

Can Land Administration in Post-Conflict Environment facilitate the Post-Conflict State Building? – a Research Problem

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Key words: conflict, post-conflict, land administration, land administration in post-conflict environment, state building, post-conflict state building

SUMMARY

There is a very specific correlation between land and conflict; they meet each other on every point of the cycle of the armed conflict and in the post-conflict period. Although land was identified as a critical gap in international response capacities and the awareness about the vital importance of addressing the housing land and property issues within the context of post-conflict peace building has increased, experiences show that there are only a few cases where land issues were addressed in the post-conflict period, and humanitarian organizations in this period mainly focus on internally displaced persons and refugee's related issues, and restitution of the situation as it was before the conflict.

There is an identified need to ensure that land issues are put on the agenda of the international community and that they are tackled in the peace treaty document or national land policies of the states emerging from conflict. As the goal of a 'land administration process is to support the implementation of land policy using the aspects of land management', land administration is the appropriate instrument for implementing land related parts of the peace treaty document or national land policies of post-conflict states.

Post-conflict period is complex, fluid and enormously difficult. After a war sometimes a new state is formed or the old one is coming out from the conflict. Both need to follow a post-conflict state building process. State-building is defined as purposeful action to build capacity, institutions and legitimacy of the state in relation to an effective political process to negotiate the mutual demands between the state and societal groups. Main characteristics of the post-war society are: institutional weaknesses, economic and social problems, and serious security problems. 'Land administration in post-conflict environment' in this research is recognised as land administration performing in peace - normal life conditions - but loaded with the characteristics of the post-conflict environment.

Having an overview of the post-conflict situations, the potential of land administration as an instrument for implementing land policies, the concepts of state building and the acknowledged characteristics of war-torn societies, it could be derived that land administration can be seen as one element – facilitator – of the overall process of post-conflict state building. This phenomenon needs in depth and evidence based research.

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1. INTRODUCTION

The causes of armed conflict and widespread violence are many and varied. In some cases land is a major cause. Land and land related issues are increasingly recognized by the international community as important element associated to conflict activities that take place before, during and specifically after the conflict in emergency and early recovery period (FAO, 2005; OCHA, 2005; UN-HABITAT, 2007; UN-HABITAT, 2009).

This study addresses the role of Land Administration (LA) in post-conflict environments. The focus is on identifying its potential role as a state building facilitator in the post-conflict period. First conflict and post-conflict environments are explored based on available literature. Then land, land rights and LA, and characteristics of LA in post-conflict environment are discussed. ‘LA in post-conflict environment’ in this research is recognised as LA performing in peace – normal life conditions – loaded with the characteristics of the post-conflict environment. A literature review continues on the processes of post-conflict state building in order to identify the characteristics of this subject with reflection on the land related issues. The paper finishes with some conclusions about the identified need to better understand whether LA in post-conflict environment can be a facilitator of the post-conflict state building and under which circumstances.

2. CONFLICTS AND POST-CONFLICT ENVIRONMENT

Causes of conflicts

The causes for armed conflict and widespread violence are many. Throughout history, conflicts have been waged over land (Tibaijuka, 2007). In some cases land is one of the factors and sometimes land is a major cause for the conflict. In his paper Lewis (2004) posed a question: “Are wars fought over land? and the answer would be historically...yes”. Land is often a significant factor for widespread violence and also a critical element in peace-building and economic reconstruction in post-conflict situations (USAID, 2004).

A broad factor of many conflicts is the social, economic and political discrimination against groups in society, whether minorities or a majority of the population (FAO, 2005). Other causes for armed conflict could be: ethnic envy, nationalistic tendencies, opposing interests, class conflicts, dispute frontiers, expansion action or economic interests (Molen and Lemmen, 2004). Lewis (2004) discusses that wars in the last decades are driven by long-simmering ethnic and religious ideologies and fuelled by a struggle for political and economic control.

It could be summarized that causes of conflicts are not only because of the land itself, but they always have a land dimension (Putzel, 2009; Todorovski, 2011).

Definitions of conflicts

There are several definitions on the conflict in the available literature and here follows a few of them: Sociologists define a conflict as a social fact in which at least two parties are involved and whose origins are differences either in interests or in the social position of the parties (Imbusch 1999), or a social situation in which a minimum of two actors (parties) strive to acquire at the same moment in time an available set of scarce resources (Wallensteen, 2002).

A definition of armed conflict given by the Uppsala University: an armed conflict is a contested incompatibility which concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths.” (UU DPCR, 2011a).

Because this research mainly focuses on armed conflicts and situations in post-conflict environment the definition for the Uppsala University would be most appropriate.

Other types of conflict are: secondary conflicts that emerge during the fragile period of post conflict state building and land conflicts.

Secondary conflicts

McAuslan (2007) defines secondary conflicts as ‘unregulated activity involving the land, housing and property sectors for which there are no mechanisms to resolve the conflicts between parties other than through using force and violence’. That land is one of the catalysts of secondary conflict is illustrated by experiences in several post-conflict societies including Kosovo, Afghanistan, Somalia and Iraq. The lessons learned in these contexts need deeper assessment and incorporation into planned future interventions emerging from war (Lewis, 2004).

Land Conflicts

Wehrmann (2005) define a land conflict as a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land - the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it. A land conflict, therefore, can be understood as a misuse, restriction or dispute over property rights to land. Anten (2010) argues that the fact that land conflicts continue is due to inadequate formal and informal rules, and weak formal agencies. These weaknesses persist because they are an integral part of the workings of the political marketplace.

Changing nature of conflicts

Nowadays, the nature of conflict has changed. Rarely do armies square off across borders. Since the end of the Cold War, conflict has moved inside national boundaries; civil wars and

insurgencies are much more common today than wars between states (Zevenbergen and Burns, 2010). The attention drawn to wars between states has been replaced by a focus on internal wars of many kinds. A global preoccupation with internal instead of international conflict is now the rule (Buyse, 2008).

Alden Wily (2009) argues that conflicts have moved from an inter-state to an intra-state context, and accordingly shifted into inter-communal and inter-class conflicts, often complicated by ethnic concerns. Wallensteen (2002) distinguishes three basic types of armed conflict: international conflict, civil wars and conflicts over state formation.

There is increased involvement of international organizations and the changed justifications for armed conflicts. This double development has focused international attention to the two kinds of internal conflict distinguished above: civil wars and conflicts over state formation. Firstly, the number of these conflicts in which international organizations are involved has increased (Buyse, 2008). Secondly the justification of conflicts has changed: identity has replaced ideology (Jeong, 2000). Ethnic or national identity, existing or constructed, proved to be a powerful unifying force for building up constituencies. Political leaders, convey a message to their supporters that unless one's own group dominated, it would be dominated by others (Buyse, 2008).

Post-conflict environment

The post-conflict period starts when the main hostilities have ceased, some kind of peace treaty document is signed and international assistance can be provided for emergency and recovery activities. This period generally could be observed in three time phases: emergency, early recovery and the reconstruction period. Activities in the emergency phase focus on establishing basic governance and providing humanitarian services. They are usually undertaken in the immediate aftermath of conflict and before full-scale mobilization of aid resources has started. During this period, there is often little or no operational governance and rule of law, and extensive destruction of infrastructure. Food security is low. These activities should be identified as short-term actions that can be implemented relatively quickly (FAO, 2005). This period is complex, fluid and enormously difficult.

According to FAO (2005) the general characteristics of the post-conflict environment are: death and injury, hunger and starvation, displacement of people, negative social and psychological consequences, changes in values and expectations, destruction of infrastructure and housing, limited government capacity, limited funding and limited national 'ownership' of recovery plans. In all cases, of post-conflict, the war machines inch their way across the landscape leaving behind destroyed infrastructure, buildings, properties and lives of those survivors left behind (Lewis, 2004).

Conflicts often result in the massive displacement of people, creating large numbers of refugees and Internally Displaced Persons (IDP). People sometimes during the conflict experience forced eviction. Displaced people often settle on land to which they have no legal claim. There is also an issue that remaining citizens occupy land and houses left by

refugees/IDP's, this type of occupation is called secondary occupation. There is an important legal distinction between refugees and IDP's. Refugees are people who flee their homes for the safety of another country. IDPs are people who flee from violence but remain within their own country (FAO, 2005). The right of all refugees and IDP's to return to their homes and places of habitual residence in their country and/or place of origin is defined in relevant international legal instruments (UN, 1998). Once the armed conflict comes to an end or diminishes in intensity, one of the first and most important issues to arise is that of restitution and compensation for those who have lost the assets they once possessed (Guterras, 2009).

In the emergency phase of the post-conflict period the first people on the ground are actors from humanitarian organizations and from the International community. These are usually logisticians and procurement people. Pantuliano in HPG (2008) acknowledge that although awareness has increased, humanitarian organisations remain focused on returning land to IDPs and refugees rather than on wider structural issues and their effects on the population as a whole. De Waal discusses 'selective nostalgia': humanitarian agencies frequently try to 'return to the way things were', but these ideals are often unrealistic or even undesirable after processes of change and transition. There is a need to get to grips with the reality of change and how best to promote positive outcomes. There needs to be a shift from focusing solely on restitution to reform (HPG, 2008). Activities undertaken in the emergency phase have impact on the processes of peace and post-conflict state building on long term.

There are cases where actions taken by donors are not well coordinated and there is some overlapping activities. In Afghanistan, there are multiple donors involved – FAO, USAID, ADB, the World Bank, UNAMA, UN-Habitat – and they have different and un co-ordinated policies and approaches to land (McAuslan, 2007).

A peace process is a formal process in which the warring parties either decide to settle the incompatibility in a process in which one issue at the time is regulated by an agreement, or where agreements that build on a previous peace agreements are signed. Definition: 'a peace agreement is an agreement signed by at least two of the warring parties addressing the problem of the incompatibility, either by settling all or part of it, or by clearly outlining a process for how the warring parties plan to regulate the incompatibility' (UU DPCR, 2011b).

De Wit in the HPG (2008) underlines that there is a need to ensure land issues are tackled in peace agreements and that this includes adequate follow-up. The issue of including Housing Land and Properties (HLP) in peace agreements should be pushed since it could compromise an often fragile peace. Nevertheless, making references to land can be important (even in fragile contexts) as it puts pressure for the issue not to be dropped off the political agenda. McAuslan (2007) argues that in an immediate post-conflict situation, governmental institutions are weak, trust both in government and between people and communities are absent. What is needed, per the OECD paper, is a post-conflict land policy which focuses on the political dynamics of the conflict over land, rather than the technical dimensions of land administration. Land professionals with experiences in the development of the land policy documents and with appropriate knowledge in post-conflict environment could significantly

contribute this process.

Land issues in post-conflict environment

When large numbers of refugees began to return to their homes in Afghanistan in 2002, for example, it quickly became apparent that they faced a host of land-related problems, such as illegal occupation by local commanders, disputes arising from the loss and destruction of ownership documents, fraudulent transactions, land distribution by successive governments to their political supporters, and disputes over grazing and water rights (Guterras, 2009).

Too few people with background in land are engaged in the topic of post-conflicts. This specific environment requires engagement of different actors to come and work together in the early stages of post-conflict period (HPG, 2008). Pantuliano underlining the critical importance that land issues play in conflict and post-conflict situations, also stressed the need to bring land tenure expertise to the humanitarian community (HPG, 2008).

Pantuliano (2009) clarifies that Humanitarian Policy Group programme of the Overseas Development Institute originated from the concern that despite increasing evidence that land is often a critical issue in conflict-affected emergencies and forced displacement and plays a key role in post-conflict reintegration and reconstruction processes, there is a perceived lack of humanitarian engagement on HLP issues. Emergency measures such as creation of IDP camps and other settlements are de facto interventions in land management and land tenure (de Waal, 2009). Acting on land issues in a post-conflict environment is of crucial importance in order to support a peaceful transition from conflict. The management of land relations is intrinsically linked to a range of peace benefits (Cramer and Weeks, 2002). Disputes over land are often an underlying cause of, and factor in, conflict, especially in protracted crises (Pantulino, 2009).

Establishing (or re-establishing) tenure security can be very complicated in countries emerging from years of conflict, especially where land records are not available or are badly organized, and where statutory and customary systems overlap (Fitzpatrick, 2008).

Land disputes & Land claims

It is critical that due attention is paid to resources of new or on-going conflict. One of these is the resolution of land and property disputes arising either from displaced population returning, or from internecine struggles for primacy over land and property rights (Lewis, 2004). With the end of an armed conflict, especially a prolonged one involving significant displacement, a large proportion of the affected population will claim or reclaim access to land and resources. This has important implications for return, recovery and reintegration processes. (Pantulino, 2009).

OECD DAC guidelines have identified land tenure and administration as a critical area of action, and stress that disputes related land holdings must be addressed as rapidly as possible once the violence has subsided (Huggins and Clover, 2005). It is important that land claims and grievances be addressed promptly at the end of a conflict. If these issues are overlooked,

property disputes will inevitably escalate and may risk threatening the usually fragile stability of a post-conflict transition. The increase in land and property disputes in the post-conflict period usually stems from the failure to understand or constructively manage post-conflict land and property relations (Pantuliano, 2009).

Future

Looking to the future, it is difficult to avoid the disturbing conclusion that the issue of land, conflict and humanitarian action will need a more prominent place on the international agenda. An accumulation of adverse trends – economic downturn, the process of climate change, volatile food and energy prices – appear likely to create the conditions for conflict within and between states, some of them directly related to the struggle for land, water and other scarce resources (Guterras, 2009).

3. LAND, LAND RIGHT AND LAND ADMINISTRATION

Land and Land Rights

As described in UN/ECE (2005) land can be recognized as a source of all wealth. Land is a place of all shelter, in the city, the town, the village, and at home. It is the source of food, of materials for construction and manufacture, of coal, gas and oil, of springs and rivers and other essentials for life. Indestructible, immovable, it is the foundation of all human activities. Houses and factories, forests and farms, river roads and railways, mines, quarries, and reservoirs are all fashioned from the land. It offers endless opportunities for development and discovery. From LA perspective ‘Land’ is to be considered as the surface of the earth, the materials beneath, the air above, and all things fixed to the soil, so it is more than just ‘land’ alone: it includes buildings, etc. (Molen, 2002). ‘Recognizing that land is a source of wealth lies at the heart of good government and effective public administration’ (UN/ECE, 2005).

There is a tight relationship between the humankind and land, and it is represented in a form of rights, interest and responsibilities to land. Rights on land can be divided mainly in two groups: statutory and customary rights and they may be defined in the statutory or common law and by the customary traditions or informal use (Molen, 2002). Within the statutory or common law - or so called formal system – rights to land and the real estate are clearly described in the appropriate legislation addressing the land issues, and because this rights to land and real estate are gained via legal instruments it can be assumed that this rights are protected and secured to the right holder. Examples of rights to land and real estate are: ownership, leasehold, freehold, easements, superficies and rights to profit. Customary traditions (or customary law) are based on unwritten rules which find their legitimacy in tradition and these traditions can be different depending on culture, social aspects, economic and political factors.

Land Administration

The term LA has been introduced in the 1990’s and has probably the first time been given ‘official’ status by the UN-Economic Commission for Europe (UN/ECE) in 1996 (Stuedler, 2004). According to the UN/ECE web site, the aim was to promote land (immovable

property) administration through security of tenure, establishment of real estate markets in countries in transition, and modernization of land registration systems in the advanced economies (UN/ECE, 2011). The importance of effective LA in support of good governance and economic development is well recognized internationally (Groot and Molen, 2000).

The UN Land Administration Guidelines defines LA as ‘the process of determining, recording and dissemination information about tenure, value and use of land when implementing land management policies’ (UN/ECE, 1996).

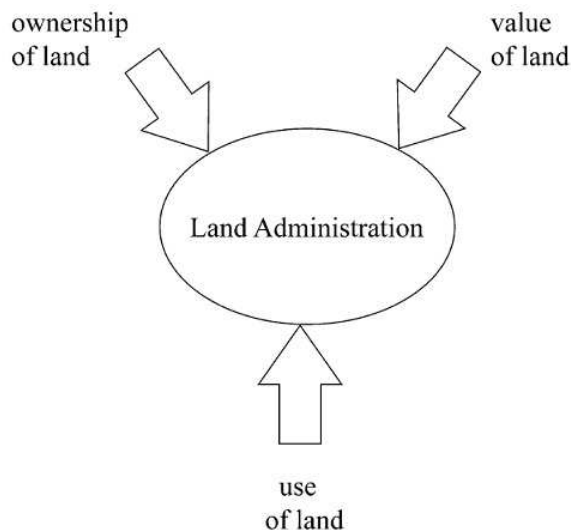


Figure 1: The broad concept of land administration (Molen, 2002).

Another definition is: LA is the process of regulating land and property development and the use and conservation of the land; the gathering of revenues from the land through sales, leasing, and taxation; and resolving of conflicts concerning ownership and use of land (Dale and McLaughlin, 1999).

Land administration deals with ownership, use and value of land (Zevenbergen, 2002). ‘Ownership’ is to be seen in a broad sense: as land tenure, that is the mode in which rights to land are held, based on statutory law, common law, and customary traditions. ‘Value’ is to be understood as all kinds of values which land might have, depending on the purpose of the valuation, the use of the land and the method of valuation. ‘Land use’ is to be understood as all the kinds of use land might have, depending on purpose and use, classification and methodology (Molen, 2002).

Land registration and cadastres make up an important part of Land Administration (Zevenbergen, 2002). McLaughlin and Nichols (1989) described land registration as ‘the process of recording legally recognized interests (ownership and/or use) in land’. Henssen and Williamson (1990) define land registration as a process of official recording of rights in land through deeds or titles (on properties). It means there is an official record (the land register) of

rights on land or of deeds concerning changes in the legal situation of defined units of land. It gives the answer of the question “who” and “how”. Dale and McLaughlin (1999) argues that land registration provides the framework and means for recognizing formalized land ownership rights and for regulating the transfer of these rights.

Cadastrals have registered the human terrain for centuries (Batson, 2007). According to United Nations (1985) cadastre is a methodologically arranged public inventory of data on the properties within a certain country or district based on a survey of their boundaries; such properties are systematically identified by means of some separate decision. The outlines of the property and the parcel identifier are normally shown on large-scale maps. FIG (1995) defines the cadastre as: normally a parcel-based, up-to-date land information system containing a record of interests in land (e.g. rights, restrictions and responsibilities). It usually includes a graphical description of land parcels linked to other records describing the nature of the interest, the ownership or control of those interests, and often the value of the parcel and its improvements. ‘Land administration systems and in particular their central cadastral components are essential parts of countries national infrastructures’ (UN/FIG, 1999).

The definition for the LA from the UN/ECE (1996) has been used in many policy documents and research studies, in this research it is key guiding principle as well.

4. LAND ADMINISTRATION IN POST-CONFLICT ENVIRONMENT

The post-conflict environment in regards to HLP is highly complex and multidimensional and it is not possible to develop guidelines for all aspects for all countries and scenarios simultaneously (UN-HABITAT, 2007). Many of those conflicts have direct effect on the control over land and the rights of people relating to land and cause innumerable denials of HLP rights (Tibajuka, 2007). Some of the land-related challenges that arise in post-conflict situations include: loss or destruction of property, secondary occupation, landlessness, insecure use or mobility rights and lack of clarity regarding ownership or use rights (Zevenbergen and Burns, 2010). Addressing these fundamental challenges, dealing with land administration in post-conflict situations, is no longer a matter of choice, but a core responsibility of effective peace building. Once it is understood that HLP issues may trigger secondary or tertiary conflict, it is important for peace building missions to become aware that proposals related to land management in post-conflict situations are an integral part of efforts to restore peace and stability (UN-HABITAT, 2007).

Land related issues that come up in the post-conflict environment are: access to land, LA systems that support tenure security, forced transactions, emergency occupation of land (for ex.: emergency camps, settlements for refugees and IDP, etc.) and HLP rights.

The normative framework for addressing HLP rights in the context of displacement is summarised in the 2007 as Principles on Housing and Property Restitution for Refugees and Displaced Persons (COHRE, 2007), known as ‘Pinheiro Principles’. ‘The Pinheiro Principles provide restitution practitioners, as well as States and UN and others agencies, with a

consolidated text relating to the legal, policy, procedural, institutional and technical implementation mechanisms for housing and property restitution' (COHRE, 2007). This document is a compilation of existing rights based documents in international human rights and humanitarian law. It acknowledges that all displaced persons should be protected regarding the HLP rights, the right(s) that they had to their property should be restored or if that is not possible then compensated. The Pinheiro Principles make some references to LA issues as well (Pinheiro Principles: 13, 15, 16, 17, 20 and 21).

LA in post-conflict areas obviously is difficult matter that requires an approach that copes with the local situation (Molen and Lemmen, 2004). Wily in HPG (2008) argues that property issues in post-conflict environment are often the same as those in non-conflict affected states but are just more loaded with the characteristics of the post-conflict settings. Land administration systems can suffer in several ways during a conflict. The most obvious blow follows from the loss of staff and records (Zevenbergen and Burns, 2010).

Land professionals

Staff can be killed, (forced to) leave the area or not be able or willing to return to their jobs within LAS. In all cases it is important to quickly identify available experienced staff and try to get them back to work as soon as possible. Most land administration staff are professionals with specific expertise, and except for (top) managers their position should not be political, but this depends much on local circumstances.

Experiences show that too few of the engaged personal in the emergency phase have appropriate knowledge and skills in LA issues which have their specific characteristics and need adequate approach for LA in post-conflict environment (HPG, 2008; Pantuliano, 2009).

When -at the end of the day- a land registrar writes down a name of an owner in a land book, and a land surveyor draws a boundary line on a cadastral map, it could be either the start of a prosperous economic development, or the overture to a new conflict (Molen and Lemmen, 2004). The work of land surveyors and land registrars can be seen in a context of state and nation building (Molen, 2011).

Land records

Land records are the evidence of ownership and use rights. Land records are typically associated with formal land administration systems. In countries where land is administered through customary bodies, where formal legal systems are not accessible to significant parts of the population, records are kept locally and transactions recorded through simple sales contracts, witness statements or local knowledge and attribution. Incomplete, out of date or contested land records can pose a threat to tenure security that is heightened in settings characterized by legal pluralism where statutory law does not recognize the existence of any other valid system of rights (UN-HABITAT, 2009). According UN-HABITAT (2009) the issues about land record in post-conflict situations that require appropriate attention are: inadequate land records; fragmented responsibility for land records; lost, stolen or fraudulent land records; and women and child's property and inheritance rights.

In East Timor the land and property building was among the first destroyed by militia activity along with most property rights records. Also in Somalia, land registries for the valuable irrigated areas in the central part of the country have been largely destroyed and will lead to significant problems once a central government and peace prevail (Unruh, 2004).

For the land records in post-conflict LA environment reveals that they are vulnerable subject and always negatively affected during the conflict. Fully paper based systems are even more vulnerable than digital ones. Land records in post-conflict LA environment can be: damaged stolen, lost, fraud or manipulated by powering parties (groups), partly or fully destroyed, moved in third country or even be a target for violent attack.

Summary on Land administration in post-conflict environment

In post-conflict situations, land (and related housing and property) issues are even more urgent and complex. No matter how difficult concerted action might seem in the chaos and confusion following conflict, land questions have to be dealt with as early as possible (Du Plessis, 2003). Historically, land administration issues have not been figured prominently in UN emergency and peace building operations. While some UN missions (including cases when UN exercised transitional governing functions, such as those in Kosovo and East Timor) addressing land administration problems in post-conflict areas, most missions either do not address these issues at all, or if attention is paid, it was generally *ad hoc*, limited in nature (UN-HABITAT, 2007). The relationship to land administration and land policy is relevant and should be recognized in peace treaties. Parties involved in formulation of peace agreements and/or strategic action plans should mention land registration not as isolated objective but rather embed in such plans a wider development and land policy (Molen and Lemmen, 2004). LA is the appropriate instrument for implementation of the national land policy. Failure to address land issues in post-conflict period can create significant obstacles to humanitarian interventions and early recovery responses and, if unaddressed, may contribute to renewed violence.

‘LA in post-conflict environment’ in this research is recognised as LA performing in peace - normal life conditions - but loaded with the characteristics of the post-conflict environment. The phenomenon needs attention: research is needed that will define and determine the characteristics ‘LA in post-conflict environments’.

5. POST-CONFLICT STATE BUILDING

After a war sometimes a new state is formed or the old one is coming out from the conflict, both need to follow a post-conflict state building process. The first challenge that these states are facing is the peace keeping process. The cessation of armed hostilities is not the complete watershed it may seem to be. A ceasefire is only a temporary success on the long road to peace (Buyse, 2008). There are two situations of peace, negative peace - absence of violence but nothing more than that, and positive peace - reconciliation among the parties on long term. (Miall et al, 1999). Peace building is actions undertaken by international or national actors to

institutionalize peace, understood as the absence of armed conflict and at least a modicum of political process (Call and Cousens, 2007).

Because the post-conflict period is complex, fluid and enormously difficult, the state and the peace are fragile, all actors involved in the process of post-conflict state building should be aware of this fragile situation and the importance to keep peace in place. The peace building process should follow in parallel the post-conflict state building on long-term.

Fragile states

Recent years have seen increasing concern among the policy-makers about ‘weak’, ‘failing’ and ‘fragile’ states. State fragility may be manifested in various forms and degrees. The chief concern is risk of conflict or humanitarian disaster (NYU CIC&IPA, 2008). By ODEC (2007) “states are fragile when states structure lack political will and/or capacity to provide basic functions needed for poverty, development and to safeguard security and human rights of their populations”.

Fragility of states and situations is understood as a situation where weaknesses in the dynamic political process obstruct the matching of citizens’ expectations of the state with the state’s capacity to deliver. It is the opposite of resilience (Anten, 2009). Resilience can be defined in relation to a state (and society), or to governance. Resilience in relation to a state is defined as the ability of state and society to manage state–society expectations and to keep expectations and capacity in equilibrium. Together, capacity, institutions, legitimacy and effective process combine to produce state resilience (NYU CIC&IPA, 2008).

States and Nations

State is defined as the institutions of government consisting of both those making political decisions and those acting on political instruction (Whaites, 2008). The literature makes a clear distinction between Nation and State, as follows: a ‘Nation is a social group sharing common ideology, institutions, language and homogeneity’, while a ‘State is a legal concept describing a social group that occupies a certain territory and is organised under common political institutions and an effective government’. To say it more easily: a Nation is a tight knit group with common culture, and a State is self-governing entity (Molen, 2011). According to Call and Cousens (2007) nation building is: actions undertaken, usually by national actors, to forge a sense of common nationhood, usually in order to overcome ethnic, sectarian, or communal differences; usually to counter alternate sources of identity and loyalty; and usually to mobilize a population behind a parallel state-building project.

State building

State-building is defined as purposeful action to build capacity, institutions and legitimacy of the state in relation to an effective political process to negotiate the mutual demands between the state and societal groups (OECD, 2008). ‘State building’, namely the construction of the foundation of the government edifice, within which governance ought to operate (Molen, 2011).

First priority of state-building must be a form of political governance (Anten, 2009), and the articulation of a set of political processes or accountability mechanisms through which the state and society reconcile their expectations of one another. Focusing on governance structures that address inequities and inequalities and promote accountability is likely to promote stability over time. State building in fragile states is a critically important but highly challenging function. The complexity and context specificity of the state formation process, as well as limits on external influence, means that sustained, serious efforts as well as research and policy innovation are urgently needed. Successes will contribute to human security, development, and international stability – benefits warranting substantial national and international engagement (NYU CIC&IPA, 2008). A distinction should be recognized that state building is not peace building and it is not nation building.

Post-conflict state building or building the war-torn societies

Ball distinguishes between three types of characteristics of war-torn societies. Firstly, these are institutional weaknesses, like non-participatory and malfunctioning political and judicial systems, strong competition for power instead of attention to governing, a limited legitimacy of political leaders and no consensus on which way society should go. Secondly, economic and social problems: destroyed or decaying social and economic infrastructure, an increase of the illegal economy and a decrease of the legal economy, people reverting to subsistence activities, hatred among population groups and, significant for the issue under review here, conflicts over land and property. Finally these societies have to cope with serious security problems: huge quantities of small arms freely circulating among the population, political influence of the armed forces, demobilization and disarmament issues (Ball, 2001). It can be concluded the main characteristics of the post-war society are: institutional weaknesses, economic and social problems, and serious security problems. Appropriate policies should be developed and implemented to overcome this situation.

Post-war states present both a major challenge and a major opportunity. Three dimensions of policy should be the focus of post-war engagement: political processes that legitimate the state; the development of the framework of the rule of law, including with respect to economic governance; and the re-establishment of a framework of security, including but not limited to reconstitution of the state security apparatus (NYU CIC&IPA, 2008).

Getting from a situation of negative peace to positive peace requires some form of doing justice (Miall et al, 1999). If justice is required, rule of law becomes one of necessary perspectives for looking at the given post-conflict environment. Apart from being an aspect of rebuilding the rule of law, housing and property restitution can make a practical contribution to peace (Buyse, 2008). Wallenstein (2002) emphasizes that in the post-settlement phase it is important to undo the effects of war. This entails economic redevelopment and the restoration or creation of democratic institutions, but also the return of refugees and displaced persons (Buyse, 2008).

In the last two decades, the number of international post-conflict operations has substantially increased. These operations have proved to be complex and results have been mixed. Important policy lessons are beginning to be learned, e.g. that policies are most effective

when they are integrated, striking the right balance between security, governance and socioeconomic development (Anten, 2009). The increased involvement of international organizations may have a double effect. Weakening or destruction of domestic institutions cause by conflict, increase the need for international remedies in case of human rights violations. More international involvement in modern conflict, at least in this respect, may then have a beneficial effect. The downside of international involvement is dependency. If human rights mechanisms are installed and maintained by international actors, they can easily collapse as soon as the latter leave the arena (Belloni, 2001). Either the international organizations should finish the process of restitution before they leave. Or the system of settlement and enforcement should be firmly rooted in local judicial systems, making it independent of international presence as far as possible (Buyse, 2008).

Post-conflict state building with reflection to land issues

Experiences show that there are only a few cases where land issues were addressed in the post-conflict period, and humanitarian organizations in this period mainly focus on IDP's and refugee's related issues, and restitution of the situation as it was before the conflict. Some opinions are that land issues should be addressed as early as possible in the emergency post-conflict phase and preferably this should be incorporated in the broader post-conflict state building context.

Unruh in HPG (2008) argues that during the peace process state authorities are weak. After a war where political environment is at its most fragile, new regimes often lack capacities and political will to address the land and land related issues. That's why there is a need to raise the awareness of the importance of the land issues in this period and overcome the political and practical barriers to dealing with land in post-conflict states.

Good governance is of particular importance in post-conflict state building. To transfer its criteria (sustainability, subsidiarity, equality, efficiency, transparency, accountability, public participation and security) on land policy and land management would provide a good basis for sustainable and low-conflict development. The due establishment of this positive framework is of a crucial importance, especially in situations of crises such as in post-conflict countries (Wehrmann, 2006).

Housing and property restitution seems to have at least a potential to make a positive contribution to peace. It serves as a legal tool to solve destabilizing refugee problems and it may help to cure at least one and maybe two of the three characteristics of war-torn societies: institutional weaknesses and, to a lesser extent, economic and social problems (Buyse, 2008).

A sound definition of property rights and their registration in a land administration system definitely belongs to the necessary institutions to build a State, as is shown in the publications of the chief researcher of the World Bank, dr. Gershon Feder and in the dissertation *The Human Right to Property* of the late dr. Theo van Banning, the Dutch representative to the FAO in Rome (Molen, 2011). In most developed countries, the land administration systems are so naturally embedded in alignment with the social and economic functionalities of a state,

that it goes almost unnoticed by the community that they are serving. Since land issues have often triggered armed conflict, and land management has been found to be an integral part of the political order, it would follow that an improvement in the land conflict resolution mechanisms would contribute to both peace-building and state-building. (Anten, 2010). Restitution processes can indeed be a beneficial factor in rebuilding societies (Buyse, 2008).

Elaborating the topics above it could be derived that the phenomenon of LA in post-conflict environment might be recognised as one element of the overall post-conflict state building process.

6. TOWARDS A RESEARCH PROBLEM

There is a very specific (sometimes too complex) correlation between land and conflict. Guterres (2009) argues that land and property issues arise at every point in the cycle of violence that is to be seen in so many countries throughout the world. Land was identified as a critical gap in international response capacities (OCHA, 2005). The past decade has been witness to a growing understanding of the vital importance of land issues and of addressing HLP rights within the context of post-conflict peace building (UN-HABITAT, 2007). On the other hand, experiences show that there are only a few cases where land issues were addressed in the post-conflict period. Humanitarian organizations in this period mainly focused on IDP’s and refugee’s related issues, and restoring the situation as it was before the conflict.

Even though the awareness about the importance of land and land related issues in post-conflict environment has been increased within the international community, still actors involved with the topic are underlining the need that more in depth research in this specific area is required which should be evidence based. There is increased number of literature about the topic of land issues in the post-conflict areas, basically on: what to do about land, land management and LA in post-conflict environment.

From the literature review it could be concluded that the topics: conflict and post-conflict environment, post-conflict state building and LA in post-conflict environment, are adequately addressed in literature. The relationship or link between conflict and post-conflict environment and post-conflict state building, as well as between conflict and post-conflict environment and LA in post-conflict environment is also acknowledged in the literature. A gap in the knowledge could be identified in the literature addressing LA in post-conflict environment in relation to post-conflict state building.

Here follows a conceptual research design which indicates the gap in the knowledge and the area that this research is going to explore in depth.

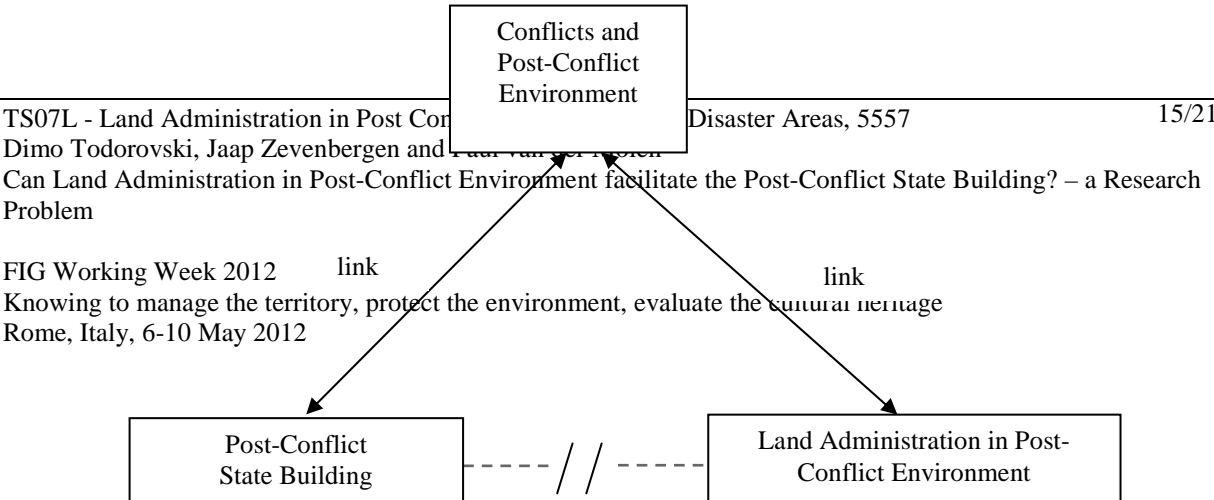


Figure no. 2: Conceptual Research Design

Having an overview over the post-conflict situations, the potential of LA as an instrument for implementing land policies, concepts of state building and acknowledged characteristics of the war-torn societies, it could be derived that LA can be seen as one element – facilitator - of the overall process of post-conflict state building.

This phenomenon needs more in-depth research in order to give the answer to the research question: can LA in post-conflict environment facilitate the post-conflict state building and under which circumstances?

Research methodology

The nature of any research problem and objectives drives the research methodology to be adopted and methods to be used. Levy (2006) argues that research using a quantitative methods leads to results which are typically generalizable and quantifiable; this does not allow a rich and in-depth understanding of a phenomenon. If the aim is to uncover the issues or a factor underlying that phenomenon, as is the case for this research, then this research requires use of the qualitative research methodology and provides the possibility to the theoretical perspective of the interpretivism. Qualitative research methods examine the how, what and why of various phenomena. Put simply, qualitative methods involve a researcher describing the characteristics of people and events without comparing events in terms of measurements or amounts (Thomas, 2003).

Strategies of doing a research in the domain of applied sciences include: experiments, surveys, histories, analyses of archival information and case studies. Yin (2003) defines a case study as: an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and the context are not clearly evident. Case study strategies are used when ‘how’ and ‘why’ questions are posed, little or no control over the event, and the phenomenon that is explored is contemporary. This fully reflects to the higher acknowledge research problem, control over the event/phenomenon

and the contemporary type of our research.

From the review of the doctoral researches in the area of the LA reveals that nine out of ten doctoral dissertations preferred qualitative methods. All ten dissertations were performed via case studies-nine used multiple and one used single case study (Cagdas and Stubkjaer, 2008).

It could be concluded that based on the nature of the phenomenon this research is exploring in-depth, most appropriate methodology for this research would be qualitative methodology executed via multiple case study strategy from multiple sources.

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