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GUIDANCE NOTE OF THE SECRETARY-GENERAL

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The United Nations and Land and Conflict

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**SUMMARY**

Over the coming decades, competition and conflict over land is likely to intensify with the growing pressures of climate change, population growth, increased food insecurity, migration and urbanization. Due to growing evidence of the link between land, armed conflict, and human rights abuses, the United Nations (UN) system needs to be more responsive to the emerging needs of Member States and populations.

This Note has been developed to help the UN system be more fit for purpose on land and conflict issues, and is based on relevant international norms and standards, the 2030 Agenda for Sustainable Development, and the experiences of the UN system.<sup>1</sup> The principles and framework for UN engagement are designed to achieve a sustained and strategic common approach across the peace and security, human rights and development pillars, and tailored to inform, in particular, UN system programming and advocacy interventions.

The UN Framework for Action in this Note helps to identify potential entry points to integrate land in conflict analyses, planning and assessment processes, supports engagement of UN leadership and outlines key activities to consider in areas of UN work - such as support to peace agreements and mediation, human rights, gender equality, rule of law and governance. This Note provides guidance on partnership and the use of practical tools for analysis, coordination and programming.

This Note consists of an introductory section and three parts. Section (A) presents guiding principles for UN engagement related to land and conflict; Section (B) presents a framework for action by the Organization across the three pillars; and Section (C) describes UN system arrangements.

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<sup>1</sup> This Note follows a collaborative UN inter-agency assessment of the UN system-wide engagement on land and conflict and is based on its findings and recommendations - UN-Habitat (2016) Land and Conflict: Towards UN System-Wide Engagement at Scale (Phase 1: Scoping and Status Study) - Executive Summary, Key Findings and Recommendations.

## **A. GUIDING PRINCIPLES**

1. Assistance is based on international norms and standards related to land and conflict
2. Ensure coherence across the three pillars for land interventions
3. Interventions should be strategic, incremental and timely
4. Prioritize national ownership and recognize that land is a sovereign issue
5. Support human rights-based and gender-sensitive approaches
6. Support effective coordination and partnerships between the UN, non-UN Organizations and national actors

## **B. FRAMEWORK FOR UN ACTION**

1. Ensure land is an integral part of conflict analysis
2. Ensure consistent engagement of Senior UN Leadership on land and conflict
3. Incorporate land into the Organization's key assessment and planning processes
4. Integrate land within relevant UN institutional mechanisms, joint programmes and financing instruments
5. Integrate land-conflict related issues in country level interventions
6. Enhance system-wide capacity to address the land-conflict nexus
7. Expand partnerships with non-UN entities and actors
8. Develop and use practical tools that address the land-conflict nexus

## **C. UN SYSTEM ARRANGEMENTS**

## INTRODUCTION

As set out in the Charter of the United Nations, the three pillars of the Organization’s mission are to maintain international peace and security, to achieve economic and social progress and development, and to promote respect for human rights. This Note is based on the findings and recommendations of a collaborative UN inter-agency assessment of the UN system-wide engagement on land and conflict in fragile settings, confirming important trends on land and conflict that have implications across the three pillars of the UN.

Competition and conflict over land is likely to intensify with the growing pressures of climate change, population growth, increased food insecurity, migration and urbanization. Mounting pressure on land resources will drive conflict dynamics at global, regional, national and local levels and there is growing evidence of the link between land, armed conflict and human rights abuses. There is increasing acknowledgement that land can be a root cause or trigger for conflict, a critical factor causing its relapse, or a bottleneck to recovery. Evidence from the field<sup>2</sup> demonstrates the significance of resolving land-related issue in the achievement of sustainable and durable peace.

In positioning itself to better support Member States to achieve the 2030 Agenda on Sustainable Development Goals (SDGs), the UN needs to develop relevant capacity, strategies and partnerships (as the SDGs reflect relevant targets and indicators pertaining to land) and to support Member States in their voluntary national reviews.

### Box 1. Land: terminology and concept

*The concept of land is defined broadly*

Land is the surface of the earth, the materials beneath, the air above and all things fixed to the soil. It contains structures, resources and landscapes of significant political, economic, cultural, spiritual and symbolic value.

It represents a strategic socio-economic asset tied closely to complex relations of production, exchange and reproduction. A resource of limited availability and a high value asset, issues related to access, control and ownership of land are tied closely to power, wealth, identity and even survival for a large part of the world’s population.

Land forms part of economic, social, political, cultural and historical activity and is tied directly to peace and security, human rights and development.

Land includes ‘property rights,’ ‘territory’ and ‘legitimate tenure rights’ as used in the international standards; ‘housing, land and property (HLP) rights’ from the humanitarian field; ‘land rights,’ ‘land management,’ ‘land governance’ and the ‘land administration’ and ‘geo-spatial data’ systems that support them, as used by governments; and ‘land tenure’ to reflect the complex social relationships among people with respect to land and its resources.

There is a continuum of land tenure types<sup>3</sup> that includes all legitimate<sup>4</sup> types - based on the recognition that land has a social function and is not just a commodity.<sup>5</sup> Both formal and informal land tenure types are considered legitimate in the eyes of the community and capable of being legalized with land documents. This includes formal and informal rental agreements, cooperative housing, leases, customary and indigenous rights, community and group rights and the informal land in urban slums.

Land is fundamentally relevant across the three pillars:

- In peace and security, land can be a root cause or a trigger of armed conflicts, while at the same time being a key factor for building resilience and sustaining peace.

<sup>2</sup> UN-Habitat/GLTN, IIRR (2018) Land and Conflict: Lessons from the field on conflict prevention and peace building, Nairobi, UNON.

<sup>3</sup> General Assembly Resolution 71/256. New Urban Agenda.

<sup>4</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012).

<sup>5</sup> Seventy percent of people in developing countries do not have registered land rights due to high costs and time involved to secure freehold titles, which often requires specialized technical capacity.

- In human rights, land-related human rights abuses, such as forced evictions, are often key to the conflict and connected to large-scale population displacements.
- In development, land is essential during the whole conflict cycle including for overall recovery from conflict, economic recovery and for ending displacement.

Dealing strategically and in a sustained manner with land-related issues during the development phase could be a preventative measure. It can lessen the risk of relapse through the engagement of the parties to the conflict and strengthens state-society relations.

UN engagement should be considered, in both mission and non-mission settings, where land is a root cause of conflict, an obstacle to development that undermines peace and stability, or a factor that increases the risk of protracted conflict.

## A. GUIDING PRINCIPLES

These guiding principles are applicable throughout the conflict cycle. Established UN policies apply, such as the ‘do no harm’, conflict and gender-sensitive approaches, ensuring context-specific interventions and inclusive stakeholder participation at all levels.

### A.1. Assistance is Based on International Norms and Standards Related to Land and Conflict

The UN engagement on the land and conflict nexus should be based on international norms and standards, including international humanitarian law (IHL) and human rights laws that apply to both peace and security and development (see Annex 1).

- First, several international human rights instruments, including the Universal Declaration of Human Rights, link land to the enjoyment of specific substantive human rights such as the right to own property alone, as well as in association with others<sup>6</sup>; and to the enjoyment of specific substantive human rights such as the right to food, equality between women and men; and protection and assistance of internally displaced persons.
- Second, UN human rights treaty monitoring bodies and special procedure mandate holders have linked land to the rights to non-discrimination regarding adequate housing, water, health, work, freedom of opinion and expression<sup>7</sup>.
- Third, Human Rights Council discussions on land cover a wide range of issues including forced evictions.<sup>8</sup>
- Fourth, regional human rights mechanisms address land including civil, cultural, economic, political and social rights, and the rights of minorities and indigenous peoples<sup>9</sup>.
- Fifth, the SDGs include land-specific targets and indicators (under Goals 1, 2, 5, 11 and 15), as well as other targets (Goals 10 and 16)<sup>10</sup> for which land is relevant.

<sup>6</sup> Article 17 of the Universal Declaration of Human Rights (1948).

<sup>7</sup> Including the Universal Declaration of Human Rights (1948); International Covenant on Civil and Political Rights (ICCPR) (1966); International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966); Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979); Convention on the Rights of the Child (1989); Convention Relating to Status of Refugees (1951); International Covenant on the Elimination of Racial Discrimination (1969) (ICERD); Hague Convention (IV) respecting the Laws and Customs of War on Land (1907); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949).

<sup>8</sup> <https://www.ohchr.org/EN/HRBodies/HRC/RuralAreas/Pages/WGRuralAreasIndex.aspx>.

<sup>9</sup> African Commission on Human and Peoples’ Rights; Inter-American Commission on Human Rights; Inter-American Court of Human Rights; European Court of Human Rights; and European Committee of Social Rights.

<sup>10</sup> Goal 1, Target 1.4 on the need for ownership and control over land and natural resources; Goal 2, Target 2.3 on secure tenure and access to land; Goal 5, Target 5a on the need for more gender-equal ownership and control over land; Goal 11, Target 11.1 on adequate housing and the upgrading of slums; Goal 15, Target 15.3 on the restoration of degraded land. The land-related targets are: Goal 10 on the overall reduction of inequality (a common issue in land which wider impact on overall inequality) and Goal 16, Target 16.3 on the rule of law (land as a root cause of conflict is a key rule of law issue).

- Sixth, there are specific land-related standards such as the New Urban Agenda (2016) and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (2012), that describe good land governance but with are legally non-binding. Similarly, standards with land-related norms by association include guidance by treaty bodies and monitoring mechanisms<sup>11</sup>.
- Lastly, tribunals and courts at all levels are drawing links between land and the gross violation of human rights, including at the International Criminal Court<sup>12</sup>.

Some of the key land-related human rights issues to consider are outlined below.

- *Protection of civilian objects* – IHL prohibits the directing of attacks against civilian objects. Civilian objects are any objects that are not military objectives. Military objectives are those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. As long as the land in question does not fall within this definition, it remains a civilian object and may not be lawfully targeted.
- *Protection of specific civilian objects* – Specific objects, such as the natural environment and cultural property, enjoy special protection against attack.
- *Destruction of property* – Under IHL, the destruction or seizure of the property of an adversary is prohibited, unless required by imperative military necessity.
- *Exploitation of natural resources* – Under IHL, pillage is prohibited, which may include the pillage of natural resources.
- *Explosive remnants of war* – States parties to the 2003 Protocol on Explosive Remnants of War are under the obligation to mark and clear, remove or destroy explosive remnants of war in affected territories under its control.
- *Displacement, refugees and internally displaced persons (IDPs)* - land-related human rights violations are inherent in every displacement situation, such as the destruction and illegal occupation and/or sale of forcibly abandoned land and buildings. Remedying and restoring land rights is important to achieve justice, build peace and facilitate self-reliance (including in the place of refuge) and achieve durable solutions. Monitoring, advocacy, preventive and preparatory measures are required to facilitate early successful voluntary returns.
- *Discrimination against women* - there is often discrimination in marriage, inheritance, legal status or resource distribution, and many women cannot access, use, control or own land. The number of female-headed households increases sharply during and after conflict, and without access to land, their livelihoods become insecure. Challenges include lack of awareness of their rights and the lack of necessary land documents and resources to pursue claims. International treaty bodies have emphasized the right of women to own, use or control land on an equal basis with men; the prohibition of discrimination on the grounds of land rights (or lack of thereof); and the right of women to own land without restrictions on the basis of marital status or any other discriminatory grounds.
- *Indigenous peoples land rights*- forced evictions are often associated with indigenous peoples' land. Indigenous peoples are protected by special human rights consideration - ILO C169<sup>13</sup> and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) emphasized the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy and their control over their economic, social and cultural development through “the principle of free, prior and informed consent” (FPIC).
- *Business and human rights*. There is an increasing trend of large-scale land-based investments by international and national business that may sometimes lead to forced evictions and human rights abuses, including the destruction of livelihoods. International standards identify the distinct but complementary roles of government and business, whereby the State has the duty to protect against human rights abuses by third parties, including businesses. Corporate responsibility includes avoiding infringement on individual rights and addressing the negative impacts, such as remedies for victims<sup>14</sup>.

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<sup>11</sup> General Comments: Human Rights Committee General Comment No.23, 28; Committee on Economic, Social and Cultural Rights General Comment No. 4,7,12,14,15,16,20,21; Committee on the Elimination of Racial Discrimination General Comment No.23;

Committee on the Elimination of Discrimination Against Women General Comment No.21; Committee on the Rights of the Child General Comment No.11.

<sup>12</sup> Policy Paper on case selection and prioritization, Office of the Prosecutor, International Criminal Court (2016).

<sup>13</sup> Convention C169 Indigenous and Tribal Peoples Convention (1989) (No. 169).

<sup>14</sup> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012); Guiding Principles of Business and Human Rights; International Convention on Civil and Political Rights (1966); International Covenant on Economic Social and Cultural Rights (Art.2).

## **A.2. Ensure Coherence Across the Three Pillars for Land Interventions**

The Organization should ensure coherence and coordination across the pillars when engaging in land-related conflict issues, taking into consideration the entities' different entry points, mandates and programming approaches at various stages of the conflict cycle, including distribution of responsibilities between pillars and entities.

- Programming should address system fragmentation through better sequencing of activities and a more sustained effort across the conflict cycle. This should include joint conflict analysis, planning and assessment, monitoring and reporting and sharing of information about land across UN entities (at global, regional, national levels).
- There should be clearer linkages between political roles and responsibilities and technical work streams. Land is often dealt with in emergency contexts as a protection or political issue, de-linked from its technical aspects, and in the development phase it is often dealt with as a purely technical issue, de-linked from the political aspects.
- Improve coordination across the SDG Results Group (UNSDG) custodian agencies<sup>15</sup> on relevant data exchange and the integration of data.
- When land is linked to conflict, UN interventions should be based on a land-related theory of change that should lead to collective, cross-pillar outcomes. Once developed, the theory of change should help to identify entry points, catalytic activities built around champions, coalitions, initiatives and targeted capacity development that can influence land-related relationships and power dynamics.
- Global and regional-level coordination is needed to address root causes of land-related conflict that transgress borders, and are often a manifestation of climate change, population growth, urbanization, migration and food insecurity.

## **A.3. Interventions should be strategic, incremental and timely**

There are a number of technical tools on land to better support local communities, for instance, through incrementally strengthening security of tenure using fit for purpose approaches to scale up the delivery of land documents for the poor and vulnerable.

- Incremental approaches that are strategically targeted may often be required to strengthen the land system, particularly when there is a need to address lack of political will or national technical capacity gaps and intermediate results should lay a foundation for long-term impact.
- The “fit-for-purpose” approach to support land administration, developed by the World Bank and UN<sup>16</sup>, links new advances in technology to the continuum of land tenure types to build sustainable land systems that provide secure land rights suited to conflict contexts. “Fit-for-purpose” approaches can be rapidly deployed, are flexible, inclusive, participatory, affordable and support accountability. A number of countries are already implementing some of these approaches, including in conflict contexts.
- Pilot projects in hot spots should include targeted capacity development that could later be upgraded to cover a larger area, more beneficiaries or scaled to support the national land administration system.

## **A.4. Prioritize National Ownership and Recognize that Land is a Sovereign Issue**

- National sovereignty issues are particularly sensitive as land often goes to the heart of national identity. Land-related initiatives should be nationally owned and wherever possible, led by national and local authorities. Particular attention is needed when supporting areas related to land law, policy and land administration and comprehensive consultations with state authorities to secure political buy-in should be

planned in advance of interventions.

<sup>15</sup> FAO, UN-Habitat, UNCCD and the World Bank are custodians for SDG land indicators.

<sup>16</sup> World Bank and the International Federation of Surveyors (FIG) (2014) Fit-for-Purpose Land Administration, FIG publication number 60, Denmark: FIG; UN-Habitat/GLTN and Dutch Cadastre (2016) Fit-for-Purpose Land Administration Guiding Principles for Country Implementation, Nairobi, UNON.

- Inclusive and participatory processes are essential to avoid land resolution becoming a source of conflict between the State and sub-national and ethnic identity groups e.g. indigenous peoples. National ownership should include the engagement of relevant stakeholders such as civil society, victims' and women's groups and local communities.
- Land issues may require engagement and coordination with counterparts at regional, national, and sub-national levels. Conflict may be concentrated in a particular territory or hot spot where non-state actors are operating or where different government entities might have different roles and responsibilities. The sovereignty issue is also relevant when engagement at the sub-regional/regional level might be more useful when land-related issues have a cross-border dimension and/or when there are regional policy frameworks and mechanisms that can provide support.

#### **A.5. Support Human Rights-Based and Gender-Sensitive Approaches**

- To strengthen conflict prevention and sensitivity there is a need for further domestication of land-related international human rights obligations covering forced evictions and the right of refugees and IDPs to recover their land rights; women's land rights; large scale land-based investments, including the issue of FPIC in indigenous/customary land; and for improved land governance, land administration and the continuum of land tenure types.
- Land activities must be conflict-sensitive and not violate human rights/international humanitarian law, nor infringe on legitimate individual or group rights. When strengthening land-titling systems there is a need to avoid support for individual ownership at the expense of others, for instance, customary land ownership by minority, marginalized or vulnerable communities.
- UN support should incorporate gender-responsive approaches to promote women's rights to own, access, control and inherit land, particularly in the context of UN assistance to national dialogues, transitional justice and legal reform initiatives. Support should include domesticating land-related gender-responsive international standards; protecting women's access to land particularly during restitution processes; and ensuring due attention is given to enforcement measures.
- A participatory and inclusive approach strengthens buy-in, accountability, transparency and sustainability. Stakeholders should include government actors, political parties, civil society organizations, land professionals, academics, faith-based organizations, customary or indigenous leaders and communities, representative institutions, farmers groups, the landless, and the general public. Emphasis should be on those who have been historically excluded, such as women and women's rights organizations.
- Large-scale land-based investment often increases conflict and competition over land and can be associated

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