

Legal Aspects of Land Administration in Post Conflict Areas

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 - z both contributed to the 'land management
evaluation tool' of UN-HABITAT, which the
paper is partly based on

Land and Conflict

- z land issues often part/core of conflict
- z different groups experience difference in:
 - y access to land delivery (gov./common land)
 - y their position on the land market
 - y formality/legality of land related activities

Land Records

- z** often no full picture from before conflict, due to informal transactions
 - y** illegality of transaction *
 - y** illegality of subdivision
 - y** intestate vs. religious/customary inheritance
 - y** avoiding taxes (transfer & inheritance)
 - y** avoiding expensive/time-consuming process
- z** not only in post conflict areas !

* Land 'rights'

- z discrimination of members certain groups
 - y by discriminatory legislation
 - y by discriminatory implementation of laws
- z contravene human rights conventions
 - y housing rights
 - y security of tenure
 - y infringement rights of weaker groups (often women, minorities, members 'wrong' group)

Conflict and land

- z usually position of groups changes over time, esp. around conflict period
- z groups might 'deal' with land records based on their shifting position
- z land records may be
 - y taken away, removed
 - y destroyed
 - y altered, manipulated

Land records

z limited reliability

- y informal transactions

- y incomplete, outdated, potentially altered

- y inhomogeneous quality

z land disputes

- y land grabbing, duress sales, self justice

- y conflicting 'reasonable' claims

- y movement of persons

Legal framework

- z** understand pre-existing legislation and practice (*law in action*):
 - y** written, customary, informal, parallel, ..
- z** check with international conventions
 - y** repeal discriminatory laws/regulations
 - y** might need to apply 'generic' intern. law
- z** avoid legal transplants (unlikely to fit)

Legal ambiguity

- z legal framework not fully coherent
- z no clear-cut application before and now
- z drafting and implementing new (fitting) legislation will take time and effort
- z urgent need for dispute resolution
- z apply alternative hierarchies of evidence
 - y do not only or fully rely on land records
 - y also on other papers, bills, witness reports, ..

Land administration

- z** set goal(s) it needs to fulfill (for now)
 - y** improve land tenure security
 - y** regulation of the land markets
 - y** implement urban/rural planning
 - y** provision of a base for land taxation
 - y** management of natural resources
- z** be realistic, take phased approach

Land administration

- z** when land market needs to be supported
 - y** pass (large part of) costs on to parties
 - y** realize that title guarantee demands thorough adjudication, investigation on transfers (and accurate boundary survey)
 - y** realize that systematic process will freeze land market for an extensive period

Land administration

z due process is needed in adjudication and processing transactions

y make sure claims are settled

y remember about legal ambiguity and need for alternative hierarchies

y protect those who are absent from the area, f.i. by public notice and waiting period

y take a sporadic approach (case by case)

Land administration

- z traditional title registration seems not appropriate
- z parties on land market have access to alternative knowledge; can weigh their risks without government involvement:
 - y stick to deeds registration
 - y or register qualified or provisional titles
 - y but freeze prescription rules for a while

Conclusions

- z land administration challenges are 'normal' plus 'post conflict'
- z select the goal(s) you go for
- z take phased approach
- z solve disputed, by non-discriminatory local rules, conventions and generic int. law
- z design tailored new laws (with lessons)

Conclusions

- z realize potential problems of land records
- z realize legal ambiguity
- z apply alternative hierarchies of evidence
- z introduce due process, but avoid systematic adjudication and postpone guaranteed titles
- z don't stifle the emerging land market

Conclusions

- z "a thousand transaction with some risk outweigh five secure transactions"