

Housing, Land, and Property Rights in Post-Conflict United Nations and Other Peace Operations

A COMPARATIVE SURVEY AND PROPOSAL FOR REFORM

EDITED BY SCOTT LECKIE



CAMBRIDGE

Housing, Land, and Property Rights in Post-Conflict United Nations and Other Peace Operations

**A COMPARATIVE SURVEY AND PROPOSAL
FOR REFORM**

Edited by

Scott Leckie



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org

Information on this title: www.cambridge.org/9780521888233

© Cambridge University Press 2009

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2009

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Housing, land, and property rights in post-conflict United Nations and other peace operations: a comparative survey and proposal for reform / edited by Scott Leckie.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-88823-3 (hardback)

1. Postwar reconstruction. 2. Peace-building. 3. Postliminy. 4. Civil war – Protection of civilians. 5. Refugees – Legal status, laws, etc. I.

Leckie, Scott. II. Title.

KZ6785.H68 2008

333.3–dc22 2008021899

ISBN 978-0-521-88823-3 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate. Information regarding prices, travel timetables, and other factual information given in this work are accurate at the time of first printing, but Cambridge University Press does not guarantee the accuracy of such information thereafter.

HOUSING, LAND, AND PROPERTY RIGHTS IN POST-CONFLICT UNITED NATIONS AND OTHER PEACE OPERATIONS

For more than sixty years, the blue helmets of United Nations Peacekeeping missions around the world have come to symbolize both the promise and the fragility of the UN. Beset with unresolved conflicts and underfunding, and invariably burdened with sentiments of overexpectation, more times than not UN missions to keep the peace have made a difference. In recent years, frequent allegations of corruption, fraud, and abuse have tarnished the image of the UN as not only overly ineffectual, but as something to be skeptical of, rather than the obvious place to turn for help in resolving contentious challenges that affect many nations.

While the ups and downs of UN operations, and what is now referred to as peacebuilding, have been extensively analyzed and critiqued, one policy sphere has largely been ignored by analysts: the track record of the UN following conflict in the area of housing, land, and property rights. This volume seeks to fill this void by examining the UN's experience in grappling (or, as the cases examined convincingly show – more often than not, consciously not grappling) with the immense and inevitable housing, land, and property rights crises that emerge in all countries during and after conflict. Chapters exploring UN post-conflict involvement and peace operations in places as diverse as Cambodia, Kosovo, Sudan, East Timor, Rwanda, and Iraq, among others, reveal not only that much more can and should be done to address the massive housing, land, and property crises that often dominate nations emerging from war, but that failing to address these inevitable and complex challenges can leave countries and their citizenry in far worse living conditions than would have otherwise been the case.

Beyond the country studies, a series of detailed and constructive policy prescriptions on how to improve international responses to these challenges are offered to policy-makers intent on ensuring that the housing, land, or property spoils of war so commonly accepted in the past are no longer bargaining chips around a negotiating table, but rather rights that should not and cannot be sacrificed for a larger peace.

Scott Leckie is the director of Displacement Solutions and the founder of the Centre on Housing Rights and Evictions (COHRE). He is an international human rights lawyer, advocate, and researcher with some twenty years of experience in the international protection and promotion of human rights. He has carried out human rights work in more than sixty countries and has worked in expert and advisory capacities with many United Nations and other international agencies, including the Office of the UN High Commissioner for Refugees (UNHCR), the UN Office of the High Commissioner for Human Rights (OHCHR), the UN Habitat Programme, the UN Development Programme (UNDP), and the UN Office for the Coordination of Humanitarian Affairs (OCHA). He has worked in both the UN Mission in Kosovo (UNMIK) and UN Transitional Authority in East Timor (UNTAET). He has written extensively on various human rights issues and lectures regularly at law schools in Switzerland, Thailand, and the United States.

ALSO BY SCOTT LECKIE

- The Housing, Land and Property Legal Code of Burma (2009)
- Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons, Vol. 2 (ed., 2008)
- Housing, Land and Property Restitution Rights for Refugees and Displaced Persons: Laws, Cases and Materials (ed., 2007)
- Legal Resource Guide on Economic, Social and Cultural Rights (ed., with Anne Gallagher, 2006)
- Returning Home: Housing and Property Restitution Rights of Refugees and Internally Displaced Persons (ed., 2003)
- National Perspectives on Housing Rights (ed., 2003)
- When Push Comes to Shove: Forced Evictions and Human Rights (1995)
- Destruction by Design: Housing Rights Violations in Tibet (1994)
- From Housing Needs to Housing Rights (1992)

For Pali

Your smile, your joy, your spark, your life
Gifts like no other

Contributors

Margaret Cordial works as a legal advisor with the Kosovo Property Agency and prior to this was with the Housing and Property Directorate in the UN's Interim Administration Mission in Kosovo (UNMIK). She earlier worked as a legal advisor with the UNMIK's Department of Justice and the OSCE. She received an LLM in International Human Rights Law from the Irish Centre for Human Rights, Galway, in 2002 and a Barrister-at-Law Degree from the Honourable Society of Kings Inns in 1996. She was called to the Irish Bar in 1996 and practiced until 2001. In 1999 she was appointed Counsel for the Department of Health at the Lindsay Tribunal of Enquiry into the infection of haemophiliacs with HIV AIDS and HEP C. She was a legal advisor to the Irish Attorney General from 2001 to 2002, and she has lectured in law at various institutions in Ireland. She has published a number of articles on procedural law issues and a publication on the Irish Circuit Courts. From 1994 to 2001 she worked with political parties, organizations, and community groups toward facilitating dialogue and reconciliation between the two communities arising out of the conflict in Northern Ireland.

Paul De Wit is an independent consultant with twenty-five years of experience in land management and land reform processes, mainly on the African continent. Over the last decade he has been focusing on post-conflict land tenure issues, land policy and law development, land use management, and territorial planning. He has worked extensively with the FAO, substantially contributing to the normative work on best practices for land reform that are now being accepted and implemented by a wide

range of stakeholders in Africa. Recent work addresses land and property issues in emergency and post-conflict situations in Sudan.

Daniel Fitzpatrick is a visiting professor at the National University in Singapore, temporarily on leave from his position as associate professor at the Australian National University Law School. He has written widely on law and institutional issues in the Third World, with a particular focus on Indonesia, East Timor, and Papua New Guinea. In 2000 he was employed as a legal consultant to the United Nations Transitional Administration in East Timor. In 2001, he was appointed a visiting professor at the University of Muenster, Germany. In 2002 he published *Land Claims in East Timor*.

Conor Foley has worked for human rights and humanitarian aid organizations in Kosovo, Afghanistan, Colombia, Sri Lanka, Indonesia, Liberia, Bosnia-Herzegovina, and Brazil. He was a Protection Officer for the United Nations High Commissioner for Refugees in Kosovo and has helped to set up legal aid projects for the Norwegian Refugee Council in Afghanistan, Colombia, Indonesia, Liberia, and Sri Lanka. He previously worked at Amnesty International UK, where he had responsibility for the organization's work on bringing human rights violators to justice during the Pinochet case. He first went to Kosovo during the war in 1999, to run human rights training courses in refugee camps on behalf of the Council of Europe. He helped to establish the campaign to free the Guildford Four in 1985, and he was Policy Officer at Liberty during the campaign against the Criminal Justice Bill in 1994. His books include *Combating Torture: A Manual for Judges and Prosecutors*, which was published by the University of Essex and the UK Foreign and Commonwealth Office; *A Guide to Property Law in Afghanistan*, which was written for the Norwegian Refugee Council and the UN High Commissioner for Refugees; *Human Rights, Human Wrongs: The Alternative Report to the UN Human Rights Committee*, which was written for Liberty; and *Legion of the Rearguard: The IRA and the Modern Irish State*, published by Pluto. He is currently editing a collection of essays on human rights and humanitarianism. He writes occasionally for the *Guardian* and other publications, and has reported on human rights issues from various parts of the world

including Iraq, Palestine, Cambodia, and Algeria. He has an LLM degree in International Human Rights Law from the University of Essex and is a Research Fellow at the Human Rights Law Centre in the University of Nottingham.

Mayra Gómez is the coordinator of the Women and Housing Rights Programme of the Centre on Housing Rights and Evictions (COHRE).

Jeffrey Hatcher is a land tenure consultant with the FAO Sudan Land Programme. Most of his career has been spent with the FAO Land Tenure Service working on territorial development strategies, land tenure system analysis, and post-conflict land tenure issues. He has also worked with ActionAid International and co-authored the study *Cultivating Women's Rights to Land* (ActionAid 2005), which analyzed women's access to land in several countries from legal and customary perspectives. He has a BA degree in International Relations from the College of William and Mary (US) and an MA in Development Studies from the European School of Advanced Studies at the Università degli Studi di Pavia (Italy).

Chris Huggins was based in Eastern Africa from 1998 to 2007, and in that time conducted research on land and water rights in conflicts and post-conflict situations, as well as other rights-related issues. He recently served as the Rwanda country researcher with Human Rights Watch. Chris was previously a Research Fellow at the African Centre for Technology Studies. He was co-editor and contributor to the edited volume *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa* (ACTS Press/Institute for Security Studies, Pretoria 2005) and has researched and written various consultancy reports for organizations including the FAO, CARE International, Oxfam, and UNEP. Chris is a graduate in English Literature from Glasgow University and holds a Master's degree in Environmental Studies from Strathclyde University.

Scott Leckie is the director of Displacement Solutions and founder of the Centre on Housing Rights and Evictions (COHRE). He is an international human rights lawyer, advocate, and researcher with some twenty years of experience in the international protection and promotion of

human rights. He has carried out human rights work in more than sixty countries and has worked in expert and advisory capacities with many United Nations and other international agencies, including the Office of the UN High Commissioner for Refugees (UNHCR), the UN Office of the High Commissioner for Human Rights (OHCHR), the UN Habitat Programme, the UN Development Programme (UNDP), the UN Office for the Coordination of Humanitarian Affairs (OCHA), and others. He worked in both the UN Mission in Kosovo (UNMIK) and UN Transitional Authority in East Timor (UNTAET). He has written extensively on various human rights issues and lectures regularly at law schools in Switzerland, Thailand, and the United States.

Rebecca Monson is a lawyer at Maddocks Lawyers in Melbourne, where she focuses on the provision of advice to government departments and public authorities in the emergency management sector. Her work includes law reform and legislative drafting, including drafting of emergency management legislation for several South Pacific nations. Prior to working at Maddocks, Rebecca was completing her studies in geography and law, and working at the Centre for Risk and Community Safety at RMIT University. Her research focuses on the links between emergencies and social and economic development, and the interaction between formal and customary legal systems. In 2004, Rebecca undertook extensive fieldwork in the Solomon Islands examining the links between livelihood security and civil security, particularly among youth. Her law honors thesis, on women's access to customary land in Fiji, Vanuatu, and Solomon Islands, received the 2004 Victorian Supreme Court Prize for Best Honours Thesis and, as one of the only extensive works on this issue, has been widely utilized by nongovernment organizations in Australia and Melanesia.

Knut Rosandhaug received his LLM degree in law from the University of Bergen (Norway). In March 2006 he was appointed as the executive director of the Kosovo Property Agency (KPA) and the Kosovo Property Claims Commission (KPCC) after having worked from 2000 with the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) in Kosovo, from 2004 as their joint Executive

Director. These institutions were mandated by the Special Representative of the Secretary-General of the United Nations (SRSG UNMIK) to receive and process claims on private immovable and residential property respectively after the 1989–1999 conflict in Kosovo. He served from 1998 to 2000 as a legal officer with the NATO Stabilization Force (SFOR) in Bosnia and Herzegovina and the NATO Kosovo Force (KFOR) dealing with property and other human rights issues. He previously worked as an assistant professor of law and a Research Fellow with the Faculty of Law in Bergen (Norway), specializing in law enforcement, supervision of police agencies, and international police cooperation; and with the Armed Forces of Norway.

Nigel Thomson is a practicing land and property lawyer. He has a Masters degree in Law from the University of Queensland, Australia, majoring in International and Comparative Law. Since practicing in commercial property law in Australia from 1993, he has spent most of the past several years working on international development projects and in peacekeeping and humanitarian operations across Asia and the Middle East. During 2004, he worked in Iraq for the International Rescue Committee. Among other humanitarian work focusing on providing assistance to internally displaced persons in southern Iraq, he designed and implemented a monitoring and evaluation process for the study of the operations of the Iraq Property Claims Commission, funded by the United Nations High Commissioner for Refugees (UNHCR). From 2000 to 2001, he acted as the Legal Counsel to the Land and Property Unit of the United Nations Transitional Administration in East Timor. During that time he was responsible for reviewing policy and legislative issues relating to housing, land, and property issues in the post-conflict environment. In 2004 he worked with the United Nations Food and Agriculture Organisation (FAO) in the development of a book concerning access to land and land administration in post-conflict environments. In 2005, Nigel worked with ARD Inc. as the Chief of Party for the USAID Tajikistan Land Legislation Development Project, working on land reform issues with the Tajikistan government. He is now a Head-office Associate at ARD Inc. in the United States.

Rhodri C. Williams is an independent consultant and researcher on human rights, forced displacement, and property restitution issues. He is admitted to the Bar in New York State and received a JD from New York University and an MA in urban and political geography from Syracuse University. Mr. Williams has extensive experience with human rights, legal reform, and displacement issues in the Balkans, including four years coordinating legal policy and monitoring of property restitution with the Organisation for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina. As a consultant, Mr. Williams has continued to focus on housing, land, and property issues in a number of international settings.

Acknowledgments

Special thanks are owed to many who assisted in the completion of this work, all of whose inspiration, insights, and wisdom formed the basis for this book. First of all, my appreciation goes to the various authors for their excellent and innovative analyses of topics that have often gone unexplored in the literature addressing post-conflict, the prevention of war, and nation-building. Their chapters have all made a major contribution to the understanding of how HLP rights can better be addressed by the institutions and agencies entrusted with rebuilding societies grounded in sustainable peace. I am particularly grateful to David Ashley and the Conflict Prevention Unit of the Foreign and Commonwealth Office of the British Government for funding the work leading to this volume. I would also like to thank Mayra Gómez of the Centre on Housing Rights and Evictions for her editing assistance with the chapters comprising this work and for her assistance in organizing the expert group chapter review gathering we convened in Chiang Mai, Thailand, in August 2006 to collectively critique all of the chapters found in this book. The insights provided by the authors of this volume to a subsequent meeting of a wide cross section of the democratic Burmese opposition on the importance of understanding housing, land, and property rights issues in contexts of deep political transition were universally useful to all of the participants of that excellent and precipitous gathering.

Special thanks to my friend and colleague Dan (“HST”) Lewis for his wise words in the Foreword and for a number of great years working together on various HLP issues. Here’s to many more. Further special thanks to John Berger of Cambridge University Press for his patience

and support for this project, and for an amazing story that only he can tell. Finally, as always, Harling and Pali provided the light and the way.

Scott Leckie
Bangkok, Thailand

Foreword

The years leading up to the preparation of this volume were some of history's most intriguing and beguiling as far as the following topics are concerned. While still far from the center of most policy- and law-makers' minds, there can be no doubt that housing-, land-, and property-related deficiencies now occupy a place on the international agendas of many agencies and governments involved in helping to bring peace, stability, and reconciliation to countries emerging from conflict. The agonizingly slow recognition that the resolution of land- and property-related disputes following war is one of the cornerstones of any sustainable peace operation has proven frustrating for those charged with unraveling the chaos of displacement and restoring the rights of survivors.

Yet, even with this small but growing recognition that displaced families and survivors of war should not remain perpetually vanquished, and that rights over property usurped through conflict demand some form of restitution, it is not sufficiently embedded in the understanding that any land or property "solution" requires a measured, integrated, and broad-scale engagement. To produce sustainable property restitution, the machinery driving the justice system, the land administration system, land-use planning, and institutional coherence across all three sectors must function, and in many cases requires complete rebuilding.

The case studies presented here describe a vast body of experience in some of the most challenging environs on the planet. The authors describe the successes and failures, the weaknesses and impenetrable bureaucracy characterizing this field. Each of the individual events that made the past decade so unique – including the large-scale return of

refugees and internally displaced persons in Bosnia-Herzegovina, the initial hope and then exasperation on land and justice issues in Afghanistan, and the grappling with customary and formal systems facing the housing, land, and property rights sector throughout Africa – came about not through any spontaneous epiphany from the peace-makers.

Rather, it was through the creative efforts of what was initially a small group of people – which included the editor of this volume, Scott Leckie – who rightly felt (and who have now surely been more than vindicated) that peace without justice, or peace agreements that enshrined a sense of victor's justice, were no longer adequate responses to the horrors and carnage of war.

Since the early 1990s the voices in support of reversing the abuses of war, in particular forced displacement and “ethnic cleansing” through an increasing embrace of broader concepts of the rule of law and more specific notions of housing, land, and property rights, often in the form of restitution rights, have grown steadily louder and more influential. This collection of case studies and the conclusions drawn from them in the last chapter of the book reflect the growing body of knowledge and, simultaneously, the need to strengthen and formalize systemic resources within the international community of peace-makers, and those that follow to build the foundations upon which stability, equity, and prosperity for all are raised.

Dan Lewis

Chief

Disaster, Post Conflict and Safety Section

UN-HABITAT

Contents

Contributors	page ix
Acknowledgments	xv
Foreword <i>by Dan Lewis</i>	xvii

I. INTRODUCTION

1. United Nations Peace Operations and Housing, Land, and Property Rights in Post-Conflict Settings: From Neglect to Tentative Embrace 3
Scott Leckie

II. CASE STUDIES

2. Stability, Justice, and Rights in the Wake of the Cold War: The Housing, Land, and Property Rights Legacy of the UN Transitional Authority in Cambodia 19
Rhodri C. Williams
3. The Response of the United Nations Interim Administration Mission in Kosovo to Address Property Rights Challenges 61
Margaret Cordial and Knut Rosandhaug
4. Balancing Rights and Norms: Property Programming in East Timor, the Solomon Islands, and Bougainville 103
Daniel Fitzpatrick and Rebecca Monson
5. Housing, Land, and Property Restitution Rights in Afghanistan 136
Conor Foley