



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

**LEGAL AND PROTECTION POLICY
RESEARCH SERIES**

**Housing, Land and Property Rights in
Post-Conflict Societies:
Proposals for a New United Nations Institutional and
Policy Framework**

Scott Leckie

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DEPARTMENT OF INTERNATIONAL PROTECTION

**PPLA/2005/01
March 2005**

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¹ The paper was prepared on behalf of UNHCR to serve as a background document and discussion paper for an expert roundtable meeting on housing, land and property rights that took place in Geneva in November 2004. The author is the Executive Director of the Centre on Housing Rights and Evictions (COHRE). He has worked directly on housing, land and property rights policy development in various post-conflict environments and on the design of institutional frameworks to protect housing and property restitution rights of refugees and IDPs concerning the Republic of Georgia, Kosovo, Timor Leste, Palestine, Albania, Sri Lanka and Iraq.

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Foreword

Issues of housing, land and property rights in post-conflict societies have recently been given heightened attention on the international agenda. For instance, the Sub-Commission on the Promotion and Protection of Human Rights has entrusted Special Rapporteur Paulo Sérgio Pinheiro with the task of preparing a comprehensive study on housing and property restitution in the context of the return of refugees and other displaced persons. As part of this task, work is ongoing to consolidate existing international human rights and humanitarian law standards on housing and property restitution into a set of UN Principles in this area.

Limited or *ad hoc* strategies that are endorsed and implemented with the legitimate aim of addressing issues of shelter, urban/rural land and property rights can in fact often act to increase tensions and prolong conflicts. This is repeatedly being illustrated when victims of war converge on temporary encampments after having been displaced from their homes and properties, when refugees and displaced persons experience difficulties in returning to their former places of origin in safety and dignity, and when warring factions fight for primacy house by house and field by field. Furthermore, post-conflict peace-building efforts, including those aimed at (re-)establishing the rule of law, are often delayed when displaced populations attempt to reclaim their properties upon their return, when ‘victors’ attempt to usurp the rights of the vanquished, and when redevelopment efforts supercede the capacity of local institutions to (re-)build administrative and systemic capacity needed to restore housing, land and property rights and consequently prevent secondary or tertiary conflicts over these rights.

The following discussion paper sets out the issues at stake and outlines a series of weaknesses in the way violations of housing, land and property rights in post-conflict societies have so far been responded to by the international community. The author also makes a number of proposals on how these rights can more effectively and comprehensively be addressed by institutionalizing the operational response within the United Nations system

This paper was developed to serve as a background discussion paper for a joint UNHCR – UN-Habitat convened Expert Roundtable Meeting on 10-11 November 2004 in Geneva. It builds on the experience and expertise of individuals and organizations that have strived to address these inequities through actions based on international human rights standards in the area of housing, land and property. Many of these actions have been implemented by a limited number of experts trained in both the legal and operational capacities required to mitigate further conflict while addressing housing land and property rights infringements with impartiality and transparency.

Experience thus far reveals that violations of housing, land and property rights have often not been given the same priority as other human rights violations, despite their importance, among other things, for the sustainable return of refugees and displaced persons and the establishment of the rule of law. Consequently, violations of these rights have often been addressed in an *ad hoc* manner rather than in a comprehensive and human rights-based way. The proposal that the United Nations consider elevating this issue both institutionally by devoting human and financial resources and operationally by placing housing, land and property rights among the

priorities of all peacekeeping operations, seeks to ensure that violations of these rights are addressed in a more robust manner, ensuring a more sustainable, transparent and accountable response in the future.

We recommend reading the following paper by Scott Leckie in conjunction with the Summary Conclusions that were reached by the participants at the end of the two-day Expert Roundtable Meeting. Together, these documents suggest a way forward with regard to the policy and operational elements required to address the plight of those who have fallen victim in one way or another to the disenfranchisement of their housing, land and property rights.

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Executive Summary

1. Housing, land and property (HLP) rights challenges are common to all post-conflict countries and territories. Restoring HLP rights to returning refugees and displaced persons, resolving ongoing HLP disputes, re-establishing a HLP rights registration system, rebuilding damaged or destroyed homes, protecting the HLP rights of vulnerable groups and many other housing, land and property issues invariably face the international community in post-conflict settings. United Nations and other peace operations, both large and small, increasingly view these concerns as essential components of the peace-building process and as an indispensable prerequisite for the rule of law. The Secretary-General's August 2004 report on *The rule of law and transitional justice in conflict and post-conflict societies* explicitly recognises this point.

2. Despite these common themes and the emergence of consensus concerning them, the policies and approaches of UN peace operations designed to address these issues have varied widely during the past fifteen years; ranging from extensive involvement with HLP rights concerns to treating these matters as considerably less vital to other peace and security concerns. While differing circumstances, combined with political, financial and other factors have some role to play in these divergent approaches, in no single UN peace operation have the full spectrum of housing, land and property rights issues been adequately addressed, though some have clearly made efforts in this direction. As a result, citizens in some countries or territories have seen their HLP rights taken very seriously by peace operations, while in other countries or territories, citizens facing precisely the same HLP predicaments that face victims of conflict everywhere, have seen their HLP rights effectively overlooked.

3. The extensive experience of UN peace operations gained during the past two decades, however, is now considerable enough for the development of a UN policy on these issues. The absence of any agreed UN policy framework for addressing the many diverse themes affecting how and in which circumstances people live, has contributed to the very different ways in which these challenges have been tackled.

4. To rectify this policy gap, this paper recommends that the UN (including agencies and departments such as UNHCR, UN-Habitat, DPKO, OCHA, OHCHR and others) establish a *Housing, Land and Property Rights Policy Development Group* with a mandate to develop a *UN Housing, Land and Property Rights Institutional and Policy Framework*, applicable to all post-conflict settings where the United Nations is actively involved (See Chart 1). It suggests that such a policy must continue to evolve as the international community's recognition of the central nature of HLP rights to the establishment of the rule of law and to social, legal and economic stability in post-conflict settings continues to expand.

5. This paper recommends that the appropriate UN department or agency create a new, permanent post entitled *Senior Coordinator for HLP Issues* to oversee the development of the new *UN Housing, Land and Property Rights Institutional and Policy Framework* and its eventual incorporation into all future UN peace operations. It is recommended that the post of should be based at UN Headquarters in New York.

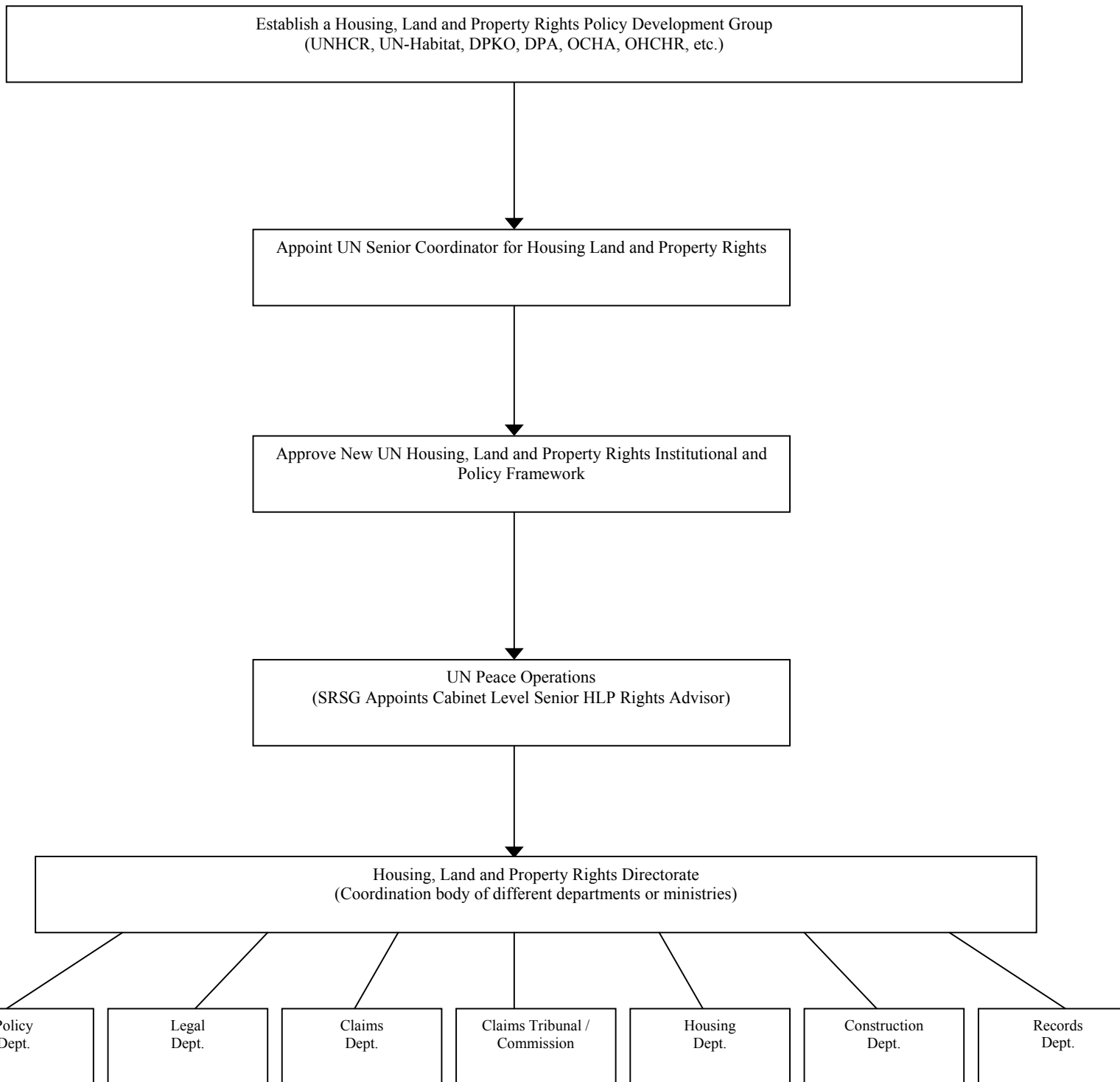
6. The *Institutional and Policy Framework* itself is premised on a series of lessons learned since 1990 in terms of attention to HLP rights concerns within peace operations. It is divided into four phases common to peace operations: (1) the planning phase, (2) the emergency phase, (3) the transition phase and (4) the development phase. It begins with an outline of proposed actions to be taken by the UN prior to the initial stages of any future post-conflict peace operation and then identifies specific institutional and policy steps that could be taken by and/or supported by the UN to more consistently address the full spectrum of HLP rights concerns likely to face them.

7. The central element of the proposed HLP rights institutional and policy framework is the facilitation of the establishment by all future UN peace operations within all post-conflict societies of a national *Housing, Land and Property Rights Directorate (HLPRD)* to ensure that comprehensive and consistent institutional, political and legal attention is paid to all HLP rights concerns within the country or territory concerned. This paper recommends that the HLPRD be comprised of the same departments wherever established, but recognises that any such institution is bound to take various forms depending on local circumstances. In some instances, the HLPRD could be an entirely new and independent institution initially coordinated by a UN Transitional Administration. While in other instances, it could be comprised entirely or partially of existing national institutions (ministries, property registration offices, etc) with the strong support of the UN peace operation concerned. The proposed HPLRD would be divided into seven departments (policy, legal, claims, claims tribunal, housing, construction and records), each of which would be responsible for implementing specific housing, land and property rights issues.

8. This paper recommends that the Special Representative of the Secretary-General of every future UN peace operation – whether transitional administrations, assistance missions or smaller missions – appoint a Cabinet Level *Senior HLP Rights Advisor* who would be responsible for the establishment and effective functioning of the national *Housing, Land and Property Rights Directorate*.

9. If each of these recommendations is implemented, the UN will be in a far better position to respond effectively and consistently to the innumerable HLP rights challenges that will invariably confront the Organisation in all future post-conflict environments where it carries out peace operations. If these proposals are accepted, UN peace operations will initiate policy responses to housing, land and property concerns prior to even entering the post-conflict area, taking duly into account existing political and legal exigencies and resources. UN peace operations will then work sustainably with national and local authorities and communities to ensure that HLP rights are properly addressed, and in each post-conflict setting will establish a *Housing, Land and Property Rights Directorate* to coordinate all activities involved in the protection and promotion of housing, land and property rights. Such processes will greatly enhance the success of future UN peace operations and significantly strengthen the rule of law and the promotion and protection of human rights within post-conflict societies.

Chart 1: The Proposed Process



HOUSING, LAND AND PROPERTY RIGHTS IN POST-CONFLICT SOCIETIES: PROPOSALS FOR A NEW UNITED NATIONS INSTITUTIONAL AND POLICY FRAMEWORK

I. INTRODUCTION: TOWARDS AN INTEGRAL APPROACH TO HOUSING, LAND AND PROPERTY RIGHTS

1. The growing involvement of the United Nations in post-conflict peace operations has led a variety of observers to suggest the need for policies on how to best address the many complex challenges that confront the UN and other institutions in such situations.² Some, for instance, have suggested the need to develop policies to address the restoration of the rule of law, the judiciary and transitional codes of criminal procedure.³ Most profoundly, perhaps, the August 2004 report of the Secretary-General on *The rule of law and transitional justice in conflict and post-conflict societies* recognises in several instances, the centrality of HLP concerns in the development of the rule of law within these societies.⁴ This paper argues in favour of the UN (and other institutions carrying out similar activities) developing a consistent, transparent and effective policy on matters relating to housing, land and property rights issues (hereinafter HLP rights) in post-conflict settings as part of its work supporting the establishment of the rule of law within post-conflict settings.⁵

² See, for instance: *Honoring Human Rights – From Peace to Justice: Recommendations to the International Community* (Alice H. Henkin, ed.), Aspen Institute Justice and Society Program; *Brahimi Report – Comprehensive review of the whole question of peacekeeping operations in all their aspects* (A/55/305 – S/2000/809) 21 August 2000; Inter-Agency Standing Committee (2002) *Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action – Programmes & Practices Gathered from the Field*, IASC, Geneva; Rama Mani (2002) *Beyond Retribution: Seeking Justice in the Shadows of War*, Polity, London; UNHCR (Inspection and Evaluation Service) (May 1998) *The Problem of Access to Land and Ownership in Repatriation Operations*, UNHCR.

³ Hansjörg Strohmeyer (2001) ‘Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor’ in *American Journal of International Law*, vol. 95:46. The recent completion of the *Draft Transitional Code of Criminal Procedure* and the *Draft Transitional Detention Act* are indications that UN-wide policies on issues relevant to post-conflict settings are possible, necessary and of practical utility.

⁴ See, for instance, paras. 4, 5 and 24 (UN doc. S/2204/616).

⁵ Although no formal policy yet exists, several UN agencies and analysts are beginning to take steps towards this end. For instance, UNHCR and the UN-Habitat Programme signed an MOU in December 2003 entitled ‘Closing the gap between relief, reconstruction and development efforts in post-conflict and post-disaster areas’. This MOU opens up operational linkages between the agencies and addresses specific areas of collaboration that will include shelter solutions for refugees and returnees, settlement

2. The development of a clear institutional and policy framework for addressing HLP rights will assist considerably in increasing the effectiveness of peace-building efforts, and provide greater social stability and expand the prospects for economic development within post-conflict societies. Such a policy will assist in expediting the re-establishment of national and local capacities to restore peace, justice, governance and rule of law. In addition to improving conditions of security and the enjoyment of human rights, an integral housing, land and property rights policy can ensure that all of the common housing, land and property rights issues facing any post-conflict environment will be adequately and consistently addressed.

3. It is widely agreed that housing, land and property rights involve much more than four walls and a roof or the temporary shelter provided by a tent or plastic sheet. It is the embrace of this expanded vision of how and in which conditions people actually live – taking fully into account the manner by which international human rights law treats housing, land and property rights (Box 1) – that is the main challenge facing the international community in post-conflict peace operations.⁶ HLP rights are widely recognised throughout international human rights and humanitarian law, and thus the legal framework required for the development of an integral policy by the UN and others is already in place.⁷ Standards such as the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination and many others all recognise formulations of HLP rights (see Annexure). There are no legal grounds or insurmountable obstacles, therefore, that explicitly prevent or prohibit peace operations from addressing HLP rights. Indeed, the UN and States possess a wide range of obligations to protect human rights in the context of post-conflict peace operations, including housing, land and property rights, and these are very widely accepted by the international community.⁸

Box 1

Housing, Land and Property Rights – Different Concepts of Equal Importance

This paper uses the term housing, land and property (HLP) rights to ensure that all residential sectors are included in the development of plans, policies and institutions addressing the legal and physical conditions in which people in post-conflict societies live. Using the term HLP also ensures that the terminology used in one country to describe the rights possessed by everyone, eg. ‘housing rights’ are treated as the equivalent of terms such as ‘property rights’ or ‘land rights’. Using only on the term ‘property rights’ to describe all of the residential issues the require attention within post-conflict settings, can all too easily lead to certain sectors (tenants, cooperative dwellers, informal sector dwellers without secure tenure and others) facing exclusion and inequitable treatment. The term HLP rights captures all residential sectors and is universally

planning and management, land and property rights, restitution and administration, infrastructure planning and development. It should also be noted that while the term ‘UN peace operation’ is used throughout this document, the proposals contained herein are also application to other peace operations that may not necessarily be coordinated by the United Nations.

⁶ See, for instance, *General Comment No. 4 on the Right to Adequate Housing* (1991), adopted by the UN Committee on Economic, Social and Cultural Rights.

⁷ See Annex 1.

⁸ See, for instance, the general analysis contained in: ICISS (2001) *The Responsibility to Protect* (Report of the International Commission on Intervention and State Sovereignty), IDRC, Ottawa.

relevant within all legal and political systems. In addition, no more than any other terms, HLP accurately reflects how international law views these concepts.

4. To date, most attention to and perceptions of how and in which conditions people live in post-conflict settings – their housing, land and property rights – have been reduced to the construction of refugee/returnee or IDP camps, the distribution of tarpaulins or programmes to restore refugee property rights.⁹ While these and other contributions are key aspects of the broader HLP rights equation, they address only a small portion of the numerous HLP *rights* concerns that can occur during complex emergencies, post-conflict reconstruction and nation-building.¹⁰ While a variety of reasons may explain this general approach,¹¹ this paper asserts that there is a pressing need to ensure that whatever policies are pursued by UN peace operations within a given post-conflict operation are – at a minimum – not outwardly inconsistent with human rights law (in particular the existing treaty obligations or national laws relevant to the country concerned), and that such policies are implemented in a consistent manner throughout all post-conflict operations undertaken by or supported by the United Nations.¹²

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

¹⁰ With specific respect to housing issues, for instance, the international community rarely even uses the term ‘housing’, let alone ‘housing rights’, and instead uses the terms ‘shelter’ or ‘property’ to describe responses to the daily living conditions and housing issues confronting affected groups does not help. While apt in many ways, the term ‘shelter’ itself assists in maintaining a reductionist view of housing rights where all housing issues are reduced to either the provision of plastic sheeting or the restoration of property rights to returning refugees. Housing rights concerns are far broader than this.

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

¹² Indeed, housing, land and property issues are extremely complex and often difficult to resolve, but can be managed by UN peace operations. For instance, one author outlines the complexities in Bosnia and Herzegovina in the following terms: “The dilemma is extensive because of the massive scale of displacement, and because of the amount of land and assets involved. Secondly, it is complex because of the legal uncertainty which resulted, not only from the unlawful occupation of many homes by people without legal title; but also from the fracturing of a formerly socialist legal system created as part of a much larger state; as well as from the widespread destruction or dispersal of many pre-war land title records. Thirdly, the property question is sensitive for several reasons. From a personal perspective, displaced people forced to leave homes, villages, jobs and people which were central to their lives, were also traumatized by the loss of all of the physical and psychological security which a “home” entails.

5. The paper outlines some of the major HLP rights challenges common to all post-conflict settings and discusses more than a dozen key lessons learned concerning HLP rights in peace operations involving the UN. Based on this analysis, an integral institutional and policy framework is proposed, which would ensure that all relevant housing, land and property rights issues are equitably, comprehensively and consistently addressed in all future peace operations. The proposed framework would apply to instances when the UN functions as the Transitional Authority and exercises full or partial powers of governance, as well as in any other case where the UN plays a smaller, supportive role to national authorities within post-conflict contexts. It is suggested that UNHCR and UN-Habitat, in close collaboration with other UN agencies and organs active in post-conflict environments, take the lead in developing and implementing this initiative.

6. Future peace operations may not be able to solve all housing, land and property problems in the short-term. However, an integrated institutional and policy framework and permanent UN staff dedicated to its implementation can surely assist in providing a measure of political certainty with regard to housing, land and property rights issues and put post-conflict societies on a far better footing to secure HLP rights for all. While security, social stability, the distribution of humanitarian aid, developing economic markets, establishing the rule of law and judicial systems, repairing infrastructure and expanding access to schools and medical facilities may dominate the policy-making activities of the UN in post-conflict settings, the time has come to consistently address, in both policy and institutional terms, the numerous housing, land and property rights challenges also facing every peace operation.¹³

II. MAJOR HOUSING, LAND AND PROPERTY RIGHTS CHALLENGES IN POST-CONFLICT ENVIRONMENTS

7. Some of the most prominent housing, land and property rights features present in post-conflict settings include HLP rights challenges in the context of: displacement and return; the legal framework and institutions; the status and availability of housing stock; and other often overlooked concerns such as homelessness and landlessness. The very brief overview presented

Economically, property issues are sensitive because land is one of the few valuable assets left in a country whose infrastructure, industry, agriculture and other income sources were shattered. Moreover, questions of return and repossession of property were politically charged, because control of territory was a major part of the rationale for which the war was fought. By seeking to restore people to their homes, and thus reverse the effects of ‘ethnic cleansing’, the peace process could threaten the interests of those who had brought about the violence in the first place, and might foreseeably do so again”. (Garlick, M. (2000) ‘Protection for Property Rights: A Partial Solution? The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) in Bosnia and Herzegovina’ in *Refugee Survey Quarterly*, vol. 19, no. 3, pp. 66-67).

¹³ Although these HLP rights challenges are ubiquitous in any post-conflict environment, these continue to be under-emphasised ignored by the wider ‘peace-building community’, despite the fact that housing, land and property disputes are often some of the central root causes of conflict in the first place. For instance, a recent volume dedicated to these matters fails to even mention the terms housing, land, property or even shelter. See: Reychler L. & Paffenholz, T. (eds.)(2001) *Peace-Building: A Field Guide*, Lynne Rienner Publishers, Boulder.

below outlines some of the key HLP challenges likely to face any UN peace operation and should assist in better understanding some of the obstacles that have thus far prevented a consistent and comprehensive approach to addressing HLP issues in post-conflict situations. By understanding these challenges and the manner by which they have been addressed in UN peace operations, therefore, a solid basis for new policy development will become apparent.

A. Displacement and Return

1. Refugee and IDP Return to their Original Homes and Lands

8. Protecting the housing, land and property rights of refugees and IDPs seeking to return to their original homes and lands is increasingly seen as a key component of peace-building efforts. To address these needs, UN and other peace operations have sometimes supported the establishment of housing and property commissions, (including adjudicative bodies entrusted with making binding determinations) to assist returnees to return to, reclaim and re-possess their original homes. Bodies designed to achieve these objectives have been created in Bosnia and Herzegovina, Tajikistan, Kosovo, Iraq and elsewhere.¹⁴

2. Resolving Housing, Land and Property Rights Disputes

9. As refugees and IDPs begin to return to their original homes, as poorer groups seek to find adequate housing, land or property and as opportunists attempt to take advantage of the breakdown in law and order, HLP rights disputes are likely to emerge. Such disputes – which can result in violence and insecurity – are the result of many factors and take numerous forms. These include: attempts by displaced persons and refugees to reclaim their former homes, only to find that these are now occupied by members of rival ethnic, national or other groups; housing, land and property claims by persons without documentation to prove their claims but who do hold legitimate rights; determining rights in instances where current occupants hold ‘lawful titles’, but where returnees do not; determining rights following unregistered or unofficial transfers of property; claims by *bona fide* purchasers of property after it was initially expropriated; claims for improvements made on homes, lands and property legally owned by returning refugees and IDPs; claims on the determination of boundaries; claims of tenancy rights and cultivation rights; and many others.

3. Large-Scale Secondary Occupation of Housing, Land and Property

10. The irregular/unauthorized possession of housing, land and property is common to all post-conflict situations. While some manifestations of secondary occupation clearly require reversal (particularly if the occupation in question took place during an ethnic conflict as an element of ‘ethnic cleansing’ or where clear cases of opportunism, discrimination, fraud or corruption are involved), care always needs to be taken to protect secondary occupants against homelessness, unreasonable eviction or any other human rights violations. Coping effectively with the legacy of secondary occupation can be made particularly difficult in circumstances where the temporary occupation of empty properties is a legitimate humanitarian undertaking, particularly during and in the immediate aftermath of conflict when housing shortages are most

¹⁴ See Scott Leckie (ed., 2003) *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, Transnational Publishers, New York.

acute. Practice has often shown that secondary occupants with legitimate humanitarian housing needs will often voluntarily vacate premises if their own housing problems are adequately solved by the provision of another dwelling, a land parcel or compensation.

4. *Forced Housing Sales or Rental ‘Contracts’ Made Under Duress at the Time of Flight*

11. Many displaced persons and refugees are forced to conclude fraudulent sale or rental ‘contracts’ under duress at the time of flight. The existence of such illegal transfers need to be addressed early on by peace operations and formally declared null and void at the early possible moment.

5. *Longstanding/Pre-Conflict Ownership and Tenancy Disputes*

12. Longstanding housing, land and property ownership and tenancy disputes which existed *prior to* the conflict can also face UN peace operations. In some instances, no clear title may have ever existed to the land or dwelling in question, while in others several people may place competing claims on the same piece of land or house. Even if not conflict-related, peace operations need to intervene to resolve such disagreements before they again emerge as sources of violence and instability.

B. The Legal Framework and Institutions

1. *Abandonment Laws or Provisions*

13. Peace operations will also often face the consequences of arbitrarily applied or otherwise unfair HLP abandonment laws or provisions.¹⁵ While abandonment laws are not *ipso facto* arbitrary, (and can be an entirely legitimate means of preventing speculation and ensuring the rational use of limited supplies of housing stock), abandonment laws that are selectively applied

¹⁵ For instance, Croatia adopted abandonment legislation designed to favour persons of Croat ethnic origin. Under the *Law on Renting Apartments in the Liberated Areas* and the *Law on Temporary Taking Over and Administration of Specified Property*, ethnic Croats who fled their homes during the fighting of the early 1990s are considered to have justified reasons for doing so, while the flight of other ethnic groups (especially Croatian Serbs) is characterized as ‘voluntary’. These and other abandonment laws have had the effect of denying many tens of thousands of persons the ability to return to their pre-conflict homes. The Guatemala peace agreement also addressed this issue in more protective terms, with the Government undertaking to ensure that the abandonment of lands was not, in fact, voluntary and that all of those wishing to return to their lands should be allowed to do so. Rwandan abandonment laws have resulted in persons displaced for more than 10 years being denied land, housing and property rights. Even after the war and the Dayton Agreement, Republika Srpska (RS) issued a *Law on Use of Abandoned Property* in 1996 that revoked ownership rights in cases where the owner had not been making active use of the housing in question. Holders of occupancy rights in socially-owned housing were also deprived of their rights under this law. Needless to say, such provisions were used almost exclusively against non-Serbs displaced from RS controlled territory during the conflict. Pressure exerted by UNHCR, the Office of the High Representative (OHR) and others led to the repeal of this and other discriminatory laws. In this instance, the law was replaced by the *Law on the Cessation of Application of the Law on the Use of Abandoned Property*, which protected the rights of owners, possessors and users of real property to repossess the real property with all the rights s/he had before 30 April 1991 or before the real property became abandoned.

against particular ethnic, national or other groups as a pretext to prevent these groups from reclaiming their former homes and lands will require the prompt attention of peace operations.¹⁶ In Sri Lanka, for instance, the application of the *Prescription Ordinance* in conflict areas has meant that displaced persons who have been absent from their homes and lands for more than 10 years have effectively been forced to forfeit rights to those homes and lands. This is despite the fact that returning during the ten year period would have not been a safe or viable option given the nature of the armed conflict in the country. In Bosnia and Herzegovina all sides to the conflict adopted laws on ‘abandoned property’ or applied existing abandonment provisions,¹⁷ seeking to legitimize the ethnic cleansing and housing and property confiscation that took place during the war. One of the international community’s most widely hailed contributions in Bosnia and Herzegovina was the role it played in ensuring the repeal of these laws.

2. *The Absence of Impartial Housing Dispute Resolution Mechanisms*

14. Post-conflict peace operations generally face a non-existent, mal-functioning or seriously over-burdened judicial system. Fair and impartial procedures for resolving housing, land or property disputes are often unavailable. Creating judicial, quasi-judicial and administrative mechanisms to find ways of resolving such disputes is increasingly commonplace, as the experiences in Bosnia and Herzegovina, Kosovo, Tajikistan, Iraq and elsewhere attest. Without such bodies, competing claims on a dwelling or land parcel have no formal means of resolution or of being officially recognised and eventually registered by the governing authorities.

3. *The Legacy of Arbitrary Applications of Law Affecting HLP Rights*

15. Peace operations are also likely to encounter the consequences of arbitrarily applied laws negatively affecting the enjoyment of HLP rights, the application and content of which may require formal reversal. In Kosovo, for instance, as a result of the application of the *Law on Changes and Supplements on the Limitations of Real-Estate Transactions*, the housing and occupancy rights of the ethnic Albanian population were arbitrarily annulled and housing and property transactions were severely restricted. As a result, housing bought or sold in 1989-1999 was generally transacted on an unofficial basis. UNMIK quickly repealed this discriminatory law several months after beginning operations.

¹⁶ In response to this common feature of post-conflict environments, a UN resolution asserts, for instance, ‘that the adoption or application of laws by States which are designed to or result in the loss or removal of tenancy, use, ownership or other rights connected with housing or property, the active retraction of the right to reside within a particular place, or laws of abandonment employed against refugees or internally displaced persons pose serious impediments to the return and reintegration of refugees and internally displaced persons and to reconstruction and reconciliation’. (UN Sub-Commission on the Protection and Promotion of Human Rights, resolution 1998/26).

¹⁷ For instance, according to Article 47 of the *Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina (SRBH), Nos. 14/84, 12/87 and 36/89)*, an occupancy right can be cancelled when the occupant has not resided in the apartment for a continuous period of six months, except in certain limited circumstances (e.g. the occupant is serving in the military or undergoing medical treatment).

4. *Internally and Externally Inconsistent Legal Frameworks*

16. In the process of addressing housing rights issues within post-conflict settings, peace operations will invariably encounter legal frameworks which are often both internally and externally inconsistent. Domestic legislation can be such that it does not provide clear answers to major housing, land and property issues, while at the same time being wholly inconsistent with relevant international legal norms. UN peace operations can play a vital role in streamlining national laws with international legal norms.

5. *The Destruction of Ownership and Tenancy Rights Records*

17. The confiscation or outright destruction of housing, land and property titles, local housing, land and property cadastres, property registries and other official records giving proof of ownership, occupancy, tenancy and other residential or land rights accompanies most conflicts. Without such records, the difficulties of proving who has rights over which dwellings or land parcels are compounded considerably. As an indication of the importance of this issue, peace operations in Bosnia and Herzegovina, Kosovo, East Timor and others have developed programmes to restore and, in some instances, create anew the entire HLP registration system.

C. Housing Stock

1. *Severe Disruption of the Housing, Land and Property Sectors*

18. During conflicts and in their immediate aftermath, the housing, land and property sectors are severely disrupted. New housing construction and the maintenance of existing housing comes to a standstill, and generally does not resume or return to pre-war levels for several years following the conclusion of conflicts. Housing supply invariably declines, causing major social tensions. If a conflict was primarily ethnic in nature, the housing sector may have been used by the warring parties as a key part of the ‘ethnic cleansing’ process and as a form of political patronage as local leaders occupy the homes of rival groups. In all conflicts, housing becomes scarce as homes are destroyed, available housing is often occupied by persons with no legal rights to do so, ownership and tenancy disputes between competing parties often emerge and turn violent and generally, the housing, land and property sectors become a source of tension and instability. With habitable housing and land as two of very few assets available to people in post-conflict settings, problems of illegal occupations and exploitative rent increases are common to all post-conflict settings.

2. *Housing and Property Damage and Destruction*

19. Post-conflict situations are synonymous with the widespread damage and destruction of dwellings and resultant severe shortages of habitable housing. In Kosovo, up to half of the entire housing stock was damaged or destroyed; in Bosnia-Herzegovina, 60 percent of the housing was destroyed; in Sri Lanka some 50 percent of housing in the conflict areas was damaged or destroyed; and in East Timor perhaps as much as 80 percent of the housing in the country was

rendered uninhabitable.¹⁸ As a result, housing that remains intact is often grossly overcrowded, unhealthy and unsuitable to long-term habitation.

3. *Inadequate Information on National Housing Stock*

20. Peace operations rarely have adequate information on the housing stock available in a post-conflict society. Though time-consuming and resource intensive, acquiring this data is vital if permanent housing solutions are to be found for the entire population.

4. *Non-Administered Public/Social Housing Units*

21. Public or social housing resources in post-conflict countries are often non-administered in the aftermath of conflict, given the absence of government and official bodies holding such responsibilities. In some post-conflict settings, the amount of social housing will be negligible, but in others it can be considerable and will require public intervention by the peace operation in question.

5. *Mid-Conflict Housing Privatization*

22. What were previously public/social housing resources are sometimes privatized during conflicts, as was the case in Bosnia and Herzegovina, Croatia, the Republic of Georgia and Kosovo. In some instances, newly privatized homes are transferred from the public to the private sector while these units are being occupied by secondary occupants, with official title being conferred to the secondary occupant without the knowledge or approval of the original dweller. Changes to the tenure type of housing, generally from the public to private sector, need not invariably be malicious in intent and may simply be part of a larger, longer-term process of privatization. But even in these cases, however, care must be taken to ensure that those with legitimate claims to return to their original homes are not excluded from the financial benefits associated with the privatization of their original homes.

D. Often Overlooked Concerns

1. *Homelessness and Landlessness*

23. The combination of conflict, displacement, destroyed and damaged housing, the absence of the rule of law, a mal-functioning economy and other factors often lead to considerable levels of homelessness and landlessness, particularly amongst vulnerable groups. While some of these groups, most notably refugees and the internally displaced are often assisted by various UN agencies mandated to do so, peace operations have often proven reluctant to address homelessness and landlessness in a comprehensive manner.

¹⁸ On housing rights issues in East Timor, see: Jean du Plessis (2003) 'Slow Start on a Long Journey: Land Restitution Issues in East Timor' in Scott Leckie, (ed.) (2003) *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons*, Transnational Publishers, New York, 143. See also: COHRE (2000) *Better Late Than Never: Housing Rights in East Timor*, COHRE, Geneva.

2. *Insecure Housing and Land Tenure*

24. Even if people have access to reasonably habitable housing resources in post-conflict settings, the tenure associated with such housing is often insecure and arbitrary eviction can remain a constant threat. In many conflict settings, within the private rental sector the legal position of sitting tenants may be entirely dependent upon the good will of the landlord and ‘rights’ may be more often defined in terms of oral agreements and a handshake than on the basis of formal contractual relations, consistent with human rights standards. In other instances, pre-conflict human settlements, in particular informal settlements such as slums may not possess legal security of tenure despite very lengthy possession rights.

25. These are some of the key HLP rights challenges that will invariably confront current and UN peace operations. The following section outlines how each of these issues have been addressed during the past fifteen years by UN peace operations and identifies some of the major lessons learned thus far on how most effectively to address housing, land and property rights concerns.

III. UN AND OTHER PEACE OPERATIONS AND HOUSING, LAND AND PROPERTY RIGHTS IN POST-CONFLICT SITUATIONS (1990-2004): LESSONS LEARNED

26. Since 1990, UN and other major peace-building operations have been active in Western Sahara (MINURSO), Cambodia (UNTAC), Guatemala (MINUGUA), El Salvador (ONUSAL),¹⁹ Haiti (MICIVIH),²⁰ Georgia (UNOMIG), Mozambique (ONUMOZ), Rwanda (HRFOR),²¹

¹⁹ ONUSAL’s activities were limited to monitoring some land issues and labour rights. See Brody, R. (1995) ‘The United Nations and Human Rights in El Salvador’s “Negotiated Revolution”’ in 8 *Harvard Human Rights Journal*, 153.

²⁰ “The [mandate] *intentionally omitted* economic, social and cultural rights. In a country as poor as Haiti, the choice had a serious impact on the daily work of the Mission’s human rights observers and frequently was a source of their frustration. The embargo impoverished already desperately poor Haitians. While human rights observers sought information about civil and political rights, the Haitians providing the information often had no money, food or medicine” (emphasis added) in O’Neill, W. (1995) Human Rights Monitoring and Political Expediency: The Experience of the OAS/UN Mission in Haiti in 8 *Harvard Human Rights Journal*, 111. In Haiti, one field team piloted a conflict resolution project addressing land conflicts and devoted one observer to monitoring land-related cases before the land courts, however, this was far from systematic. See also: Granderson, Colin (1996) Institutionalizing Peace: The Haiti Experience in Aspen Institute, *Honouring Human Rights – From Peace to Justice* (Alice Henkin, ed.), 227.

²¹ “After initial extensive discussion on whether or not to cover economic, social and cultural rights, HRFOR chose to prioritise civil and political rights. A Field Manual distributed to staff stated: The necessity of setting priorities in Rwanda is such that Field Officers will work principally within the framework of promoting specific civil and political rights, *as opposed* to economic, social and cultural rights. However, these two categories of rights are inextricably related. In Rwanda, because of a lack of education and poverty, can be argued to have contributed to the genocide, any human rights solution needs to take these factors into account...” (emphasis added) (HRFOR, Field Guidance Manual (1996). See: Howland, T. (1999) ‘Mirage, Magic, or Mixed Bag? The United Nations High Commissioner for Human Rights’ Field Operation in Rwanda, in *Human Rights Quarterly*, pp. 1-55.

Bosnia and Herzegovina (OHR/UNMIBH), Kosovo (UNMIK),²² East Timor (UNTAET), Democratic Republic of the Congo (MONUC), Eritrea and Ethiopia (UNMEE), Sierra Leone (UNAMSIL), Afghanistan (UNAMA), Iraq (SRSG/CPA) and elsewhere.²³ While the scale and severity of HLP rights challenges may have differed between these post-conflict countries, these challenges did confront every major peace operation in place during the past decade and a half (whether or not these were actually addressed in policy or programmatic terms). In no two post-conflict peace operations just noted have consistent policies on these complex concerns been put in place.²⁴ Most operations choose piecemeal approaches to these issues; enthusiastically embracing some concerns and overlooking others. In some settings (Tajikistan, Bosnia and Herzegovina, East Timor, Kosovo), a concerted attempt was made by the international community to address *some* HLP rights issues. In other operations (Cambodia, Afghanistan²⁵) HLP rights were treated generally as peripheral matters.

27. If we examine how the three major UN Transitional Authorities (UNTAC, UNMIK and UNTAET) approached HLP rights concerns, we can clearly see just how different UN policy has been on these issues. UNTAC had considerable powers in Cambodia, but it quite consciously failed to address either housing, land or property rights issues in any meaningful or enduring way despite the scale of the problems concerned.²⁶ In Kosovo, UNMIK established a Housing and

²² Scott Leckie (1999) *Housing and Property in Kosovo: Rights, Law & Justice: Proposals for a Comprehensive Plan of Action for the Promotion and Protection of Housing and Property Rights in Kosovo*, UN-Habitat Programme.

²³ See, for instance: Strohmeyer (supra note 3); Ian Martin (1998) 'A New Frontier: The Early Experience and Future of International Human Rights Field Operations' in *Netherlands Quarterly of Human Rights*, vol. 16 no. 2, 121; Clapham and Martin (1996) 'Smaller Missions Bigger Problems' in *Honoring Human Rights – From Peace to Justice* (Alice H. Henkin, ed.), Aspen Institute Justice and Society Program, 133.

²⁴ Moreover, in no such operation has a policy and legal framework been pursued which addresses all of the numerous housing, land and property challenges that invariably face post-conflict societies. As one author has correctly noted "[i]t is fair to say that land policy, as an element of peace-building missions, tends to be under-rated and has received little attention in the literature". Daniel Fitzpatrick (2002) *Land Policy in Post-Conflict Circumstances: Some Lessons From East Timor – New Issues in Refugee Research Working Paper No. 58*, UNHCR.

²⁵ Pursuing what it has called a 'light footprint approach' in Afghanistan, the UN Assistance Mission in Afghanistan (UNAMA) only belatedly addressed some elements of the housing rights challenge, which in this country manifests mainly as a question of land. Outright landlessness, inadequacy of land in areas of origin, the current occupation of land by commanders and returnee desires for more land, difficulties in recovering property, weak dispute resolution mechanisms, illegal occupation of Government land and others are key problems facing Afghanistan. "UNHCR recognises the land related problems are often one of the most serious issues threatening the stability of Afghanistan, and that the reorganisation of the land tenure system in Afghanistan is a priority that merits the attention of the authorities, international community, and donor governments". (See: UNHCR 'Land Issues within the Repatriation Process of Afghan Refugees' (9/2003)). See also: UN-Habitat (March 2003) *Preliminary Study of Land Tenure Related Issues in Urban Afghanistan with Special Reference to Kabul City*; Center on Economic and Social Rights (May 2002) *Human Rights and Reconstruction in Afghanistan*, CESR, New York and Liz Wiley (2002) *Land Rights in Crisis*, Afghan Research and Evaluation Unit, Kabul.

²⁶ "Although the Supreme National Council, on behalf of Cambodia, acceded at UNTAC's request to ratify the International Covenant on Economic, Social and Cultural Rights, little subsequent attention was paid to this area by UNTAC. As far as the Human Rights Component was concerned, this was a

Property Directorate (HPD) and a Housing and Property Claims Commission within five months of entering the territory to address HLP issues, including the adjudication of housing and property rights claims. Serious steps to re-establish a land cadastre and to rebuild the administrative capacity needed to address HLP issues were also taken in Kosovo. Conversely, programmes to rebuild damaged and destroyed homes, the effective management of social housing resources and the protection of the HLP rights of minority groups fared less well. While in East Timor, the structures of UNTAET lacked a housing department, allocated no funds for the construction of public housing and had no staff appointed to deal with housing issues, even though up to 80% of East Timor's housing lay in ruins. A Land and Property Unit (LPU) was established during the first months of the arrival of the UN, and made one of the most comprehensive *attempts* at addressing a wide spectrum of HLP rights concerns. However, many of these efforts were thwarted by a combination the prevailing complexities of the economic and social situation in the country and the perceived difficulties associated with taking HLP rights seriously.²⁷ For instance, a comprehensive plan presented by the LPU to establish a land claims commission was eventually rejected by officials fearful of addressing the complexities of the land issue.²⁸

28. In none of these three cases of UN-led governance, therefore, were *all* of the fundamental HLP rights challenges facing these two areas systematically addressed. In other post-conflict settings, such as Bosnia and Herzegovina, more comprehensive approaches were taken. For instance, a Commission on Real Property Claims (CRPC) was created under the Dayton Peace Agreement ending the Bosnian war to implement the right of all refugees and internally displaced persons to return to their original homes; a series of domestic property abandonment

conscious decision, given the scarce resources, the lack of time, and the extent of violations of civil and political rights which UNTAC was required to address". See: Dennis McNamara (2000) 'UN Human Rights Activities in Cambodia: An Evaluation' in *Honouring Human Rights* (A.H. Henkin, ed.), Kluwer Law International, Netherlands, pp. 47-72.

²⁷ The LPU, for instance, commissioned a series of papers seeking to develop a far-reaching series of policies to address the key issues facing the country. See, for instance: Michael Brown (14 March 2001) *Land and Property Administration in East Timor: Summary of Consultants' Reports Prepared by the Land and Property Administration Project (FS/TIM/OO/S01)*, UN-Habitat. Between May-August 2000 the following policy papers were prepared: 'Land Registration in East Timor: Plan for Rehabilitation of the Land Registration System'; 'Cadastral Survey and Mapping for Land Administration in East Timor'; 'Housing, Property and Land Rights in East Timor: Proposal for an Effective Dispute Resolution and Claim Verification Mechanism'; 'Housing, Property and Land Rights in East Timor: Improved Proposals for an Effective Dispute Resolution and Claim Verification Mechanism'; 'Housing and Human Settlements Development in East Timor: Proposals for Institutional Arrangements and Programme Development'; 'Land Law in East Timor: Review of Existing Land laws for the Purpose of Creating an Equitable Land Administration System'; and 'Land and Property Planning and Administration in East Timor: Consultant's Report'.

²⁸ On this issue, see: Daniel Fitzpatrick (2002) *Land Claims in East Timor*, Asia Pacific Press, Canberra. He provides the following cogent analysis: "UNTAET failed to provide: formal mechanisms to resolve housing conflict, other than a nascent court system desperately overburdened by criminal cases; any public housing other than attempts in March 2000 to secure pre-fabricated 'Kobe' houses for international staff (but not for East Timorese); any form of effective inter-agency body to manage housing conflict caused by the delivery of returnees to Dili; any administrative regime to govern transactions concerning private land as foreigners entered into dealings with those occupying habitable housing; and any systematic incentives for refugees and IDPs to return to their original areas".

and other laws were repealed and replaced, national administrative restitution structures were established in both Entities to address the shortcomings of CRPC, and major initiatives such as the Property Law Implementation Plan (PLIP), the Stability Pact and massive investments by the international community all contributed to the resolution of many HLP rights challenges. But even in Bosnia and Herzegovina, however, many of the HLP issues were only implemented many years following the 1995 Dayton Accords.

Box 2

Lessons Learned from UN Approaches to Housing Rights in Post-Conflict Situations (1990 – 2004)

- Include HLP Rights Directly Within Peace Agreements, Security Council Resolutions, Voluntary Repatriation Agreements and Other Policy Documents
- Include HLP Rights Competencies within Peace Operations Institutional and Administrative Structures
- Addressing HLP Rights is Not Discretionary if the Protection and Promotion of Human Rights Are Key Features of the Peace Operation
- Plan Early, Appropriately and Integrally
- Determine the Applicable Legal and Policy Framework During the Planning Process
- Establish a HLP Rights Expert Standby Network
- Ignoring HLP Rights Will not Make the Problems Go Away
- Peacekeepers are Important HLP Rights Protectors
- Recruit Local Lawyers and Housing Experts First
- Resolving HLP Disputes Promotes Economic and Social Stability
- Reversing HLP Rights Violations Is Invariably Difficult But Not Impossible
- Treating HLP Rights as Human Rights Can Promote Reconciliation
- Peace Operations Do Not Need to Build All New Housing to Take HLP Rights Seriously
- Prepare for a Long-Term Process
- Create an Enabling Environment at the Community-Level

29. In none of the UN peace operations that have operated since 1990, therefore, was an integral approach to HLP rights taken which was sufficiently responsive, remedial or environment-building in terms of the creation of conditions leading to the society-wide enjoyment of these rights for everyone.²⁹ Identifying some of the preliminary lessons learned during the past fifteen years of UN (and other) peace operation involvement in addressing HLP rights concerns will be useful in developing a proposed comprehensive, consistent and integral policy that takes the array of HLP rights concerns fully into account (See Box 2).

²⁹ See, for instance: ICISS (2001) *The Responsibility to Protect* (Report of the International Commission on Intervention and State Sovereignty), IDRC, Ottawa. This report delineates three types of action to be pursued in addressing the consequences of conflict: (1) responsive action: ‘any activity undertaken in connection with an emerging or established pattern of abuse and aimed at preventing its recurrence, putting a stop to it, and/or alleviating its immediate effects’; (2) remedial action: ‘any activity aimed at restoring people’s dignity and ensuring adequate living conditions subsequent to a pattern of abuse (through rehabilitation, restitution, compensation and reparation)’; (3) environment-building action: ‘any activity aimed at creating and/or consolidating an environment – political, social, cultural, institutional, economic and legal – conducive to full respect for the rights of the individual’, pp. 11-12.

30. *Lesson 1: Include HLP Rights Directly Within Peace Agreements, Security Council Resolutions, Voluntary Repatriation Agreements and Other Policy Documents:* Although all peace operations have the potential to deal adequately with HLP rights challenges, in none of the documents outlining the authority and competencies of the various operations that have functioned in the Balkans, East Timor and elsewhere have HLP rights concerns figured as prominently as they might have. Even in the case of the Dayton Agreements which, in Annex 7, clearly enshrined the rights of refugees and displaced persons to return to their original homes, most of the HLP rights activities eventually pursued by the international community were not envisaged when Dayton was signed in 1995. Indeed, in response to the security, stability, legal, economic, social and other problems that invariably emerge in all post-conflict settings when HLP rights concerns are not addressed, some important peace operations did, *ex post facto*, begin to take at least some steps to face the more severe HLP rights challenges. Were HLP rights competencies written directly into the agreements establishing peace operations, these attempts at creating a stable peace and assisting countries to reconstruct would arguably have had more success at earlier stages in the process.

31. *Lesson 2: Include HLP Rights Competencies Within the Institutional and Administrative Structures of Peace Operations and Fund Them Adequately:* Future peace operations should explicitly include HLP rights competencies within their overall operational and administrative design. The HLP rights mandate should be clearly elaborated, adequately financed and form part of the broader political structures and strategies in the country/territory concerned. As outlined below, this can best be assured by the creation of a new UN post at Headquarters to be responsible for the inclusion of HLP issues within the design of all future peace operations. At the operational level in the post-conflict country/territory, a Cabinet-level HLP Rights Advisor should be appointed by the relevant SRSG and be made responsible for overseeing all HLP Rights policies.

32. *Lesson 3: Addressing HLP Rights is Not Discretionary if the Protection and Promotion of Human Rights are Key Objectives of the Peace Operation:* HLP rights should not be treated as secondary or optional concerns within the overall socio-economic reconstruction process in any post-conflict setting. All governments maintain official competencies to regulate matters relating to housing, land and property, and while the stature of UN peace operations is surely unique, there is no valid reason why such operations cannot incorporate similar responsibilities into their various structures, particularly when playing a governance role. Indeed, if peace operations are formally entrusted with restoring and protecting human rights, then HLP rights cannot be ignored.³⁰

33. *Lesson 4: Plan Early, Appropriately and Integrally:* HLP rights issues should be addressed as early as possible and in an appropriate and integral manner. Establishing the position of Senior Coordinator for HLP Issues within the appropriate UN department within UN Headquarters for dealing quickly and consistently with HLP rights issues within post-conflict environments would allow numerous research, institutional planning and other activities to be carried out prior to the start of the operation, thus saving valuable time and allowing HLP rights

³⁰ The *Brahimi Report* clearly recognises that respect for human rights is a key element of peace-building and that peace operations should be given the capacity to make a demonstrable difference in the lives of the people in their mission area relatively early in the life of the mission (See: Para. 37).

programmes and measures to start far earlier than has been the case to date. The development of an Integrated Mission Task Force (and the inclusion of a HLP Rights Officer within it) would assist in this process (see below).³¹

34. *Lesson 5: Determine the Applicable Legal and Policy Framework During the Planning Process:* Valuable months are often spent during the initial periods of peace operations identifying local laws, compiling these, translating them and trying to understand how the entire domestic legal framework on housing, land and property rights actually fits together. Additional time is spent examining the compatibility of domestic laws with the international human rights legal framework, suggesting which laws may need repeal or amendment and which new laws may be needed. Much of this work could be done during the peace operation planning process. This would save valuable months of time and allow the HLP rights components of the peace operations to be established immediately upon arrival in the country or territory concerned, in all areas where access is possible.

35. *Lesson 6: Establish a HLP Rights Expert Standby Network:* The limited amount of HLP rights expertise within the UN Secretariat and other UN agencies involved in post-conflict peace operations, and the present lack of any personnel within important institutions (such as the Department of Peacekeeping Operations (DPKO)) with specific HLP rights expertise has meant that when these rights have been addressed in peace operations, this has generally been carried out by external consultants. Recruiting and hiring consultants can be time-consuming, resource-intensive and lead to considerable delays, problems with follow-up and can affect overall effectiveness of the peace operations involved. Due to the HLP rights activities that took place in Bosnia and Herzegovina, East Timor, Kosovo and in a number of countries in Africa, there is now a reasonably large group of HLP rights practitioners available who have had direct experience in post-conflict settings. The establishment of a stand-by expert civilian capacity, including broad HLP rights expertise, coordinated by the proposed HLP Rights Officer at UN Headquarters would assist in expediting attention to HLP rights concerns and assure that these issues were appropriately addressed at the earliest stages of the planning process.

36. *Lesson 7: Ignoring HLP Rights Will Not Make the Problems Go Away:* The practice of the past 15 years indicates that peace operations ignore housing, land and property rights challenges not just at their own peril, but more importantly to the detriment of the local population in the country or territory concerned. Failing to address and face the often complex and immense challenges posed by the housing, land and property sectors may initially seem the least threatening way of dealing with these controversial issues. However, HLP rights problems will not go away on their own.

37. *Lesson 8: Peacekeepers are Important HLP Rights Protectors:* Peacekeeping forces need to be formally involved in the enforcement and protection of housing, land and property rights. The civilian elements of peace operations need to seek the support of the military in a range of HLP rights matters, including halting illegal forced evictions and arresting those responsible,

³¹ “There is currently no integrated planning or support cell in the Secretariat that brings together those responsible for political analysis, military operations, civilian police, electoral assistance, human rights, development, humanitarian assistance, refugees and displaced persons, public information, logistics, finance and recruitment”. (*Brahimi Report*, p. xiii).

stopping acts of violence against civilians, protecting housing against looting, damage or destruction and assisting in the restoring of HLP rights by evicting secondary occupants deemed to be illegally occupying housing, once the relevant procedural safeguards have been addressed.

38. *Lesson 9: Recruit Local Lawyers and Housing Experts First:* Understanding the history, social attitudes, legal status, regulatory framework and cultural significance of housing, land and property in post-conflict countries is not possible without the full involvement of the local population from the planning process onwards. Progress on these issues, in all peace operations, is simply not possible without the extensive involvement of local lawyers and experts. Hiring local citizens to guide the HLP rights implementation process is not only appropriate, but will ensure that mistakes are not made by over zealous (or inexperienced) international staff in determining how best to proceed on the HLP rights front, and that realism and common sense can be combined with international law and principle to generate the best possible policy framework for addressing these challenges. While care needs to be taken by peace operations to ensure objectivity and independence by local lawyers and HLP rights experts, and to protect against biased decision-making or policy prioritisation (particularly in situations following ethnic conflict), international expertise can never replace local experience and understanding. International and local experts working together to address HLP rights challenges, however, can provide an ideal means of ensuring that these issues are tackled in the best possible manner. In addition, the presence of local lawyers and experts can assist in preventing excessive local expectations as to the speed and scale of resolving all HLP rights challenges facing the country or territory in question.

39. *Lesson 10: Resolving HLP Rights Disputes Promotes Economic and Social Stability:* Resolving HLP rights disputes should be treated as an important way of strengthening security, and economic and social stability, in post-conflict situations. Failing to resolve such disputes and implementing housing, land and property rights can cause local populations to turn against international peace operations and seek unofficial solutions to their own residential problems, without regard to law.

40. *Lesson 11: Reversing HLP Rights Violations is Invariably Difficult But Not Impossible:* Peace operations need to be aware from the outset that reversing HLP rights violations (such as illegal occupations of private homes, the confiscation of residential land or obstructive local officials who refuse to implement HLP rights laws) will be difficult and sometimes dangerous. Such operations, however, must find effective ways – preferably at the earliest possible time in the life-span of the operation – to assert political and (to the extent possible) physical control over the housing environment of country or territory with a view to achieving housing justice for victims of HLP rights violations. The HLP components of peace operations need to be able to rely upon the support of both the political leadership of the operation as well as military leadership to enforce HLP rights provisions and restore HLP rights to those whose rights have been recently, or not so recently, violated.

41. *Lesson 12: Treating HLP Rights as Human Rights Can Promote Reconciliation:* Peace operations can assist in promoting reconciliation by developing housing reconstruction, building material production and related programmes involving members of formerly hostile ethnic

groups and in the process ensuring members of all ethnic groups that their HLP rights will be taken seriously.

42. *Lesson 13: A Gender Perspective Should Pervade All HLP Sectors:* Women and girls tend to face severe and distinct HLP rights problems in post-conflict environments. Discriminatory inheritance laws and traditions, for instance, may prevent women from enjoying HLP rights equally to men. In many countries and territories, HLP records are kept exclusively in men's names. Female-headed households may often have only limited access to resources for re-building damaged homes. Serious efforts need to be taken by UN peace operations to specifically address the HLP rights challenges facing women and girls.

43. *Lesson 14: Peace Operations Do Not Need to Build All New Housing In Order to Take HLP Rights Seriously:* One reason why peace operations during the past fifteen years have only reluctantly embraced HLP rights issues stems from a concern that taking these rights seriously automatically implies that the peace operation *itself* will need to pay for and physically construct all new housing stock. While it is wholly appropriate for the international community to provide financial resources towards new housing construction (and, indeed, this is commonplace), peace operations can take HLP rights seriously without necessarily building tens of thousands of new housing units. The construction of new housing is but one of dozens of positive HLP rights contributions peace operations can make towards creating a sense of housing justice in post-conflict areas.

44. *Lesson 15: Prepare for a Long-Term Process:* Achieving the full realisation of HLP rights within any society is an extremely challenging proposition; even more so within often decimated post-conflict environments. In Bosnia and Herzegovina, nearly a decade after the end of hostilities, the investment of billions of dollars, an ideal legal framework and the strong commitment of the international community to address housing concerns in a reasonably comprehensive manner, HLP problems remain. In East Timor, some five years since the destruction of 1999, the new nation's housing stock has only very partially been rebuilt. Nevertheless, peace operations which institutionally address HLP concerns within post-conflict settings will clearly place the country/territory concerned in a far better position to achieve a comprehensive sense of residential justice for all social sectors.

45. *Lesson 16: Create an Enabling Environment at the Community Level:* The role of communities played at the grassroots level in the reconstruction process is often overlooked by UN peace operations. Involvement by communities in these processes will immediately engage local level reconstruction efforts, which in turn fosters stability, economic development, participatory processes and popular support for the peace operation concerned.

46. These are a small sampling of some the more fundamental lessons learned in how best to tackle the housing, land and property rights challenges that face (to varying degrees) peace operations in all post-conflict environments. With a view to applying these lessons to actual post-conflict settings, we now turn to a series of concrete proposals designed to result in a clear, replicable and comprehensive policy and institutional framework on HLP rights capable of application by all future UN peace operations.

IV. PROPOSED HOUSING, LAND AND PROPERTY RIGHTS INSTITUTIONAL AND POLICY FRAMEWORK

47. The arguments supporting the need for a UN institutional and policy framework to address HLP concerns are clear. To achieve this objective, this paper first recommends that a *Housing, Land and Property Rights Policy and Institutional Development Group*, coordinated by UNHCR and UN-Habitat, be established to review the proposed *Housing, Land and Property Rights Institutional and Policy Framework* and to coordinate the implementation of the other recommendations outlined in this paper. Once formed, the *Group* should improve and fine-tune the proposed *Framework* and eventually place a more formalised proposal to Member States and other relevant UN agencies.

48. In terms of suggested UN internal staffing arrangements, this paper recommends that the appropriate UN department or agency create a new, permanent post entitled *Senior Coordinator for HLP Issues* to oversee the implementation and further development of the new *UN Housing, Land and Property Rights Institutional and Policy Framework* and its eventual incorporation into all future UN peace operations. The post should be based at UN Headquarters in New York. Because these rights all relate to the issues comprising the rule of law, the new post could potentially be incorporated into the Criminal Law and Judicial Advisory Unit of the Department for Peacekeeping Operations (DPKO).

49. As noted, UN peace operations have addressed housing, land and property rights concerns in post-conflict societies very differently from one operation to the next. While there is a growing tendency within peace operations by the UN more generally towards an embrace of political and legal action in support of housing, land and property rights, the somewhat imbalanced nature of the approaches thus far taken point to the need for a more refined policy model. The proposed *UN Housing, Land and Property Rights Institutional and Policy Framework* which follows is divided into four sets of actions, each based on a different phase of a typical UN peace operation; the planning phase, the emergency phase, the transition phase and the development phase. While it is clear that the distinctions and time-frames between such phases are invariably blurred, and that in certain instances, some phases will garner far more attention and resources than others, this four-phase process seeks simply to outline the HLP activities the require attention prior to, during and subsequent to the establishment of a UN peace operation within a post-conflict society. The contours of the framework are necessarily generic in nature, and will, of course, need further refinement and specificity when applied in particular post-conflict settings.

50. Firstly, some of the elements of the *Planning Phase* of a peace operation are outlined. It is during the planning phase that the principles guiding the HLP rights policy-making process can be examined and that the specific institutional framework – invariably unique to each peace operation but comprised of the same elements and dedicated to the same broad human rights and HLP rights objectives – can be designed, discussed and developed. These activities (all of which are designed to be carried out prior to the actual start of a given operation) would be overseen at UN Headquarters by the *Senior Coordinator for HLP Issues* just proposed. While within the peace operation itself, the implementation of the *UN Housing, Land and Property Rights Institutional and Policy Framework* would be the responsibility of a new Cabinet Level *Senior*

HLP Rights Advisor, accountable to and appointed by the SRSG in peace operation in question. In particular, the *Advisor* would be responsible for the establishment and effective functioning of the national *Housing, Land and Property Rights Directorate* and the broader *Framework*, as well as maintaining fundraising and other responsibilities for the relevant institutions concerned.

51. Secondly, the measures that should be taken during the *Emergency Phase* of a peace operation to address HLP rights concerns are outlined. During the emergency phase, peace operations should undertake HLP needs assessments, protect all housing, land and property records, begin legal reform efforts leading eventually to a clear and robust legal framework fully supportive of HLP rights, begin large-scale efforts at providing emergency shelter and transitional housing, identify and begin to allocate abandoned public properties and develop the legal and institutional bodies required to ensure housing, land and property restitution rights for refugees and displaced persons.

52. Thirdly, we examine aspects of the *Transition Phase* of a peace operation which would involve the large-scale implementation of the *Policy Framework*. During this phase, the institutions developed during phases one and two would begin to more comprehensively carry out their work. The implementation of housing policy, housing repair and reconstruction, housing finance, the provision of building materials and other activities would characterise this phase.

53. Finally, the fourth stage in the policy – the *Development Phase* – covers activities made possible by the stability provided by the preceding three phases. It is at this stage that virtually the entire HLP rights policy process should be coordinated by citizens from the post-conflict country or territory, with the international community playing a largely supportive role. It is also at this stage that long-term economic development plans relating to the full realisation of housing, land and property rights should be initiated.

A. Planning Phase

54. For peace operations to most effectively grapple with HLP rights considerations, action needs to take place during the planning phase of the mission *prior to* the departure of the peace operation team to the post-conflict environment. These and related objectives could be pursued by the proposed *Senior Coordinator for HLP Issues*. Effectively addressing HLP rights concerns will require that the peace agreement (if there is one) contains guidance on these issues, that human rights treaties enshrining such provisions are fully embraced and that the basic contours of the HLP rights institutional and policy framework be developed.

1. Building the Institutional Framework Within Post-Conflict Societies: The Housing, Land and Property Rights Directorate

55. The institutional framework coordinated by UN peace operations designed to address HLP rights challenges in post-conflict situations is of considerable importance. The sooner that such institutions are established (or less likely re-established) and functioning, the more rapidly that potential violence surrounding unresolved housing disputes can be stopped, that the

unlawful hoarding of housing, land or property and the use of the HLP sectors as means of political corruption can be halted, and that the rights of those without a decent place to live can be systematically addressed. An overview of the HLP functions of peace operations tends to indicate that while many agencies are involved in HLP rights activities, a central oversight institution is required to ensure that local and international agencies working on these issues are provided with an effective means for coordinating their activities. Such an arrangement would clearly delineate the precise role expected of each UN agency, local and national government institution and civil society and NGO organisations and coordinate these within the broader HLP rights policy and legal arrangements already in place.

56. If such an approach is taken, the full spectrum of HLP rights concerns can be addressed in a way which will be beneficial to the local population, build the basis for future stability and economic growth, and construct the foundations for the rule of law, justice and the protection and promotion of human rights. As mentioned, a variety of institutional approaches to addressing housing, land and property issues have been taken in post-conflict and transitional contexts. In many instances, entirely new institutional arrangements were established to deal with housing, land and property issues and disputes (Bosnia and Herzegovina and Kosovo³²), while in others, greater reliance was placed upon the role of existing institutions, including the judiciary and political organs (Tajikistan). In yet other post-conflict settings, new institutions dealing with land and property issues may have been created, but without competence to address housing matters or to resolve lingering and destabilising residential disputes (East Timor). To reiterate, however, in no peace operation were all HLP issues comprehensively addressed.

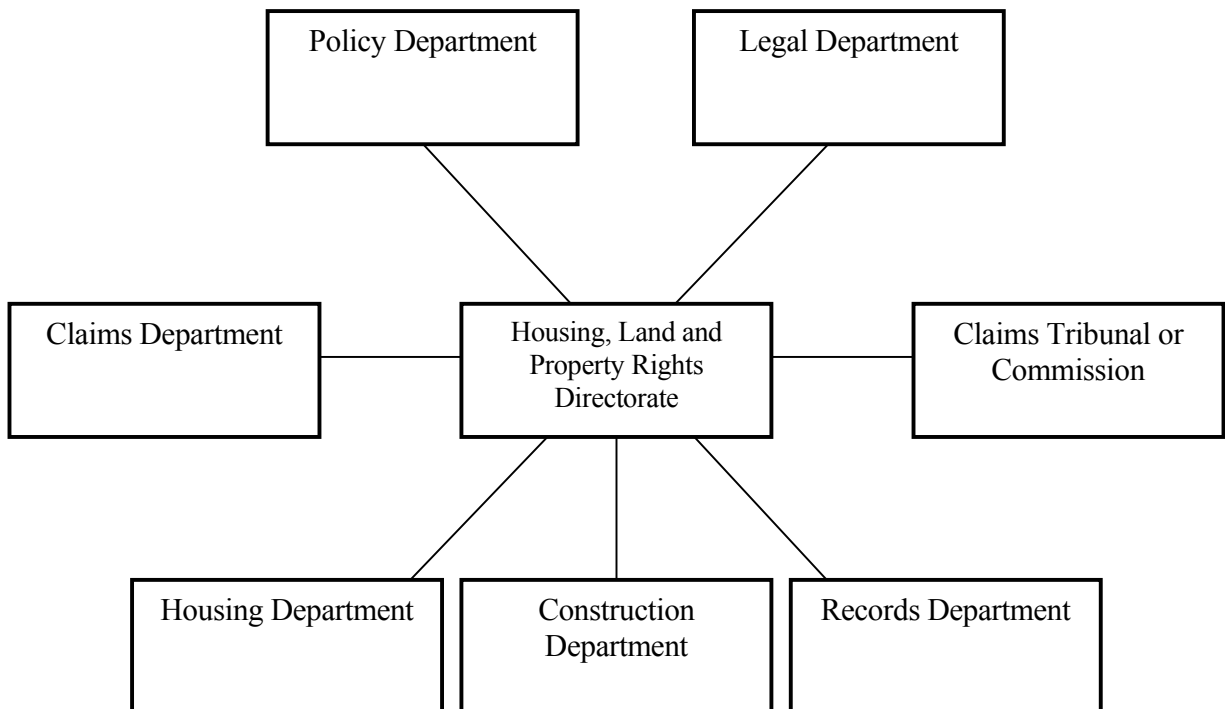
57. To be effective, the HLP rights institutional framework must be clear, effective and streamlined, and should *maximise* local and national involvement. It should coordinate all relevant HLP rights-related activities of the peace operation in question, including the relevant activities of existing ministries and public institutions, international agencies, NGOs and others. A clear institutional framework should guide the implementation of all HLP rights laws and policies including those relating to restitution, the allocation of abandoned housing, homelessness, inadequate housing, the prevention of arbitrary evictions, services linked to housing (water, electricity, sanitation, etc) and all of the other HLP rights challenges likely to emerge in any post-conflict setting.

58. The establishment of a *Housing, Land and Property Rights Directorate (HLPRD)* (See Chart 2) within each UN peace operation (either newly created or comprised partially or

³² For example, under UNMIK Regulation 1999/23 (15 November 1999) *On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission*, “The Housing and Property Directorate (the “Directorate”) shall provide overall direction on property rights in Kosovo until the Special Representative of the Secretary-General determines that local governmental institutions are able to carry out the functions entrusted to the Directorate. In particular, the Directorate shall: Conduct an inventory of abandoned private, state and socially owned housing; supervise the utilisation or rental of such abandoned property on a temporary basis for humanitarian purposes; rental monies of abandoned private and socially owned property shall be recorded in a separate account in trust for the rightful owner, subject to the deduction of relevant expenses; Provide guidance to UNMIK, including CIVPOL and UNHCR, as well as KFOR on specific issues related to property rights; and Conduct research leading to recommended policies and legislation concerning property rights”.

completely of existing institutions) would be one important means of developing the institutional framework required to comprehensively address all housing rights concerns. A *Housing, Land and Property Rights Directorate* would act as the official institution responsible for all matters relating to housing, land and property policy and for assessing, adjudicating and enforcing housing, land and property claims. The *SRS* should, in consultation with local authorities, have responsibility for appointing the *Executive Director of the HRD*, who in turn should report directly to the relevant national governmental officials and the Senior HLP Rights Advisor and the *SRS*.

Chart 2: *Elements of the Housing, Land and Property Rights Directorate*



59. The HLPRD would consist of **existing national institutions** (such as housing and land ministries, judicial bodies to adjudicate HLP disputes, land cadastre agencies, etc) where these were still functioning, combined with other inputs, including new institutions and bodies, as appropriate. The Directorate would be comprised of seven elements: a Policy Department; a Legal Department; a Claims Department; a Claims Tribunal or Commission; a Housing Department; A Construction Department and a Housing Records Department (See Annex 7.3). Such a structure could form the standard institutional template in all post-conflict situations and ensure that all relevant housing, land and property rights issues in the country concerned were adequately addressed by the relevant Governing bodies. Relevant UN agencies would play a supportive (and sometimes structural) role within these institutions.

60. The *Policy Department* would carry out housing, land and property rights policy initiatives, including the administration of the housing, land and property sectors. It would promote an approach to HLP issues that takes as its starting point the universal application for

everyone of the right to adequate housing (and related land and property rights) as established pursuant to a range of international human rights treaties. This department would also prepare an initial **HLP Rights Action Plan** and carry out a national **HLP Rights Needs Assessment** to determine the precise scale of housing damage and destruction.

61. The *Legal Department* would be responsible for developing a democratic, fair and equitable legal framework on HLP rights themes, fully consistent with international human rights and humanitarian laws and other legal standards and norms. It would draft relevant HLP rights Regulations, as required, and monitor the implementation of relevant law, identify laws in need of repeal or amendment, draft new legislation and undertake any other measures to develop a consistent legal framework. Moreover, it could be entrusted with urging local government officials to apply HLP rights laws and policies in an equitable manner, and to prevent local authorities from actively violating these laws. The Legal Department could also be responsible for developing a HLP Rights Law Implementation Plan (modelled perhaps on the Property Law Implementation Plan (PLIP) in post-war Bosnia and Herzegovina) designed to expedite the implementation of HLP rights laws at the local level.

62. The *Claims Department* would be responsible for the collection and processing of housing, land and property restitution claims, the resolution of housing disputes and the determination of claims in coordination with other bodies.

63. The *Claims Tribunal/Commission* would act as an impartial and independent adjudicative body, and would issue binding decisions on claims that could not be resolved through mediation and other negotiated means. All claims that could not be resolved amicably would be adjudicated by the tribunal/commission involved. This body would resemble institutions such as the Commission on Real Property Claims (CRPC) in Bosnia and Herzegovina and the Housing and Property Claims Commission (HPPC) under the Housing and Property Directorate (HPD) in Kosovo.

64. The *Housing Department* would coordinate additional activities in support of HLP rights, including: the identification of all abandoned housing and other public and private buildings that could be used for housing purposes, and the allocation of such premises (generally on a temporary basis) to homeless persons and displaced families and other conflict-affected groups; the provision of other forms of transitional or emergency housing or land for those in need, including secondary occupants of refugee and displaced person's property; protecting all persons against forced evictions and other forms of arbitrary and unlawful displacement; identifying State land for use in constructing affordable social housing and for allocation to homeless and landless persons and families; administering and managing all public housing resources; monitoring housing affordability and intervening within the housing market to keep residential prices at reasonable levels; and developing housing finance systems accessible for the poor to enable them to construct adequate housing resources and to repair damaged homes.

65. The *Construction Department* would be responsible for the physical side of housing rights efforts, including: to reconstructing damaged or destroyed homes; assisting the housing construction sector to function optimally; and developing affordable building materials for lower-income groups; and repairing infrastructure and services.

66. The *Records Department* would be entrusted with re-establishing (or establishing) the housing, land and property registration system, updating the national land cadastre; carrying out GIS survey's of the country or territory and all other matters concerning the regularisation of the housing, land and property arrangements.

67. To function effectively, a *Housing, Land and Property Rights Directorate* will require staffing levels commensurate with the scale of the HLP rights challenges it faces. The HLPRD should be headed by an Executive Office comprised of an Executive Director and Deputy Director and legal and support staff. Each Department should be headed by a Department Coordinator, who in turn would be responsible to determining precise staffing needs in each area of competence. Ideally, staffing should be comprised of nationals of the country concerned, with technical assistance and advice provided by the UN and other actors.

68. The financial requirements of the HLPRD should be included within the overall budget of the peace operation, and listed as a separate budget line item. Specific funding requests should be developed by the HLPRD to supplement ordinary budgetary allocations. Financing such institutions has proven difficult in the past and new means need to be found to adequately resource these bodies.

B. Emergency Phase

69. As just outlined, a range of measures in support of HLP rights can be taken prior to the start of any peace operation. Completing these activities before arrival in the post-conflict environment can considerably improve the immediate performance of the peace operation. Building on work carried out prior to the initial stage of the peace operation, the emergency phase of a peace operation will be a period when a series of critical actions are undertaken to develop the policy required to systematically address all housing, land and property rights concerns. Five key actions require attention during this phase:

1. Pursuit of a Rights-Based Approach

70. During this period, a range of different actions should be taken by peace operations to present the rights-based approach to these issues:

71. *Convene National Housing, Land and Property Rights Consultations:* All stakeholder national consultations on HLP rights should be held early in the life of the peace operation. They should involve local institutions such as housing and other relevant ministries, all UN and other international agencies including UNHCR, DPKO, UN-Habitat, OCHA, the military component of the operation, NGOs and representatives of political parties and civil society organizations.³³ These consultations should develop into a national discussion on the most effective means of

³³ In Sri Lanka, for instance, in 2002-2003 UNHCR sponsored a series of workshops on land and property rights of internally displaced persons designed to obtain local inputs into these issues and to assist in the development of a plan of action to address these concerns within the context of the ongoing peace talks. As a result, UNHCR and the Human Rights Commission of Sri Lanka proposed the establishment of a Sri Lanka Commission on Land, Housing and Property Rights.

addressing housing, land and property rights issues within the institutional framework being put in place and ideally the contours of a national legal and policy framework on housing, land and property rights matters. Emphasis should be placed on securing the HLP rights of particularly vulnerable groups.

72. *Adopt an Interim Housing, Land and Property Rights Policy:* The policy should be grounded in human rights principles and international best practice, outline the terms of any peace settlement and the manner by which HLP rights issues were addressed and the local, national and international laws that will guide the process of implementing these rights. The policy should also indicate that:

- A Housing, Land and Property Rights Directorate will be established to deal structurally with all outstanding housing, land and property issues;
- HLP rights and related provisions in treaties ratified by the State concerned will be recognized and respected in full;
- All persons will be protected against arbitrary or unlawful forced evictions or the confiscation of homes or land and against situations of homelessness due to forced eviction or displacement;
- An emergency policy response to address homelessness and landlessness will be approved; and
- Permanent HLP solutions will be sought for everyone.

Box 3

<i>Presenting the Rights-Based Approach to Housing</i>	
Convene National Housing Rights Consultations	Hold stakeholder national consultations that include local institutions, all relevant UN and other international agencies including UN-Habitat, UNHCR, NGOs and representatives of political and civil society organisations.
Adopt an Interim Housing Rights Policy	Announce publicly to the local populace a policy grounded in human rights principles and international practice, outlining the terms of any peace settlement and the manner by which housing rights issues were addressed and outlining the local, national and international laws that will guide the process of implementing housing rights.
Minimize Residential Disruption to the Maximum Possible Extent	Do not order, carry out or tolerate forced evictions of people from their present homes (unless truly extraordinary circumstances so warrant).
Ensure that Peace Operations Do Not Worsen Housing Prospects of the Local Population	Address impacts that their very presence will have upon the local housing markets.

Carry out Housing Rights Training Programmes for Local Officials	Sponsor a series of housing rights training programmes to ensure that people are aware of the operations' housing rights policy and activities.
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73. *Minimize Residential Disruption To The Maximum Possible Extent:* Peace operations should seek to minimize residential disruption as much as possible by not ordering, carrying out or tolerating forced evictions of people from their present homes, unless truly extraordinary circumstances so warrant, and even then, only once basic conditions of stability have emerged. While eviction may be required in order to return a home to its legitimate original owners or tenants – following the conclusion of a judicial process and subsequent order – it is advisable to allow those currently occupying State property or land purely for humanitarian purposes (e.g. there is no other available and affordable housing for those in need) to continue to temporarily reside where they are, and to speedily identify alternative solutions in order not to delay the return process. Evicting them without offering alternatives forces them to find even worse places to live, and adding to the probably already large homeless population, and would contravene many international human rights standards.

74. *Ensure that Peace Operations Themselves Do Not Worsen the Housing Rights Prospects of the Local Population:* Peace operations need to address the impacts that their very presence will have upon the local housing, land and property markets. Appropriate steps need to be taken by peace operations to prevent the hyperinflation in housing markets that are invariably created when large numbers of international personnel arrive in countries of operation. While addressing this problem will be a difficult one (in part because property owners renting to international staff can benefit financially), if the majority of the local population that does not directly benefit clearly senses that at least an attempt by the peace operation to confront this issue, it may be more willing to support the peace operation's objectives.

75. *Carry Out HLP Rights Training Programmes for Local Officials:* Peace operations should sponsor a series of HLP rights training programmes to ensure that people are aware of the HLP rights policy and activities and that they have a role to play in securing these rights for everyone. Such events should be organised in cooperation with the national authorities and also approach national institutions, including universities and research institutes, to assist in this process. In-house HLP rights training within peace operations would also strengthen attention to these issues by peace operations staff.

76. *Publicising the HLP Rights Activities of the Peace Operation:* Peace operations should widely publicise their planned HLP rights activities and policies during the first months of operation (See Box 3). Doing so will engage and inform the local population immediately and concretely show the intention of the peace operation to address HLP rights issues from the outset. The production of information leaflets, posters, videos, TV and radio commercials and other means of transmitting the HLP rights message and preliminary plan of action to the wider public will both create transparency as well as assisting in the assertion of public control over the housing, land and property sectors.

77. The recent history of UN peace operations suggests that the sooner HLP rights issues are addressed at the political level, the more rapidly related disputes and policy inadequacies can be amicably resolved without developing into violence or instability. This applies both to issues requiring mediation or adjudication (such as housing, land and property disputes), as well as broader issues relating to the rights of the homeless, women, displaced persons and other groups that are particularly vulnerable in terms of HLP rights. Although there may be a temptation to delay decision-making on many of these issues, and perhaps an even greater reluctance to address these issues, practice clearly shows that neglecting to address HLP rights leaves the people living in the post-conflict country in increasingly volatile economic and political circumstances, and external investment will also be negatively affected.

2. *Initial Housing, Land and Property Rights Assessments*

78. To perform effectively, one of the first actions of UN peace operations should be carrying out initial housing rights assessments. Collating and analysing such information is the only actual basis upon which accurate and effective policy-making can take place. HLP issues should also be included within the purview of DPKO assessment missions carried out prior to the establishment of peace operations. At a minimum, the types of information that should be collected include:

(A) Housing Stock Status

- Proportion and location of destroyed or damaged housing stock
- Inventory of abandoned (and currently unused) housing
- Housing-related infrastructure destruction and damage (water, electricity, etc)
- Availability of social or public housing resources
- Particular ethnic, religious or other minority housing issues

(B) Emergency Housing Needs

- Number of homeless persons and families
- Number of IDPs
- Number of persons with emergency housing needs
- Number of lawful secondary occupants
- Number of squatters

(C) Land

- Availability of State urban and rural land
- Abandoned private land or State-owned land reserves
- The presence of land mines in or near to housing sites, agricultural land or possible land for allocation
- Access to natural resources

(D) Housing Records

- Housing, land and property rights registration system
- Land cadastre
- Other registries held, for example, by Ministries with regard to State-owned land
- Information on incomplete housing or land regularisation programmes

(E) *Availability of Building Materials*

- Availability of locally produced building materials
- Overall building material requirements

3. *Determining the Legal Framework*

79. Peace operations will have varying degrees of legislative power and influence. In many instances, national authorities will remain the sole law-making power. In other cases, such as the transitional authorities in Kosovo and East Timor, both UNMIK³⁴ and UNTAET had comprehensive mandates enabling them to exercise legislative and executive powers. The Security Council resolutions establishing these transitional authorities set out the applicable law in general terms by determining that the law prevailing in both territories at the time would remain in place, unless it was manifestly inconsistent with international human rights law. UNMIK's Regulation *On the Authority of the Interim Administration in Kosovo* determined applicable law, and by inference, determined how HLP rights would be approached by them.³⁵

80. While most peace operations will operate with considerably less flexibility or influence than that given to UNMIK and UNTAET or other transitional authorities, all peace operations

³⁴ As one paper asserted: "UNMIK has a clear legal mandate to examine housing and property issues in Kosovo. This mandate is derived from the contents of UNSCR 1244 emphasizing the duty of UNMIK to protect and promote human rights (one of which is the right to adequate housing), UNMIK Regulation Nos. 1999/1 and 1999/2 and any subsequent UNMIK Regulation. The UN Secretary-General's report of 12 July 1999 indicates that "UNMIK will be guided by internationally recognized standards on human rights as the basis for its authority in Kosovo. UNMIK will embed a culture of human rights in all areas of activity, and will adopt human rights policies in respect of its administrative functions" (para. 42). UNMIK, therefore, must take into account and apply wherever possible, international human rights standards recognizing the right to adequate housing and related rights ". (Scott Leckie (1999) *Housing and Property in Kosovo: Rights, Law & Justice: Proposals for a Comprehensive Plan of Action for the Promotion and Protection of Housing and Property Rights in Kosovo*, UN-Habitat Programme).

³⁵ See UNMIK/REG/1999/1 of 25 July 1999, Sec. 1(1) Authority of the interim administration: All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General; Sec. 2 Observance of internationally recognized standards: In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards and shall not discriminate against any person on any ground such as sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status.; Sec. 3 Applicable law in Kosovo: All laws applicable in the territory of Kosovo prior to 24 March 1999 shall continue to apply in Kosovo insofar as they do not conflict with the standards referred to in section 2, the fulfilment of the mandate given to UNMIK under United Nations Security Council resolution 1244 (1999), or the present or any other regulation issued by UNMIK; Sec. 4 Regulations issued by UNMIK: In the performance of the duties entrusted to the interim administration under United Nations Security Council resolution 1244 (1999), UNMIK will, as necessary, issue legislative acts in the form of regulations. Such regulations will remain in force until repealed by UNMIK or superseded by such rules as are subsequently issued by the institutions established under a political settlement, as provided for in United Nations Security Council resolution 1244 (1999); Sec 6 State property: UNMIK shall administer movable or immovable property, including monies, bank accounts, and other property of, or registered in the name of the Federal Republic of Yugoslavia or the Republic of Serbia or any of its organs, which is in the territory of Kosovo.

will need to generate or assist in generating a legal framework conducive to the implementation of an integral HLP rights policy. Legal regulations will need to be adopted in close collaboration with local lawyers and HLP experts. An effort will need to be made at the earliest possible time to outline the legislative framework and applicable law governing the HLP rights activities of peace operations and to identify steps to make this framework most effective.

81. Considerable research on relevant law can be carried out prior to or during the first phase of peace operations beginning their work. At a minimum it should be possible to compile (and translate) all relevant domestic housing, land and property legislation prior to entering the country/territory. Depending on the lead time involved, considerable legislative analysis can be carried out even before the peace operation begins to function.

82. Once the legislative framework is known, the law can be analysed from the perspective human rights law to determine domestic and international legal compatibility and to identify where local law may require amendment to conform to relevant human rights standards. Some of the more important legislative domains that should be compiled and analysed (including practice), include:

Constitution

- Constitutional housing, land and property rights and relevant human rights provisions.

Laws governing abandonment and restitution

- Abandonment laws or provisions (including adverse possession);
- Housing, land or property laws adopted during the armed conflict (e.g. allocation of abandoned housing to others);
- Laws concerning the restoration of housing or property rights;
- The position of formal law vis-à-vis customary land titles and ownership.³⁶

Laws and regulations governing the different HLP rights

- Laws on ownership and other rights *in rem*;
- Landlord and tenant law;
- Land laws (including user rights and administrative procedures);
- Laws regulating security of tenure;
- Laws governing property sales (including transfer rules), exchanges and leases;
- Housing and land expropriation laws (including compensation provisions);
- Provisions on improvements;
- Laws determining succession rights to land and housing, particularly the rights of women to access and control land;
- Laws governing communal ownership of land or housing.

³⁶ For a detailed analysis of housing rights legislation, see: UN Housing Rights Programme (2002) *Housing Rights Legislation*, UN-Habitat Programme and the Office of the UN High Commissioner for Human Rights.

Housing stock

- Laws concerning housing repairs and improvements;
- Laws addressing housing credit and finance;
- Laws governing State property including social housing resources;
- Laws on public health and housing.

Institutions, procedures and HLP records

- Institutions currently in charge of property matters;
- Procedural laws;
- Laws or provisions regulating eviction;
- Real estate registry laws and regulations.

83. Determinations need to be made early on as to the compatibility of domestic law relevant to HLP rights with international human rights and other legal standards. To ensure this compatibility, the repeal and reform of local legislation may need to be considered.³⁷ Undertaking activities designed to promote compatibility between local and international laws also provides a good opportunity to expand attention to and understanding by municipal authorities and citizens of the manner by which international human rights and humanitarian law address housing, land and property rights in the return context and how these norms can be incorporated into the national legal framework.

4. Transitional Shelter and Abandoned Housing

84. The provision of transitional housing (tents, camps, building materials, etc) and the identification and official temporary allocation of public and abandoned properties can be an important means of providing interim housing space to those in need. In East Timor, UNTAET established effective procedures for the temporary allocation of abandoned buildings and land for terms of up to three months, medium-term allocations three to twelve months and long-term between one to five years. As a result, abandoned housing and other public and private buildings that could be used for housing purposes were identified and allocated, on a temporary basis, to homeless persons and families. Institutional mechanisms to efficiently identify and allocate abandoned housing, land or properties can play a vital role in securing at least temporary HLP solutions to those in greatest need.

5. Restitution Procedures

85. One of the most difficult issues facing any peace operation is how to most effectively deal with the question of housing, land and property restitution rights for returning refugees and IDPs. Several peace operations have played fundamental roles in establishing and coordinating

³⁷ In Kosovo, the relevant UN authorities have repealed a discriminatory housing law (UNMIK Regulation 1999/10 (20 October 1999) *On the Repeal of Discriminatory Legislation Affecting Housing and Property in Kosovo*). In Bosnia and Herzegovina (at the request of UNHCR, OHR and others), several abandonment laws were repealed to pave the way for the implementation of the property restitution provisions of the Dayton Accords.

the work of housing, land and property restitution procedures to enforce the HLP rights of those displaced during a previous conflict. Some of the key principles (See Box 4) that should inform any future restitution and compensation procedures include:

86. *Some Political Decisions Will Need to Be Made:* Despite the legal nature of HLP restitution rights, some elements of this process will require political decisions. These will concern, for instance:

- The jurisdiction of the restitution body;
- The types of claims which can be submitted to a given mechanism;
- The persons/groups who can present such claims.

87. *Restitution Claims Procedures Must Be Free, Simple, Accessible and Enforceable:* Restitution procedures designed to restore the HLP rights of persons displaced during conflict are invariably based on a claims process accessible to all who wish to submit claims. In some countries, national and local judicial bodies have collected, assessed and adjudicated claims, while in others international bodies carried out this vital task. Given the sensitivity around HLP issues and the need to create an environment allowing the development of sustainable solutions to HLP rights, such a process should be a national one, supported by the international community, unless another solution is warranted. The claims process should provide permanent housing solutions for all returnees, including owners, tenants and others with recognised rights. Claim forms and directions on how to fill in the forms should be available in languages understood by those likely to submit claims. Claims processing centres and offices should be established throughout the areas where claimants currently reside, such that it is easy to reach the nearest office, or to deploy mobile teams to such areas. Independent legal aid centres providing expert legal assistance to returnees seeking to invoke their rights to housing and property restitution can also prove a useful feature of an independent claims process.³⁸ Restitution bodies must have free access to all property records and be required to accept many types of evidence.³⁹

Box 4

<i>Key Principles of Restitution and Compensation Procedures</i>	
Restitution Claims Procedures must be Free, Accessible and Enforceable	- Claims forms and directives of how to fill in the forms should be available in required languages, claims processing centres

³⁸ See, for example, the network of Legal and Information Centres established by UNHCR in post-conflict Bosnia and Herzegovina.

³⁹ A variety of evidence types, in addition to formal property records, are admissible in many of the existing restitution procedures. These include, for instance: verified sale contracts, verified gift contracts, inheritance decisions with legal validity, court decisions on ownership, valid decisions made in administrative procedures, building permits, mortgages or credit agreements, property taxes or income taxes, construction licenses or building permits, usage permits, contracts on use of an apartment, excerpts from official records, decisions on the allocation of an apartment, decisions on apartment rent or rent levels, apartment rent slips, decisions by which apartments are declared abandoned, certificates of place of residence, bills (utility, phone, gas, etc.), pre-war phonebooks, eyewitness testimony, personal identity cards, car registration, census records, personal contracts, dismissal records, photographs, valuer reports, voting records, and others.

	<p>located in easily accessible areas or deployment of mobile teams</p> <ul style="list-style-type: none"> - Restitution mechanisms should be able to assist potential claimants in filling out forms, answer questions and/or provide legal counsel or direct representation - Restitution bodies must have access to all property records and evidence
Political Decisions Will Need to be Made	<ul style="list-style-type: none"> - Political decisions will concern areas such as the jurisdiction of the restitution body, types of claims to be submitted to a given mechanism, who can present the claims, how far back in time claims can go, are decisions are permanent or temporary, etc.
Restitution Remedies Must be Flexible and Effective	<ul style="list-style-type: none"> - Institutions should have at their disposal an array of flexible remedies that can be deployed in adjudicating restitution claims, all options should be examined
Restitution Decisions must be Enforced	<ul style="list-style-type: none"> - Important to include an enforcement arm within any restitution institution - Restitution bodies should be given powers necessary to enforce their decisions and ensure that Governments and other relevant parties comply
Homelessness Should be Prevented	<ul style="list-style-type: none"> - Peace operations should ensure that people do not become homeless due to the recovery of refugee housing
De-link the Immediate Availability of Alternative Accommodation from the Determination of Restitution Rights	<ul style="list-style-type: none"> - Holders of legitimate rights should not be prevented from re-possessing their homes because of failure of the State concerned to find alternative accommodation to current occupants
Address Compensation Reasonably	<ul style="list-style-type: none"> - Compensation should not be seen as an alternative to restitution but as a remedy when restitution is not factually possible
Staffing Restitution Bodies	<ul style="list-style-type: none"> - Institutions need to be entirely impartial and independent in carrying out their mandate, staffing should be non-discriminatory, multi-ethnic basis

- How far back in time the claims can go?;
- How to ensure that an independent appeal institution will address errors in law and fact without considerably delaying the restitution process?;
- What role, if any, will be played by traditional or non-judicial methods of conflict resolution especially in countries without an independent or functioning judiciary?;
- To what extent the international community is required to assist the process?;
- Whether decisions are temporary or permanent in nature;
- To what extent can administrative procedures achieve justice;
- How to ensure the enforceability of decisions if secondary occupants are not willing to vacate voluntarily the home or land they occupy?

88. *Restitution Remedies Must Be Flexible and Effective:* Resolving restitution claims requires that the institutions concerned have at their disposal an array of flexible remedies that can be deployed, and the equally important need for refugees and IDPs to have the right to choose the remedy that is best suited for them and most consistent with their rights and wishes. Local or traditional dispute resolution processes should be examined, as should possible non-judicial remedies such as arbitration and mediation, the possibility of facilitated sales, the granting of user or leasehold rights (rather than outright ownership), property exchanges and other options.

89. *Restitution Decisions Must Be Enforced:* The importance of including an enforcement arm within any restitution institution or an external entity subject to its control, cannot be overemphasised. Restitution bodies should be given the powers necessary to enforce their decisions and to ensure that Governments and other relevant parties comply. Local and national Governments should be legally obliged to accept decisions by restitution bodies.

90. *Homelessness Should Be Prevented:* While restitution rights need to be enforced, peace operations and restitution institutions should ensure that people do not become homeless due to the recovery of refugee housing, land or property rights from a secondary occupant. Mechanisms need to be developed which allow the provision of alternative accommodation to those who are legally required to vacate homes over which they do not hold legitimate rights. At the same time, holders of legitimate rights should not be continually prevented from re-possessing their homes because of the failure of the State concerned to find alternative accommodation for current occupants.

91. *Address Compensation Reasonably:* Most peace operations have avoided the question of compensation, despite the clearly defined international legal principles relating to it. Even when mentioned explicitly within a peace agreement (such as within the Dayton Accords), no compensation programme was ever implemented. Compensation should not be seen as an alternative to restitution, but should be used as a remedy when restitution is not factually possible or when a claimant knowingly and voluntarily accepts compensation in lieu of restitution.

92. *Staffing Restitution Bodies:* Such institutions need to be entirely impartial and independent in carrying out their mandate. Staffing should be done on a non-discriminatory, multi-ethnic basis. This includes professional and administrative staff, as well as adjudicators.

C. Transitional Phase

93. Following the initial planning and acute emergency phase, the transitional phase would typically involve the full implementation of the policies developed during the first two phases of the peace operation concerned. Some of the key activities during this phase, include:

1. *Housing and Land Policy*⁴⁰

94. UN peace operations should develop or assist local authorities with the development of HLP policies consistent with international law, and which are designed to promote and protect HLP rights to the fullest possible extent. A policy that embraces HLP rights should:

- *Prevent any detrimental discrimination with respect to housing, land or property rights:* Prohibit all forms of discrimination in law; strictly enforce such provisions with respect to tenancy and sale agreements and prevent any actual or perceived attempt at neighbourhood segregation;
- *Identify measures to ensure affordable housing and land to all:* Introduce or expand housing subsidy programmes to ensure that low-income groups are not forced to spend a disproportionate percentage of their income on satisfying housing requirements; and develop rent regulation policies to protect low-income groups against unreasonable rent increases;
- *Identify and allocate affordable land for low-income housing settlements:* Set benchmarks for the identification of land for eventual use and/or allocation to low-income groups; and develop longer-term plans for land allocation and distribution (particularly of State land) with a view to accurately addressing future housing needs; and
- *Provide infrastructure to existing low-income settlements:* Allocate sufficient public funds to the rehabilitation or provision of infrastructure, including roads, water and sanitation systems, drainage, lighting, emergency life-saving systems; and provide subsidies and incentives to the private sector to provide relevant infrastructure and services.

2. *Housing Repair and Reconstruction*

95. Once the national housing, land and property rights assessments are completed and the precise scale of housing damage and destruction is determined, an intensive multi-agency programme of housing repair and reconstruction should be initiated, in collaboration with local authorities.⁴¹

⁴⁰ The term 'housing policy' refers to the conceptual framework surrounding official treatment of the housing sector. Housing policy addresses a wide range of issues, including: the treatment of housing as a human rights issue; security of tenure; the appropriate role of Government within the housing sector and the relationship between the housing market and society's housing requirements; issues of micro- and macro-housing finance; housing subsidies; housing credit; housing infrastructure, urban growth; zoning; building codes and standards; housing prices, rent levels and overall housing affordability; housing quality and size; housing investment; regulating housing speculation and other related issues. On housing policy, generally, see: Shlomo Angel (2000) *Housing Policy Matters: A Global Analysis*, Oxford University Press, Oxford.

⁴¹ In Kosovo, UNMIK called for a common approach to housing repairs and reconstruction which urged various international donors and agencies involved in repair and reconstruction of houses to adopt a common approach to housing rehabilitation to make the best use of limited levels of assistance. In

3. *Housing Finance*

96. Support for the construction of new housing may also be a central component within peace operation efforts to address HLP rights concerns. Although this element of peace-building is often still perceived as too resource-intensive a task to undertake within post-conflict settings, the need for the construction of new social housing and other new dwellings have been recognised by some peace operations.⁴² While the actual building of new homes may be opposed by those favouring more minimalist approaches to peace-building, it is vital to remember that the physical reconstruction and expansion of habitable housing stock in a peace conflict environment, must necessarily form part of a broader housing rights policy framework.

97. *Promote housing finance programmes for the poor:* UN peace operations should strive to provide assistance to low-income groups and encourage them to develop self-controlled housing finance and savings programmes. Micro-credit housing loan/grant programmes could be established. Support mechanisms need to be created that will assist people in their rehabilitation and support them in whatever they are already doing to rebuild their homes. In this respect, low-interest and long-term loan programmes are urgently needed, so that people can purchase building materials to repair their damaged houses or to buy land to build new homes. The poor generally have little or no access to credit for such purposes, and it will fall on peace operations to ensure such access.

98. *Promote low-income housing programmes:* UN peace operations have typically shied away from promoting low-income housing programmes, focusing rather on shorter-term, more acute needs. Future peace operations should seek to ensure that whatever public expenditure is devoted to housing is commensurate to national housing requirements, and targeted to benefit

adopting such an approach, UNMIK urged that agreements be reached in terms of the beneficiary selection criteria (should combine the level of financial, material and human resources available to the household, together with the availability of a house and level of the damage inflicted, as well as an assessment of the urgency of the situation of each household), common standards of rehabilitation, defining a mechanism for implementation of donor-assisted rehabilitation programmes and overall coordination. (UNMIK Press Release 18 January 2000, UNMIK/PR/137). The Office of the High Representative in Bosnia and Herzegovina issued a Code of Practice for Reconstruction and Repair in September 1998 setting out basic principles and procedures to be followed by reconstruction agencies to ensure that reconstruction projects, and the return of refugees and displaced persons to repaired housing units, take place on a sound legal basis. This Code urges reconstruction agencies to obtain from the Municipal authorities a list of pre-war residents of each of the individual properties or housing units on which work needs to be carried out and to corroborate the legal rights to the properties or housing units of the pre-war right holders by means independent of the municipal authorities. It further urges that temporary occupants be required to sign a document acknowledging that the pre-war legal right holder retains full legal rights to the property and that these rights are not affected by any reconstruction work done to the property before or during the period of the pre-war rights holder's absence.

⁴² The Stability Pact for South Eastern Europe, for instance, proposed the construction of some 60,000 social housing units and the reconstruction of tens of thousands of housing units as part of its regional return initiative. (Stability Pact for South Eastern Europe (2001) *Agenda for Regional Action – Return and Integration 2001-2003*). See also, UNHCR (1998) *Review of the UNHCR Housing Programme in Bosnia and Herzegovina*, UNHCR Inspection and Evaluation Service.

those most in situations of housing disadvantage. Moreover, peace operations should ensure that a reasonable portion of international development assistance, as appropriate, is earmarked for housing construction or improvements.

99. *Provide stimulants to the private sector to construct low-income housing:* Peace operations should propose the development by national authorities of tax credit programmes and other stimulants to the private sector to encourage the construction of low-income housing.

4. *Building Materials*

100. The production of affordable and local building materials should be strongly supported by UN peace operations. In all post-conflict situations, the housing construction sector will need to be assisted to function optimally by the peace operation involved. Special measures can be developed to encourage this sector to develop affordable building materials for lower-income groups.

5. *Social Housing Administration and Maintenance*

101. Peace operations need to ensure that all public housing resources are properly administered and managed. Measures should be taken to ensure that any suggested privatisation of such resources are made and implemented solely by the local population.

6. *Security of Tenure*

102. Peace operations can also take concrete steps to increase levels of security of tenure for everyone, including public and private sector tenants and those living in informal settlements. This can include the development of quick and affordable measures for conferring security of tenure rights to slums and popular settlements currently without security of tenure; the issuing of public commitments allowing existing informal communities to continue to remain in place; and expanding national land and housing registration systems to allow for the inclusion of new tenure rights of the poor.

7. *Eviction*

103. Evictions carried out or ordered by agencies forming part of peace operations may be required to enforce judicially sanctioned housing re-possession orders or to remove people who may be unlawfully occupying State property or other public buildings.⁴³ While eviction *as a last resort* may be a measure necessary to enforce housing, land and property laws and to restore legitimate rights to returning refugees or IDPs, extreme care will need to be taken to protect the rights of those facing eviction. International law widely prohibits all but the most exceptional cases of forced eviction. However, international law does allow evictions to be carried out when a series of strict legal and procedural requirements are fully satisfied. In order to conform to international human rights law and standards (eg. Committee on Economic, Social and Cultural Rights General Comment No. 7 on Forced Evictions (1997), et al), peace operations should

⁴³ See, for instance, *Order No. 6* (on the eviction of persons illegally occupying public buildings (CPA/ORD/8 June 2003/06)) issued by the Coalition Provisional Authority in Iraq.

ensure that no person, family or community is made homeless as a result of the resolution of a housing, land or property dispute which requires eviction. A policy decision should be made that the forced eviction of residents will not take place unless alternative land and/or housing are made available to them. But extreme care needs to be taken that national authorities do not use this as an excuse to delay the return and restitution process.

8. *Housing for Vulnerable Groups*

104. *Develop An Emergency Policy Response to Homelessness*: Homelessness warrants a major policy response by UN peace operations. Resources should be sought to assist the homeless and to begin the process of finding permanent housing solutions for all. Identifying vacant State property and allocating this for the temporary or permanent use of the homeless would be an immediate step that could be taken with very limited financial implications. Similarly, providing financial assistance or incentives to the construction industry could assist in inducing the rapid construction of affordable housing.

105. *Ensure the Protection of Women's Housing Rights*: UN peace operations should ensure that women's rights to inherit housing, land and property are fully respected, and that proper registration procedures for registering HLP rights in women's names are fully in place.

106. *Promote Programmes for Groups with Special Housing Needs*: Develop special housing policies for vulnerable and other groups with special housing needs, including: women-headed households, the disabled, older persons, minorities, indigenous peoples, unaccompanied or separated children and others.

9. *Registration of Housing*

107. The housing, land and property registration system, and/or the national land cadastre will require establishment, (or re-establishment and updating). As appropriate, alternative titling and deeds systems should be proposed to expedite the conferral of security of tenure and official registration of housing rights.

D. Development Phase

1. *Planning for the Future: Steps Towards Redistributive Justice and the Rule of Law*

108. Given that peace operations are by their very nature temporary institutions designed to help nations in the transition from conflict to peace and development, no peace operation could ever hope to leave a country in the knowledge that housing, land or property rights were systematically enjoyed by the entire population. At best, a departing peace operation that embraced a HLP rights approach to the challenges it faces during its tenure in a post-conflict situation will leave behind a legal and policy framework that places the country concerned in a far better position itself to find permanent housing, land and property rights solutions for all people under its jurisdiction. It should depart the country/territory only when national and local 'ownership' of the HLP institutions and policies pursued during the course of the peace operation is strong. Moreover, departure would be premature if UN-led exercises such as Poverty-

Reduction Strategies, relevant provisions of the Millennium Development Goals and UNDAF arrangements, as well as national processes such as national development plans, have each firmly and clearly included HLP rights issues prominently within their planning frameworks. If a sense of *residential justice* is the legacy of a peace-building operation, and this still under-emphasised, yet crucial, form of justice begins to pervade the political culture of the country concerned, a positive result can be claimed and future conflict will likely be averted.

109. One particular legislative action that may be considered at this stage would be the pursuit of a *Consolidated Housing Rights Law*. Such legislation would enable the development of a consolidated law governing all constituent guarantees comprised under the rights to housing, land and property ensured under international law, and could provide a clear basis for coordinating joint international and local efforts towards protecting HLP rights. Among other things, the Act should:

- provide a legislative basis for land reform;
- create a national housing environment free of discrimination;
- firmly entrench housing, land and property rights concerns within broader anti-poverty strategies;
- ensure that HLP rights violators are prosecuted; and
- ensure that historical HLP rights violations are included within the mandate of truth and reconciliation commissions and other reconciliation bodies.

V. CONCLUSIONS AND RECOMMENDATIONS

110. Comprehensively addressing housing, land and property rights within the context of post-conflict reconstruction should be a formal component of all future UN peace operations. Such an approach would assist in building peace and the rule of law, promoting reconciliation and economic development and reducing poverty. To date, the manner by which these rights have been approached in UN peace operations has been largely *ad hoc*, inconsistent and only marginally successful in addressing the vast array of concerns found within the housing, land and property sectors.

111. In order to take the process forward, and to sustainably incorporate HLP issues into the formal peace operation process, the following steps are suggested:

- The establishment of a ***Housing, Land and Property Rights Policy Development Group*** to be coordinated by UNHCR and UN-Habitat, and comprised of various other UN agencies and advisors;
- Intensive discussion, debate and eventual approval of a new ***UN Housing, Land and Property Rights Institutional and Policy Framework***. The *Development Group* would discuss and formalise such a *Framework* which would guide the planning and implementation process prior to and during the activities of all future UN peace operations. The *Group* would present the draft *Framework* to Member States for final approval;

- The establishment of a new, permanent P-5 level *Senior Coordinator for HLP Issues* to oversee the eventual incorporation of the new *UN Housing, Land and Property Rights Institutional and Policy Framework* within all future UN peace operations. The post of should be based within the appropriate department at UN Headquarters in New York.

112. To initiate this process, it is proposed UNHCR and UN-Habitat should convene an **Expert Group Meeting by May 2005** to formally establish the proposed *Housing, Land and Property Rights Policy Development Group*. Once this group is created, the implementation of the other recommendations contained here could be initiated. In addition to the broad recommendations outlined above, the Policy Group could explore the feasibility of developing more detailed policies on each component and sub-component of the general policy framework proposed in this paper, as well as considering the production of a detailed *UN Handbook on Housing, Land and Property Rights Issues in Post-Conflict Environments*, complemented by a practical toolkit.

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VII. ANNEXES

A. Relevant International Housing Rights Standards

International Covenant on Economic, Social and Cultural Rights (1966), adopted by UNGA resolution 2200A(XXI), entered into force on 3 January 1976. Article 11(1) states:

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing and to the continuous improvement of living conditions**. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

International Convention on the Elimination of All Forms of Racial Discrimination (1965), adopted by UNGA resolution 2106A(XX), entered into force on 4 January 1969. Article 5(e) (iii) states:

*In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...(e) in particular...(iii) **the right to housing**.*

International Convention on the Elimination of All Forms of Discrimination Against Women (1979), adopted by UNGA resolution 34/180, entered into force on 3 September 1981. Article 14(2)(h) states:

*States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...(h) **to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications**.*

International Convention on the Rights of the Child (1989), adopted by UNGA resolution 44/25, entered into force on 2 September 1990. Article 27(3) states:

*States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and **housing**.*

Convention Relating to the Status of Refugees (1951), adopted on by UNGA resolution 429(V), entered into force on 22 April 1954. Article 21 states:

*As regards **housing**, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.*

Universal Declaration of Human Rights (1948), adopted and proclaimed by United Nations General Assembly resolution 217A (III). Article 25(1) states:

*Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, **housing** and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

B. Human Rights Linked to Housing, Land and Property

*The Right to Adequate Housing*⁴⁴ was first recognised within Article 25(1) of the Universal Declaration of Human Rights, and subsequently included in various standards, most notably the International Covenant on Economic, Social and Cultural Rights (CESCR). Beneficiaries of this right are entitled to housing that is ‘adequate’. Adequacy includes: security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy. Governmental obligations derived from this right include duties to take measures to confer security of tenure (and consequent protection against arbitrary or forced eviction and/or arbitrary confiscation or expropriation of housing), to prevent discrimination in the housing sphere, to equality of treatment and access vis-à-vis housing and protection against racial discrimination, guaranteeing housing affordability, landlord-tenant relations and many others.⁴⁵ Further duties are incumbent upon those exercising powers of

⁴⁴ COHRE (2000) *The Human Right to Adequate Housing 1945-1999: Chronology of United Nations Activity*, COHRE, Geneva.

⁴⁵ *General Comment No. 4 on the Right to Adequate Housing (1991)* also stipulates two clear circumstances amounting to violations of the housing rights provisions of the Covenant, which peace operations need to take note of, namely: “11. A general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations found in the Covenant”.(Para. 11);

governance to promote access to and provision of housing resources suited to the needs of the disabled, the chronically ill, migrant workers, the elderly and refugees and internally displaced persons.⁴⁶

The Right to Property is also enshrined in international legal standards, including the Universal Declaration of Human Rights (art. 17)⁴⁷, the Convention on the Elimination of All Forms of Racial Discrimination (art. 5(d)(v)), the Convention on the Elimination of All Forms of Discrimination Against Women (art. 16(1)(h)) and other international standards. In addition, Principle 21 of the IDP Guiding Principles pursues comparable approaches.⁴⁸ While the right to adequate housing is designed to ensure that all persons have a safe and secure place to live in peace and dignity, the right to property is particularly important in terms of protecting the rights of persons who already own property or who have rights to use property (such as tenants), in particular, against the arbitrary deprivation of one's property or home.

The Right to Be Protected Against Forced Evictions is increasingly recognised under international law. Many international standards assert that forced evictions constitute 'a gross violation of human rights, in particular the right to adequate housing'.⁴⁹ In addition to asserting that 'forced evictions are *prima facie* incompatible with the provisions of the Covenant [CESCR], and can only be carried out under exceptional circumstances'⁵⁰, a leading UN human rights body has consistently proclaimed that States parties to the CESCR had violated the right to adequate housing

and "18. [T]he Committee considers that instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law".

⁴⁶ The obligation of governments to prioritize attention to securing the housing rights of the most disadvantaged groups in society is also addressed in *General Comment No. 4*: "States parties must give due priority to those social groups living in unfavorable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others" (Para. 11). Principle 18 of the *IDP Guiding Principles* provides: "1. All internally displaced persons have a right to an adequate standard of living; 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure access to: (a) Essential food and potable water; (b) Basic shelter and housing; (c) Appropriate clothing; and (d) Essential medical services and sanitation. 3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies".

⁴⁷ "1. Everyone has a right to property, individually and commonly owned; 2. No one may be arbitrary deprived of his property".

⁴⁸ "No one shall be arbitrarily deprived of their property and possessions. The property and possessions of all internally displaced persons shall in all circumstances be protected, in particular, against the following acts: Pillage; Direct or indiscriminate attacks or other acts of violence; Being used to shield military operations or objectives; Being made the object of reprisal; and Being destroyed or appropriated as a form of collective punishment. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use."

⁴⁹ For a comprehensive listing of all international standards see, COHRE (1999) *Sources No. 3 – Forced Evictions and Human Rights*, Geneva.

⁵⁰ Para. 18, *General Comment No. 4* (1991) 'The right to adequate housing'.

because of the prevalence of forced evictions on their territories. General Comment No. 7 on Forced Evictions (1997) provides the most comprehensive statement on forced evictions and the CESCR.⁵¹

The Right to Security of Tenure is a central housing rights issue. Without security of tenure – whether formal, informal or in other forms – people’s housing, land and property rights are permanently under threat, and the risk of forced eviction, displacement or other forms of dispossession are ever-present. Providing security of tenure has been widely recognised as both a positive development goal, and increasingly as a distinct human right.⁵² International human rights bodies are increasingly linking the full enjoyment of human rights to the enjoyment of security of tenure.⁵³

The Right Not to Be Arbitrarily Deprived of One’s Property: Closely related to the eviction question, the right not to be arbitrarily deprived of one’s property is widely addressed throughout human rights law. The basic principles associated with this right stipulate that property can only be expropriated or compulsorily acquired if this is carried out in accordance with law, in the public interest and subject to the payment of just and satisfactory compensation.

⁵¹ Principle 6 of the *IDP Guiding Principles* reaffirms these sentiments, stating, “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence”. Within other jurisdictions, forced evictions have been condemned on human rights grounds. It is commonplace for national laws to regulate the carrying out of forced evictions under constitutional law, security of tenure provisions, property and housing laws, landlord and tenant legislation, criminal law, civil law, and administrative laws.

⁵² Security of tenure is a complex issue, as the UN Campaign for Secure Tenure has recognised: “Security of tenure describes an agreement between an individual or group to land and residential property which is governed and regulated by a legal and administrative framework. This legal framework is taken to include both customary and statutory systems. The security derives from the fact that the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justiciable. The tenure can be affected in a variety of ways, depending on constitutional and legal frameworks, social norms, cultural values and, to some extent, individual preference. In summary, a person or household can be said to have secure tenure when they are protected from involuntary removal from their land or residence, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent. Such exceptional circumstances might include situations where physical safety of life and property is threatened, or where the persons to be evicted have themselves taken occupation of the property by force or intimidation” UNCHS (1999) *Implementing the Habitat Agenda: Adequate Shelter for All*, Global Campaign for Secure Tenure, UNCHS, Nairobi.

⁵³ For instance, in 1991 the Committee on Economic, Social and Cultural Rights stated in General Comment No. 4 that “tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”. Perhaps the most important and far too under-emphasized point concerning security of tenure is the fact that secure tenure can take a wide variety of forms, and it is most definitely not isolated to the conferral of formal legal title. Among others, secure tenure can take the following forms: de facto recognition, but without legal status; recognition of security of tenure, but without any form of tenure regularization; provision of temporary occupancy permits; temporary non-transferable leases; long-term lease; and provision of legal tenure. (See: Durand-Lasserve and Royston (eds.)(2000) *Holding Their Ground: Secure Land Tenure for the Urban Poor in Developing Countries*, Earthscan).

The Emerging Right to Housing and Property Restitution has been increasingly recognized not just as a preferred general legal remedy to the deprivation of housing land and property of the displaced, but also as a distinct right. In increasingly commonly heard language, the UN has re-affirmed “the right of all refugees, as defined in relevant international legal instruments, and internally displaced persons to return to their homes and places of habitual residence in their country and/or place of origin, should they so wish”.⁵⁴

The Right to Be Protected From Homelessness or Other Housing Rights Violations is relevant in all cases, but particularly in cases involving the secondary occupation of housing and property belonging to returning refugees, where evictions of unlawful and illegitimate occupants may need to occur (if voluntary moves are not forthcoming) for restitution rights to be enforced. All programmes of return involving housing and property disputes should contain assurances that even those who have no lawful or other rights to dwell within housing or property registered to returnees, do not become homeless or the victims of other rights violations.⁵⁵

⁵⁴ UN Sub-Commission on the Promotion and Protection of Human Rights Resolution 1998/26.

⁵⁵ In this regard, account should be taken of provisions contained in *General Comment No. 7 (1997) on Forced Evictions* issued by the UN Committee on Economic, Social and Cultural Rights which stipulates that: “Evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available”. (Para. 17, E/C.12/1997/4). These sentiments are echoed in the 1997 *Comprehensive Human Rights Guidelines on Development-Based Displacement*: “The Obligation to Prevent Homelessness 13. States should ensure that no persons, groups or communities are rendered homeless or are exposed to the violation of any other human rights as a consequence of a forced eviction”.

C. The Housing, Land and Property Rights Directorate (HLPRD)

