidence stored in a database to people as they reside in their dislocated locations (often moving) and then eventually return. However approaches to managing and using complex spatial-temporal databases and other tools of geographic information science are now significantly advanced (e.g. Nelson et al, 2009; Knowles, 2008; Dysart, 2011), facilitating their application to new problems.

3.2. Pre-emptive land registration

A technique with considerable potential utility in ongoing conflicts which are expected to continue for some time, is to pre-emptively register, in widespread and rapid form, the lands and properties of those who may become displaced. Such an approach would be valuable where displacement is or could become a significant feature of the conflict, or is expected to occur in new areas, and where populations by and large do not have documented title. Williams (2009) notes the legal advantages to doing this. And while such a rapid procedure would not attempt to definitively title land, or provide complete clarity of rights and boundaries (as this would increase the time requirement, and would need to resolve any ongoing disputes), it should be claim-based and aim for maximum coverage as quick as possible, however 'light' the process. Widespread dissemination of the fact that such a procedure has occurred or is underway, could act to pre-empt or deter some dislocation caused by certain interests attempting to gain permanent control over lands via the conflict. In this regard the mapping and GIS abilities of remote sensing (see section 3.9) would be of considerable additional value.

The Colombian government has perhaps the most capable approach regarding proactive and pre-emptive measures for land and property restitution (Zuluaga et al, 2009). With approximately four million people displaced over the course of the long insurgent conflict, the country faces an enormous problem in the return and reintegration of large populations of rural inhabitants. In a look forward to facilitating this even before the war comes to an end, the government has instituted a program whereby those who have become dislocated, or believe they could be, have the opportunity to quickly register their land with a specialized program, so as to facilitate their return upon the end to hostilities (Zuluaga et al, 2009; AS, 2010a, 2010b). Given the size of the dislocation, and nature of the land tenure problems in Colombia, this approach will likely prove very useful in restitution and recovery. Using a variety of methods for obtaining evidence for claim, including techniques of

⁹ Cognitive maps (also known as mental maps) are informal hand-drawn maps that get at the perception of the map-maker with regard to his/her landscape, and demonstrate a level of familiarity with a local landscape which strongly attests to occupancy (eg, Portugali, 1996; Hart, 1995). Such maps include important components of the landscape which can then be corroborated with other information such as existing maps and other documents, remote sensing, verbal testimony or aerial photography (eg Hart, 1995).

'social cartography' (adding testimonial evidence to maps) (Figure 2) for IDPs lacking documents and where land is lacking delimitation, the Colombian approach seeks to get a head start on large-scale restitution (MOA, 2010; Zulaga et al, 2009).

3.3. Thwarting coerced and bad faith transactions

Coerced, forced, fraudulent and bad faith land and property transactions are common in war-torn settings, creating large dislocations and confiscations of land and property that are difficult to reverse (eg, Kuba and Lentz, 2006; Moyo and Yeros, 2005; Leutloff-Grundits, 2006). In such situations certain legal decrees that freeze all transactions, or types of transactions, applied to specific areas of a country for certain periods of time, even retroactively, can be very useful. A variation of this technique exists in Iraq, where forced, fraudulent, and illegal land and property transfers, or transfers suspected of being so, were frozen en-masse and not allowed to proceed by the Property Registration Department in the Ministry of Justice (Isser and Van der Auweraert, 2009). Williams (2009) outlines this technique more broadly, whereby when it is widely understood that a war took place in a specific region for a specific period, all transactions during that period and immediately after, can be declared legally null and void even well after the fact, with such a declaration being widely disseminated among the general population. Similarly, as conflict or instability begins to spread to new areas of a country, such a ruling could also be issued pre-emptively. This may have the effect of discouraging dislocations due to coerced, forced, fraudulent, and bad faith transactions. While this would also impact good faith transactions during this period, additional techniques to verify the good faith nature of such transactions can also be derived. However good faith transactions are also arguably much more able to continue informally among the parties to mutual benefit during the period in question, and be officialized subsequently.

3.4. Technical and administrative HLP capacity

The subtraction of a broad range of junior level administrative and technical HLP capacity is common during armed conflict, and emerges as a serious problem during recovery (Price, 2003; Marquardt et al, 2002; UNEP, 2005; Shambaugh et al, 2001). As a near-pervasive feature after prolonged conflicts, the well educated often return from exile or safe positions within the country to occupy leadership positions in ministries in urban areas, while the more numerous mid and lower level trained and experienced technical staff have usually scattered to a wide variety of internal displacement and refugee situations, or have taken up residence and employment in other areas of the country or in other countries. Government HLP staff who work in and are knowledgeable about rural areas are particularly vulnerable to early targeting by insurgent groups due to their government employment and hence perceived government sympathies.

Training a critical mass of new land and property rights employees after conflict and providing them with experience is necessary, but costly and time-consuming (Shambaugh et al., 2001; UNEP, 2005, 2003). And although this can produce long-term results, it does not address immediate HLP restitution needs subsequent to conflict with the rapidity required. While such long-term training is underway, the HLP problems of the country can continue to deteriorate significantly as a result of a widespread capacity vacuum (Debroux et al., 2007; Shambaugh et al., 2001). While it is challenging to maintain organizational and technical capacity during times of conflict so as to act quickly with the onset of recovery, pre-empting the large-scale loss of trained junior personnel is possible. When HLP staff can no longer perform their duties due to the advancing momentum of conflict, international efforts can be directed toward enlisting them in training programs or employment prior to their dispersal, either within more stable parts of the country, in neighbouring countries, or abroad. Such an

approach has experienced success in the conservation sector during war (UNEP, 2007; Blom & Yamindou, 2001; Ali, 2007). Shambaugh et al. (2001) note in this regard that short study tours to neighbouring countries have produced worthwhile outcomes during armed conflict. Study tours can keep HLP staff members engaged, and allow them to learn about legal and administrative developments and advances in HLP not currently employed in their country (including techniques for dealing with war-torn tenure issues), which can later be used in the post-conflict period. Such an option might include short courses in technical colleges, or distance education with foreign technical schools and universities. A good number of such schools in developing countries are funded or run by donors, and provide courses in HLP rights and regularly take in students from elsewhere in Africa (Wright, 2013); such that donor funded arrangements for this option can take advantage of certain synergies. In addition, a number of international NGOs run their own certificate programs on land rights, cadasters, land law, or have programs that contain these topics; such as the Danish Land Tenure Certificate Programme in Arusha, Tanzania. In addition, HLP staff from a conflict country can be transferred or loaned to assist staff in neighbouring countries struggling to maintain their own HLP rights structure in border areas in the face of large influxes of refugees (and sometimes militias) from the conflict country. Such a transfer could be valuable to neighbouring countries because those being transferred would be able to speak the language of the refugees and know the refugee population better. This strategy would allow transferred HLP employees to be kept track of, to continue to work and gain experience, and then be quickly transferred back in the post-conflict period.

An alternative for keeping track of HLP personnel during conflict, is to place them in administrative, operational and other managerial positions in refugee and IDP camps, as support to humanitarian organizations or UN efforts. National and internationally run camps always hire local staff, and prioritizing HLP personnel for this employment would accomplish four objectives: 1) assist with camp operation including the land rights aspect of camp location, land area needed, interaction with local communities over use of their lands for camps, and access to surrounding land resources; 2) allow for government and the relevant international community to know where this personnel is so as to quickly redeploy them to HLP restitution work at the end of hostilities; 3) allow for them to be employed at no additional cost; and importantly, 4) allow for greater capacity in the gathering of relevant HLP information from IDPs or refugees during the reception process, as noted previously.

Advance planning for the above options is perhaps more straightforward than it might seem. It is quite common for government units, but especially for international agencies, NGOs, embassies, and donors resident in a particular country to derive detailed contingency plans as the country becomes increasingly unstable and moves toward open conflict. Such plans normally include the re-programming of projects and activities, and the relocation of personnel; and could easily include efforts to prevent the permanent loss of trained junior level HLP staff by setting up predetermined arrangements designed to employ, train, or keep track of them.

3.5. Planted trees

Where effective, legitimate institutions are lacking (as they almost always are during and after war), the emergence of certain forms of landscape-based evidence can be particularly robust, especially forms which connect well with statutory precepts of claim such as attesting to ‘occupation.’ Purposefully planted trees deserve particular mention in a war-torn evidentiary context due to the very clear connections made between social relations and specific lands. The literature regarding the tenure role of trees is significantly large (e.g. Raintree 1987; Meinzen-Dick et al., 2002; Otsuka et al., 2001; Rocheleau and Edmunds, 1997; and Fortmann

and Ridell, 1985 is an annotated bibliography on the topic with 414 entries). Purposefully planted economic, marker, and service trees are notable for their pervasive role as legitimate evidence for claim within customary systems, and their strong connection with formal legal ideas of long-term occupation or presence (Otsuka et al., 2001; Meinzen-Dick et al., 2002). For example Cohen (1993) articulates the powerful role of tree planting as evidence in asserting land claims in the contested landscapes of the Middle East by both Palestinians and Israelis (Figure 3), given that legitimate institutions to resolve claims between these two groups are lacking (also Braverman, 2009).

Trees are valuable for land tenure claims because they make the 'right' evidentiary connections among the physical, social, and cultural domains (Unruh, 2006). While economic and service trees are useful in this regard, there is widespread use within customary and statutory tenure systems of specific 'marker trees'; in other words purposefully planted trees which exist as boundary or place markers on rural lands (e.g. FAO, 1995; Dewees, 1995). While these exist in wide variety, they share significant similarities. Most are not natively from the areas in which they are used, so as a result they stand out and are recognized as non-native. As they are not native they also frequently do not reproduce (self-seed) locally, and hence their existence is evidence for their purposeful placement. They are commonly used within customary tenure systems for boundary and claim purposes but are frequently also recognized in law. In Uganda subsequent to the large dislocation during the Idi Amin era, returning populations were able to locate such trees within farms that had regrown into forest, and this facilitated return and the reclaiming of land, partly because such trees exist as legitimate evidence in Ugandan statutory law (Bahati, 2003). Rural inhabitants in central Uganda have been known to plant such trees for the express purpose of being able to reclaim land after their dislocation due to war and unrest, thereby retrieving it from squatters or counter claimants (Bahati, 2003). This can be especially useful evidence if the original occupant can describe with some precision where the trees are, especially when corroborated with testimony from neighbours. In Liberia, 'soap trees' were used for a such a purpose after that war (Unruh, 2008a). A related tool for observing the presence and absence of trees, including the cutting of trees is remote sensing imagery from different points in time, revealing an earlier presence of trees (see section 3.9).

A variation of this approach is the utility of in-place economic and service trees, such as mango, papaya etc., that do self-seed locally. While perhaps not quite as explicit evidence as marker trees, after a war it can be quite clear which are the older trees and which are the younger ones that have self-seeded. In the developing world, such economically valuable trees are among the most common and valuable forms of customary evidence for claiming ownership of land (e.g., Raintree, 1987; Fortmann and Riddell, 1985 and the references cited in these works for Africa, Asia, and Latin America). In the case of cashew trees in postwar Mozambique, the rules and customs regarding the link between cashew trees and land tenure in the postwar context, greatly facilitated (at no cost to the state) the coordination of defending and asserting rights to land, and hence land re-access and dispute resolution during the return process (Unruh, 2010). The older cashew trees in particular have and continue to play an important role in the organization of property rights in the period of recovery.

The fact that use of such marker and other purposefully planted trees is so widespread in customary tenure systems, means that statutory law could potentially move quickly in a modest way, to recognize where it does not already, the evidentiary role of such trees; either generally, for dislocatees only, or temporarily in order to facilitate return and reclaim. For statutory law, such 'facts on the ground' regarding property rights are a fundamental component of claim and counter claim (Ottolenghi, pers. comm. 2009).

3.6. Retrieval of land records subsequent to conflict

Land records can be taken or hidden away by retreating forces when they leave a country or area, with a variety of intentions. For example the retreating Serb army took part of the land records from Kosovo with them, while other parts were hidden in Orthodox monasteries (Toal and Dahlman, 2011). And in East Timor the Indonesian head of the Dili land office took the main land and property record books to Indonesia during the violence (Marquardt et al, 2002). The timely retrievability of materials taken by retreating belligerents and others in conflict scenarios can be variable. While it is often known that certain parties have the documents, their retrieval often depends on peace negotiations or forms of compensation, reparation, or concession with regard to the conflict, and so can be linked to wider processes. Zevenbergen (2009) notes that very often there is no easy access to such materials.

However HLP records are also frequently taken by employees or former employees of HLP units within government at different levels and locations (as they are in a unique position to know how valuable they are), and this offers considerable potential. Land and property documents can be taken by these actors for safekeeping or as future negotiable assets, as they depart their places of work when offices begin to cease functioning with the onset and advancement of armed conflict. Such documents can also be purposefully looted and kept by opportunists as the war intensifies. In aggregate this results in a series of 'mini-archives' hidden within and outside the country among a variable set of actors. While retrieving these during and after a war can be complicated, there are feasible approaches. The first step is to locate any former employees that may have possession or knowledge of the whereabouts of these materials. It can be a common pattern for some of the formerly employed in a postwar context to return to or near their old work sites after a war (even if it is reduced to rubble), as the international community is arriving. This is done simply to observe, or just pass the time and meet up with colleagues. Such former employees can be approached and queried about the existence of HLP materials, and possibly hired to assist with locating and retrieving these holdings, along with other aspects of HLP recovery. The existence of such personal archives can also become known as government and donor activities begin to address postwar HLP issues and the general population becomes aware of this and those who have materials begin to come forward. This can potentially be encouraged by public announcements. Once such personal archives are located, recovering them can occur by several means--although it could be considerably easier if the employees who took them also participated in one of the options noted previously for junior level HLP personnel. Those in possession of such holdings can at times be reluctant to release them because they either fear for the safety of the records, or they can view such records as a way to guarantee future employment or payment--options that should be explored. One way to deal with the reluctance to release documents on safety grounds, is to photocopy or digitally photograph them, such that evidence of their existence can be used in the short-term, with the originals then being accessed through subsequent arrangements.

Apart from retrieval of actual HLP documents themselves, the retrieval and use of other documents attesting to the existence of the actual documents is also possible. For example, in East Timor, a good deal of information on properties whose records were destroyed when the land and property offices in the capital Dili were burned down, could be retrieved through the banks that had accepted these properties as collateral for loans (Zevenbergen, 2009).

3.7. Protection and storage of HLP records

In many developing country circumstances as a country moves toward open conflict, HLP records become poorly stored and can rapidly deteriorate, or become highly disorganized as they are left unsecured as national human and financial resources are redirected toward the war effort. This process then becomes acute during conflict. As a result stored records are highly susceptible to destruction, theft and fraud. Government offices (especially in rural areas) that house official HLP records (titles, deeds, cadasters, transaction records, applications) along with blank titles, deeds and stamps that officialize documents, are all at heightened risk of theft in conflict contexts, and can be specifically targeted and removed, destroyed, or used for fraudulent activities during and after armed conflict by a variety of actors (PCWG, 2009; Unruh and Abdul-Jalil, 2012). In addition, parties with questionable claims to lands or who are involved in disputes can destroy records that favour other claimants (Bruce, 2009). In East Timor, the land and property unit housing the land records was reported to be one of the first buildings destroyed during the conflict (Marquardt et al, 2002). In Sierra Leone, when the rebels first entered Freetown, a group of them were specifically tasked with destroying and stealing land records (Unruh, 2008b). And in Liberia the national archives which housed the land and property records there were targeted for theft and destruction of records during the war (Unruh, 2009).

A few sources have noted the significant potential of moving quickly to copy, store and protect HLP records held in government offices as the prospect of armed conflict grows or moves to new areas (e.g. PCWG, 2009; Williams, 2009). Apart from attempting to physically move, store, and otherwise protect original land and property documents, current technology allows paper documents to be rapidly photographed, organized and sent elsewhere for safekeeping, preferably out of the country. Such a technique would be considerably quicker and lower cost than protecting or moving and storing the originals, and hence would be able to cover more areas. Batson (2013; 2008) describes a similar approach for Afghanistan. In a related approach, Williams (2009) notes the value of assisting local populations at risk of displacement in compiling and safeguarding any documentary or other evidence they may have available to them related to HLP assets. Where documents are lacking, digital photographs of local landholders on their land or property or next to houses, tombs, boundaries or other landmarks, can be done quickly and be valuable in making a subsequent argument for previous occupancy.

In a records protection context it is worth noting that as instability grows, people frequently tend not to rely on one land and property rights system or single set of evidence attesting to HLP claims, but instead engage with several systems and evidence sets when seeking to secure claims. This occurs by local inhabitants documenting their transactions where previously they did not, demarcating and recording boundaries in a variety of ways, engaging in reciprocal testimonial accounts with neighbours and kin, or looking for dispute resolution within different tenure systems (e.g. Lemmen et al, 2009; Barry and Fourie, 2002; Augustinus and Barry, 2004). Thus communities can seek to record as much as possible as security deteriorates, and restitution efforts should be aware of the existence of evidence for claims residing in different tenure systems. Other records such as receipts of payment for municipal taxes, utility bills and school fees can also be evidence of long-term occupation, and in some cases can lead to full statutory land rights after a certain period of time via rules of prescription (Zevenbergen, 2009).

3.8. Recording customary practices attesting to rights

Like the village level protection and copying of documents that attest to land and property rights, recording customary rights at the village level can likewise prove to be very worthwhile. Williams (2009) observes from a

legal perspective that simply recording customary and informal practices regarding HLP is very worthwhile in a village setting (pre-dislocation) as well as in a camp setting subsequent to dislocation, as these can be used in any subsequent legal efforts. Williams (2009) further suggests that "[f]or customary situations testimony should be taken from owners, users, witnesses, and any customary leadership with regard to the location and nature of the HLP assets in question". As in camp situations, digital voice and video recordings can quickly record known customary rights, claims, HLP descriptions and other relevant information at the individual or community level, and can be corroborated with other forms of evidence such as that derived with remote sensing. A growing number of countries acknowledge customary rights in statutory laws, constitutions, regulations, legal rulings and precedents; and these can be used in connection with descriptions of customary rights for restitution purposes.

3.9. Remote sensing

Satellite imagery and aerial photography have recently begun to offer significant potential for establishing connections between the displaced and their lands and properties. Research and application in the use of both forms of imagery to analyze landscape scale phenomenon has now progressed to the point of significant integration with social science. The incorporation of social processes which are reflected in landscape patterns (e.g., Liverman et al, 1998; Moran and Ostrom, 2005; Lambin et al, 2001) has provided important insight into land tenure arrangements connected to landscape features which can be useful for restitution. Villages; settlements and graveyards; agricultural fields; human use of streams, hills, ridges, ravines and forested areas; trees planted along boundaries; and the location and features of streets and buildings, can all be observed over wide areas with such imagery and connected with the social processes which produced or altered them. This can produce very robust connections between specific lands and properties on one hand, and the people who participate(d) in, and hence have exclusive knowledge of certain landscape change on the other, thus attesting to occupation (Figure 6a) (e.g., Burns, 2009; Vogt et al, 2006; Mulley and Unruh, 2004; McConnell et al, 2004). The analytical connections between satellite/air photo imagery and rural institutions (formal and informal) is a vigorous field of research and application that is providing key insights into postwar recovery by integrating geography, anthropology, and political science (e.g., Fairhead and Leach, 1996; McConnell et al, 2004; Guyer and Lambin, 1993; Fox et al, 2003; Evans and Moran, 2002). Pre-conflict imagery often exists for many areas of the world,¹⁰ such that even well after displacement, this imagery can be requested from the governments and companies that hold them so that a characterization of specific areas for certain periods of time can be derived. Such pre-displacement landscape patterns can be readily identified and described in detail by dislocatees familiar with them, making a powerful argument for pre-displacement occupancy (Figure 6b). The significant utility and potential of such imagery has been demonstrated in a wide variety of participatory mapping exercises with local (including forcibly dislocated) populations well able to recognize land use and terrain features from both satellite imagery and aerial photography (e.g. Burns, 2009; DW, 2005). Combining or matching such imagery with verbal and/or other evidence attesting to attachments to land prior to dislocation can serve as valuable forms of attestation for restitution claims (Figure 2).

Obtaining imagery for use in support of rapid restitution programs can be fairly straightforward. Apart from the possibility of downloading such imagery from the internet for free, during a peace process the UN military

¹⁰ Landsat data in particular is widely available and can quickly and cost-efficiently serve the needs of the development community for rapid postwar analysis.

command or a participating member state nearly always has satellite and air photo imagery of the country in question--both historical and recent, and this can be requested for use in restitution activities. In East Timor the Australian military active in the country as peacekeepers provided areal photography to the recovering Land and Property Unit for use in restitution. In an example from Darfur, various NGOs monitor secondary occupations using satellite imagery (Elhawary and Pantuliano, 2009). Such monitoring can determine the dates of abandonment by those who fled as well as the dates of secondary occupation, in addition to detecting change in HLP-relevant landscape features over time due to secondary occupation.

3.10. Modest, rapid changes in statutory law

Substantial potential exists within the realm of the statutory legal domain in war-torn countries, for approaches that see modest changes in statutory law having significant influence on restitution. One fairly quick technique is to determine the existence and applicability of any national laws with regard to HLP rights issues that could be used or quickly amended to technically fit a postwar setting (PCWG, 2009). It is important to consider the utility of individual articles within seemingly less relevant domestic laws, as these can be quite useful. For example individual articles of law dealing with the 'right of reversion' of property after the termination of various forms of rent, lease and loan, etc., can be useful with minor amendment to fit specific war-torn circumstances (Unruh, 2008b). Such a legislative analysis should include laws that deal with protections against evictions and HLP restitution, particularly following arbitrary or unlawful dislocation; as well as any right to peaceful enjoyment of property and possessions (PCWG, 2009). Broadly, such an effort would benefit by seeking legal alignment between the approaches noted previously in this article and statutory law. For example, determining how laws are aligned with localized forms of evidence regarding HLP in a war-torn context, particularly non-documentary evidence, would be very useful. In this regard support from domestic NGOs and the international community can be valuable to assist with changing evidence rules (early on, even if only temporarily for the duration of the war and postwar period). Such change can focus on rules that are overly restrictive, are over-reliant on formal documentary evidence, or are unable to adequately handle customary and informal forms of evidence specific to war-torn contexts. Mozambique is a successful example of this approach, whereby small changes in statutory law facilitated the use of what emerged as highly usable customary evidence after the war. In the postwar Mozambican Land Law, one of the key changes adopted indicated that, "the use of non-written forms of customary evidence, such as oral testimony, to defend claims to land is permitted" (Mozambique Land Law, 1997). Isser and Van der Auweraert (2009) note the need for such an approach for Iraq. Overall the question in such an analysis should be, what are the constraints and opportunities of domestic statutory law with regard to returning and reclaiming land and property after war.

Other modest changes in statutory law while a conflict is still underway can assist with restitution, and potentially deter some dislocation. Several examples are important. The application of 'adverse possession'¹¹ during and after armed conflicts presents a primary challenge for restitution (Ottolenghi, 2009; Unruh, 2009). Because pre-war laws in countries undergoing conflict are almost never made with the intention to manage war-torn situations, certain laws can become very problematic in a conflict context if not modified or qualified. For adverse possession, unless there is legal clarification as to whether the war-time period counts toward the time requirement for claiming land via adverse possession, then the law can be used to prevent restitution, as

¹¹ Adverse possession is a legal approach to acquisition of title by possession or occupation of land or property for a certain period of time under certain conditions (Garner, 2000).

occurred in Guatemala (Ottolenghi, 2009).¹² In addition, property owners who have fled the conflict, particularly the elite, can seek to violently evict IDPs from their lands if they fear (or don't know) that secondary occupation during the war-time period counts toward adverse possession. This can become very charged as the end of the adverse possession period approaches, as observed in Liberia (Unruh, 2009).

A separate set of modest changes to domestic statutory law can attend to the 'upgrading' of evidence and rights based on secondary evidence. The possession of a wide variety of secondary documentary evidence (receipts for school fees, electricity, water, telephone and other services, documents pertaining to land-mine clearance, personal or informal two-party documentation attesting to HLP transaction, etc.) usually does not constitute evidence for HLP assets along the lines of a deed or title. However these can be engaged in a procedure that UN-Habitat and FAO have promoted whereby such documents are legally 'upgraded' and formalized as legitimate, strong evidence attesting to HLP claims (UN-Habitat, 2008). While FAO and UN-Habitat promote upgrading generally, South Africa has had particular success beginning with the 1991 'Upgrading of Land Tenure Rights Act' (RSA, 1991). Emerging from the 1991 Istanbul Urban Forum, upgrading is currently regarded as an international 'good practice', and could be tailored to specifically attend to restitution in war-torn contexts, including customary evidence. Figure 7 illustrates for Liberia the upgrading of squatting into rights of occupation, attested to by a document.

In spite of the potential of modest changes in statutory law, it is worth noting that such an approach can sometimes encounter significant resistance by those interested in protecting the status quo, particularly when this involves protecting certain private property rights. Such resistance can refer to the constitution for reasons not to change particular laws or regulations.

4. Discussion

Significant progress has been made in recent years in understanding contemporary modes of armed conflict and how they intersect with civilian populations (Stedman et al, 2002; Hampson and Malone, 2002; Flint, 2005; Koppell and Sharma, 2003; Hurwitz, 2008). As well advances have been made in attaching this improved understanding to the content and operation of the 'peace process' as pursued by the international community (e.g. Jeong, 2005; Bruch et al, 2011; van Tongeren et al, 2005). In this context enough is now known about postwar land tenure, how it operates, and the patterns of problems that emerge (e.g. Bruch et al, 2012; Braverman, 2009; Unruh and Williams, 2013), along with techniques for registering and examining land claims for local populations (Wilson, 2008)¹³ that specific approaches should now be derived to try to pre-empt what are known to become extremely large, volatile, expensive and long-term tenure situations after armed conflict.

The techniques briefly outlined in this paper, along with others, may have the potential for a certain pre-emptive effect with regard to certain restitution problems, and possibly even dislocation. Williams (2009) highlights the

¹² Ottolenghi (2009) notes for ethnic communities in Guatemala that, "adverse possession was drastically applied to deny the right to reoccupy their ancestral lands to ethnic communities which sought refuge in Mexico to escape the war waged against them by a government which had meanwhile settled on the lands vacated by different groups as a counter-insurgency measure." See Mauro and Merlet (2003) for more on the background and functioning of adverse possession in Guatemala.

¹³ For example significant advances have been made recently regarding the field of 'forensic surveying' which seeks to get at the very wide variety of evidence for land claims (Wilson, 2008).

prospect of using HLP evidence, "to alert parties in de facto control of abandoned properties of ongoing violations that they must address or be held accountable for." At a minimum, widespread dissemination of the fact that evidentiary information is being collected from dislocatees encourages any current or prospective secondary occupant (including those engaged in land grabbing) to begin to doubt that they will be able to retain such land. An important aspect of such a scenario is that in many cases, but particularly those involving ethnic cleansing (the Balkans, Darfur), secondary occupants do know that they are on someone else's land or property, regardless of the political context (Williams, pers. comm, 2009). What can encourage this doubt is the clear and widespread public awareness of the recording and protection of evidence for the purpose of restitution. As Williams (2010) notes, it is possible to push ambiguity in certain directions during conflict. Such doubt and ambiguity can have the effect of encouraging private arrangements between some secondary occupants and the original owners, whereby forms of rent, care-taking, etc., are arranged, so that the secondary occupants hedge their bets with regard to any ultimate post-conflict HLP arrangement. The author's own research revealed this to be the case in Darfur.

Where widespread civil society, government and international community awareness exists that evidence pertaining to IDPs and refugees is being collected and sent quickly out of the country so as to be used in restitution, there emerges the possibility of repercussions on the conduct of the conflict itself. This could occur in particular with regard to wartime objectives of population replacement on lands and properties, and the willingness to participate in such objectives by sympathizers, combatants, and even government personnel. Such an effect may contribute to less dislocation overall as those who promote or cause it may come to the conclusion that it is not worth their while.

Other postwar land and property problems may be forestalled as well. Land law reform usually always follows civil war (e.g. Wiley, 2009; Huggins, 2009; Stigall, 2012), with the 'consultation' or 'legal research' phase (to determine what people are doing 'on the ground') always needing a significant amount of time--frequently years. However if approaches to HLP restitution which interact significantly with local populations are applied early, this can provide a valuable head start on this important phase, potentially reducing the time needed and speeding up postwar HLP legal reform. For example information regarding who has (or had) what rights and where prior to the war, and what evidence is and is not available to different groups, can contribute significantly to an inclusive postwar set of HLP laws.

An additional postwar problem that could be ameliorated, stems from the reality that civil court systems designed for peacetime are pervasively unable to handle the large surge in postwar land and property dispute cases, which cause a great deal of congestion in the courts system, even to the extent of preventing the system from functioning. In Iraq this amounted to tens of thousands of cases (Isser and Van der Auweraert, 2009), and in Liberia between 75 and 90 percent of all cases in all courts were land and property related (Unruh, 2009). While postwar countries can establish special land and property commissions or tribunals in an attempt to handle such a surge, the evidentiary problems remain a primary challenge in resolving these disputes. The techniques described here could assist in two ways, 1) by producing, protecting and making available evidence to be used in dispute resolution, thus speeding up the process, and 2) by potentially reducing the volume of some types of disputes, due to the clear existence of forms of evidence held by returning populations and backed up by the national government and the international community.

Finally, further work on these and other tools would do well to focus on providing guidelines that would prioritize and sequence among the different techniques, given the: nature of a particular conflict; the manner in which dislocation occurs; the state's capacity; the relative viability, strengths and weaknesses of the existing customary tenure systems; and the presence and capacities of local and international NGOs and donors. In this regard a framework similar to what Boone (2013) describes would be of considerable utility. Such a framework would however take into consideration that a war-affected landscape is diverse, and that in many cases use of different techniques will be spatially and temporally separate, such that any single set of priorities, sequence or timeline would likely not be applicable over the entire war-affected human landscape.

5. Conclusion

While the social, economic and political impacts of war-displaced populations are daunting, the convergence of four ingredients may have the potential to contribute to a much more effective management of HLP restitution. First are the advances in certain technologies which are applicable. From new forms of cadasters, spatial recognition and HLP registration, to remote sensing imagery and digital media connectable to the internet, a variety of new tools can be brought to bear. Further work is needed to both examine additional tools and better integrate these with relevant war-torn social processes. Second, the various socio-political processes by which displacement occurs is now more thoroughly and comprehensively understood, to the degree that identifiable patterns have emerged and can be examined in-depth for latent opportunities. This has occurred both due to the scale and number of dislocation events, and to a greater data collection and analytical ability on the part of the international community, including the emergence of conflict, refugee and peace studies as hybrids of traditional disciplines. Third, the technical aspects of HLP restitution processes and their variations are now much better understood. This is due to both the glaring need for HLP restitution in the many recent conflicts, and the many repeated attempts to deal effectively with it. Fourth, the operative aspects of war-torn land and property rights are now better understood. Both a specific focus on the topic and comparison across cases have allowed for advances to be made in understanding the difference between war-torn and stable settings in an HLP context, and the various mechanisms which are able to address problematic issues over time. What are needed in order to take fuller advantage of these four ingredients are techniques which can bring them together to deal with restitution in a way which matches the potential of these advances to the ongoing enormity of the need. The brief descriptions of the ten potential techniques presented here is an attempt at a first step.

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