VOLUME 1: CONFLICT PREVENTION

HOUSING, LAND AND PROPERTY-SENSITIVE URBAN LAW

Enhancing urban law to protect housing, land and property across the conflict cycle

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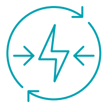
Glossary

ALTERNATIVE DISPUTE-RESOLUTION

Dispute-resolution that takes place through processes outside of the formal judicial system (that is, litigation), such as through arbitration, mediation and negotiation; these can also include customary dispute-resolution processes such as mediation through community elders.



CONFLICT CYCLE

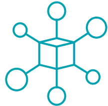
The various phases of addressing and responding to conflict, from conflict prevention (pre-conflict) to emergency response (conflict), early recovery (transition) and reconstruction and redevelopment (post-conflict).

CONFLICT PREVENTION

A process of building systems where actors are more likely to choose peaceful pathways by taking advantage of favourable structural factors or mitigating the impacts of unfavourable ones, building incentive structures that encourage peace, and containing violence when it does occur.

CONTINUUM OF LAND RIGHTS

Includes all legitimate types of tenure – based on the recognition that land has a social function and is not just a commodity. 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.



DECENTRALIZATION:

The transfer of government responsibilities and resources from the central government to subnational units of government.

FIT-FOR-PURPOSE

An approach to land administration that is flexible and focused on serving communities' needs, such as providing security of tenure and control of land-use, rather than focusing on top-end technical solutions and high accuracy surveys. Fit-for-purpose land administration should be (a) designed along administrative rather than judicial lines; (b) comprehensive with the full continuum of land rights; (c) flexible, incremental and inclusive; and (d) non-discriminatory and supportive of gender equity.

FORCED EVICTIONS

Permanent or temporary removal against the will of individuals from their homes or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.

HOUSING, LAND AND PROPERTY RIGHTS

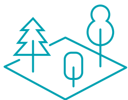
The bundling of three overlapping elements of the same human rights claim: the right to a home, free from the fear of forced eviction, a place that offers shelter, safety and the ability to secure livelihood opportunities. Grounded in international humanitarian and human rights law, HLP rights encompass the right to an adequate standard of living, to adequate housing, to property, and to return and remedy, including restitution and compensation.

HOUSING, LAND AND PROPERTY ISSUES (HLP)

The adverse impacts of conflict on HLP rights and the challenges to protect and restore such rights during and after violent conflict. These may include the following: mass displacement, homelessness, secondary occupation of land and housing, seizure of housing, land or property by armed groups, lost or damaged cadastral records and property documents, unrecorded, fraudulent or involuntary property transactions, damaged or destroyed urban infrastructure and housing units, real estate speculation and land grabbing, gender-based violence and discriminatory practices, incapacitated administrative institutions and governance bodies, proliferation of disputes over rights to housing, land and property, and conflict rubble, debris, explosive remnants of war and landmines.

HOUSING LAW

Housing rights legislation and the rules that regulate the housing sector, including housing acts, landlord-tenant laws, social housing law and real estate law.



LAND

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 socioeconomic asset tied closely to complex relations of production, exchange and reproduction.

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

LAND-BASED ADJUDICATION

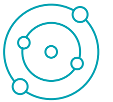
The process of final and authoritative determination of the existing rights and claims of people to land and represents the first stage in the registration of title to land in areas where the ownership of the land is not officially known.

LAND TENURE

The complex social relationships among people with respect to land and its resources.

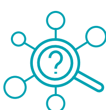
PLANNING LAW

The rules and regulations that determine the context, conditions and terms of the social contract for urban and territorial development, such as the provision and securing of public space, the granting of land and building rights, and the upholding of building codes and standards.



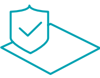
PROXIMATE FACTOR

Contextualizes the root cause in the local context; exists only because there is a root cause of conflict; there are many different types of proximate land factors depending on the nature of the root cause; for land, both the visible and invisible proximate factors feed into and contribute to worsening the violent conflict.



ROOT CAUSE

Long-term, invisible factors underlying violent conflict. Land is one of several potential root causes of conflict.



SECURITY OF TENURE

The right of all individuals and groups to effective government protection against forced evictions from land and/or housing units.

TENURE-RESPONSIVE PLANNING

An approach to spatial planning – and particularly land-use planning – that seeks to improve tenure security in a specific area, through the integration of tenure specific goals in the overall planning process.

TRIGGER

Flashpoints that feed into the root cause and catalyse the onset of violent conflict.

URBAN GOVERNANCE

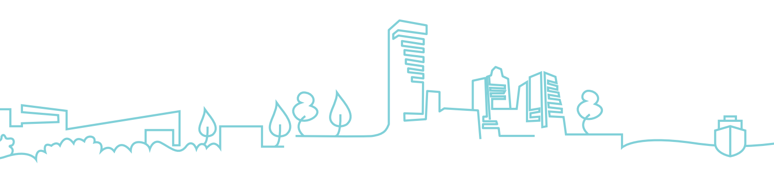
The structures and process by which Governments and stakeholders collectively decide how to plan, finance and manage urban areas.

URBAN LAW

The collection of policies, laws, decisions and practices that govern the management and development of the urban environment.

URBAN LAND MANAGEMENT:

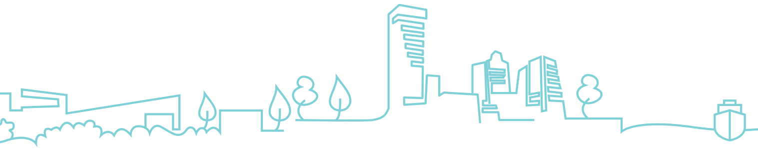
Deals with ensuring that land resources are used efficiently to provide housing, infrastructure, public services and other amenities in the urban context through transparent land administration systems.



Acronyms

ADR	Alternative dispute-resolution
CDRM	Customary dispute-resolution mechanism
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Convention on Economic, Social and Cultural Rights
CESCR	Committee on Economic, Social and Cultural Rights
EIA	Environmental impact assessment
ERW	Explosive remnant of war
ESIA	Environmental and social impact assessment
FAO	Food and Agriculture Organization of the United Nations
FIG	International Federation of Surveyors
FFP	Fit-for-purpose
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GLTN	Global Land Tool Network
HLP	Housing, land and property rights
IFRC	International Federation of Red Cross and Red Crescent Societies
IRBD	International Bank for Reconstruction and Development
LIS	Land information system
NRC	Norwegian Refugee Council
NUA	New Urban Agenda
NUP	National urban policy
OPG	Open government partnership
OHCHR	Office of the United Nations High Commissioner for Human Rights
PMCMV	Programa Minha Casa Minha Vida
PPP	Public-private partnership
SDG	Sustainable Development Goal
SEA	Strategic environmental assessment
STDM	Social Tenure Domain Mode
UXO	Unexploded ordnance
UDHR	Universal Declaration of Human Rights

UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UN-Habitat	United Nations Human Settlements Programme
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security



An aerial view of Mombasa county © Blue Economy/ UN-HABITAT

Introduction

As the world continues to urbanize, cities face greater challenges in responding to humanitarian crises and achieving sustainable post-conflict development that upholds everyone's right to adequate housing.

The impacts of conflict are increasingly being experienced in urban areas around the world – as seen in modern crises such as those in Ukraine, the Gaza Strip, Yemen and Syria – putting larger numbers of civilians at risk of and resulting in the destruction of homes, large-scale displacement and the loss of property or tenure documents.

Violent conflict also impacts cities indirectly as they often absorb large numbers of internally displaced persons and refugees coming from areas affected by violent conflict. These influxes put significant pressure on cities to adequately provide basic services, housing and sources of livelihood.

High costs of living, strained natural resources, unplanned urbanization as well as discriminatory housing laws and policies in urban areas have contributed to the development of informal settlements where residents have weaker land tenure security and are more susceptible to the impacts of conflict and disaster.

These impacts include eviction, displacement and residing in highly inadequate housing conditions due to crisis-induced damage to land, housing and basic infrastructure. Climate change, disaster risks and environmental degradation also tend to disproportionately affect communities residing in informal housing and further contribute to intersecting conflict vulnerabilities.

Urban law has a role to play in preventing conflicts by addressing the conditions which undermine the housing, land and property (HLP) rights of city dwellers in humanitarian contexts and in creating the conditions for peace and security during post-conflict recovery.

In establishing frameworks for the governance, management and development of urban areas, urban law offers numerous opportunities to ensure that such structures and processes promote security of tenure for all segments of the population in times of peace and crisis alike.

However, in much of the world, urban law has been drafted to recognize exclusively the interests of formal property rights holders such as landowners, mortgage creditors and registered leaseholders, leaving those with other forms of tenure especially vulnerable to crisis impacts.

This includes those who lack the capital or credit to participate in formal land or housing markets and those who rely on social or customary forms of land tenure.

Additionally, urban law can contribute to several land issues that have been recognized as root causes or triggers of conflict, such as politics of exclusion, capture of state instruments, population pressure, poverty, weak land administration systems and chaotic urbanization (United Nations, 2019, p. 9).

When it comes to addressing the impacts of conflict in the short-, medium- and long-term, rigid urban law systems can be slow to respond to HLP issues such as the following:

- mass displacement;

- homelessness;

- secondary occupation of land and housing;

- seizure of housing, land or property by armed groups;

- lost or damaged cadastral records and property documents;

- unrecorded, fraudulent or involuntary property transactions;

- damaged or destroyed urban infrastructure and housing units;

- real estate speculation and land grabbing;

- gender-based violence and discriminatory practices;

- incapacitated administrative institutions and governance bodies;

- proliferation of disputes over rights to housing, land and property;

- conflict rubble, debris, explosive remnants of war and landmines.

Thus, the urban law framework needs to be capable of adapting to reflect and effectively respond to the housing, land and property rights conditions of urban populations across the conflict cycle, from conflict prevention to emergency response, early recovery and post-conflict redevelopment.

This publication series –"Urban Law and Conflict" – aims to support the identification of where (in what laws, policies, rules or regulations and dealing with what subject matters) and how (suggested best practices and reforms) urban law can better protect and promote the HLP rights of urban dwellers in periods of crisis to "ensure that all inhabitants, of present and future generations, without discrimination of any kind, are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements" (New Urban Agenda, 2016, p. 11).

Jemaa el Fna Square, Marrakech, Morocco © Annie Spratt/Unsplash

URBAN LAW

Urban law is the collection of policies, laws, decisions and practices that govern the management and development of the urban environment (UN-Habitat, 2015, p.1).

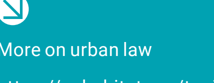
These instruments establish the institutional structures that manage urban areas, shape the spatial planning and physical organization of urban areas, determine the use and management of urban and peri-urban land, and ensure the provision of housing for urban and peri-urban populations.

Legal frameworks are powerful components of the urban ecosystem that underpin cities' ability to fulfil their social, economic and environmental potential as foreseen in the New Urban Agenda. Urban law determines the rights, duties, powers and immunities of urban actors and defines the processes which dictate urban management and development. The binding nature of these instruments gives them a unique capacity to realize the objectives of Sustainable Development Goal 11 and address the manifold challenges that cities face today, including housing affordability, resource scarcity, environmental degradation, public health and safety, poverty and socioeconomic inequality, as well as natural and human-made disasters and conflicts.

Urban law consists of a broad and diverse field of legislative sources that govern the various functions of towns and cities, including urban planning, municipal finance, urban land administration and management, infrastructure provision, mobility and local economic development among others.

Individual pieces of urban legislation can operate at different levels of government (national, subnational, local) and be sourced from different branches of government (legislative, executive, judicial).

As such, urban legislation can be comprised of, *inter alia*, constitutional law, national and subnational legislation, local regulations and bylaws, executive orders, ministerial resolutions and decrees, judicial judgments and court orders. Urban law can also include non-binding "soft law" instruments, such as policies, guidelines, strategies and plans.



More on urban law

https://unhabitat.org/topic/urban-legislation

Additionally, because urban areas are multifunctional sites of engagement for various sectors and industries, legal provisions impacting the spatial, economic and governance structure of cities will be found in a range of sectoral and public sources of law. Constitutions, civil and criminal codes, environmental and climate laws, urban planning laws, land laws, public administration and local governance laws, public-private partnership laws, tax laws, cultural heritage laws, energy laws, building codes and zoning ordinances will all, for example, have implications for urban management and development.

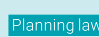
In this publication series, urban law is broken down into four thematic areas – urban governance, planning law, housing law and land management – as defined below.

> **Urban governance** refers to the structures and processes by which governments and stakeholders collectively decide how to plan, finance and manage urban areas (Urban Policy Platform, "Governance").

Urban law often establishes the framework for urban governance through provisions of administrative law and, occasionally, constitutional legislation that determine the manner in which the local authorities are constituted, the nature of their powers and the scope of their authority, responsibilities, duties and functions. Transparent, accountable, participatory and representative urban governance structures and processes with reliable dispute-resolution mechanisms can mitigate the risk of future land-based conflict. Ensuring that the legal framework allows for sufficient decentralization of powers, with local authorities having full responsibility in spheres involving interests of local citizens (UN-Habitat, 2009, p.11), can also enable more efficient and fit-for-purpose responses to HLP challenges during various phases of the conflict cycle.

> **Planning law** refers to the rules and regulations that determine the context, conditions and terms of the social contract for urban and territorial development, such as the provision and securing of public space, the granting of land and building rights, and the upholding of building codes and standards (UN-Habitat, 2018, p.15).

RESOURCES



Urban law should also define the various territorial planning instruments and processes that can be used to organize and orient the sustainable development of urban areas, such as land-use plans, urban master plans, zoning plans, neighbourhood plans, building codes and so forth.

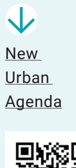
In this way, planning laws establish and regulate complex systems that not only govern spatial development but also directly influence land management and land tenure security (UN-Habitat, 2018, p. 1). As such, a legal framework that promotes participatory, inclusive and tenure-responsive spatial planning can significantly reduce vulnerabilities prior to crises and facilitate the remedy of HLP violations in the transition and redevelopment phases of conflict.

Urban land management deals with ensuring that land resources are used efficiently to provide housing, infrastructure, public services and other amenities in the urban context through transparent land administration systems.

Within the urban law framework, this primarily entails defining the processes for adjudicating, registering, recording and disseminating information about land tenure, including the rights ***in rem***, value and use of land and its associated resources. However, land administration systems face particular challenges in urban areas where population density is high, institutional organization is often fragmented, and inconsistent and complex planning and land-use and other regulatory restrictions apply. Such challenges are multiplied in periods of crisis where land records and property documentation can be lost or destroyed. For these reasons, the legal framework for urban land administration must fully align with the New Urban Agenda, which advocates for the development of fit-for-purpose and age-, gender- and environment-responsive land administration solutions within the continuum of land and property rights, to increase security of tenure for all, recognizing the plurality of tenure types and giving particular attention to security of land tenure for women (NUA, 2016, p. 35).

RESOURCES

ANNUAL PROGRESS REPORT 2018



New Urban Agenda

“ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums”

Housing law refers to housing rights legislation and the rules that regulate the housing sector, including housing acts, landlord-tenant laws, social housing law and real estate law.

These laws should be consistent and aligned with Sustainable Development Goal 11 which makes reference to "ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums" and reduce the urban population living in slums, informal settlements or inadequate housing. The New Urban Agenda envisions cities and human settlements that "fulfil their social function [...] with a view to progressively achieving the full realization of the right to adequate housing as a component of the right to an adequate standard of living" (NUA, 2016, p.13).

To realize this vision, it calls for the development of adequate and enforceable regulations in the housing sector, including, as applicable, resilient building codes, standards, development permits, land-use by-laws and ordinances, and planning regulations combating and preventing speculation, displacement, homelessness and arbitrarily forced evictions, and ensuring sustainability, quality, affordability, health, safety, accessibility, energy and resource efficiency and resilience (NUA, 2016, p. 111). In times of crisis, rights-based housing law and policy can sit at the nexus of planning law and urban land management to help ensure that all people have access to a safe and secure home free from the fear of forced eviction.

National Capitol Building in La Habana
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HOUSING, LAND AND PROPERTY RIGHTS

The concept of housing, land and property (HLP) rights refers to the bundling of three overlapping elements of the same human rights claim: the right to a home, free from the fear of forced eviction, and a place that offers shelter, safety and the ability to secure livelihood opportunities (NRC/IFRC, 2016, p. 5).

Grounded in international humanitarian and human rights law, HLP rights encompass the right to an adequate standard of living, to adequate housing, to property and to return and remedy, including restitution and compensation (Jimenez-Damary, 2021, p. 4). The three distinct components of this bundle of rights collectively ensure that all types of tenure relationships are accounted for and no group is excluded by not falling into the category of any one formal “land”, “housing” or “property” right (Leckie, 2005, p. 9). This bundle of rights is also intended to reflect the various ways in which these rights have been treated and referred to across both international law and diverse domestic legal systems.

Housing, land and property rights are recognized in both international law and international standards (“soft law”), including the Universal Declaration of Human Rights (UDHR), the Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), amongst others. The UDHR is an explicit guarantee of the right to adequate housing (Art. 25) as well as every person’s right to own property alone as well as in association with others, and protects against the arbitrary deprivation of one’s property (Art. 17).

There are multiple components of the right to adequate housing as elaborated by the Committee on Economic Social and Cultural Rights in General Comment No. 4 (1996). These components include legal security of tenure, access to public goods and services, affordability, habitability, physical accessibility, location and cultural adequacy. Security of tenure may exist in relation to land or housing units and entails “the right of all individuals and groups to effective government protection

against forced evictions" (UN-Habitat/GLTN, 2008, p. 7). It derives from the fact that the right of access to, use and control of the housing, land and property is underwritten by a known set of rules, and that this right is legitimate.

As such, providing tenure security requires the recognition of a diversity of tenure rights along the continuum of land rights, ranging from the most informal types of possession and use to formal ownership (UN-Habitat/GLTN, 2016, p. 16).

Housing, land and property rights are primarily framed through a humanitarian lens (see NRC/IFRC, 2016) to jointly address the impacts of conflict on people's secure access to their place of habitual residence.

These conflict impacts include forced eviction, displacement, lost civil and property documents, damaged cadastral or land registry records, incapacitated land administration systems, unstable security conditions, and the physical destruction and damage of HLP assets.

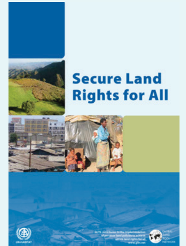
However, HLP vulnerabilities are often exacerbated by land and housing issues that predate the crisis period and have been entrenched by inadequate laws, policies and practices.

In the urban context, for example, land tenure security and access to adequate housing is chronically undermined by gentrification and real estate speculation, poverty, discriminatory spatial organization, unplanned urban development, weak infrastructure and basic services, outdated property registration systems and under-capacitated land administration bodies.

The humanitarian dimension distinguishes HLP rights within the broader concept of "land", and also includes the following: "property rights", "territory" and "legitimate tenure rights" as used in international standards; "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

RESOURCES

Scoping and Status Study on Land and Conflict (English 2016)



Secure Land Rights for All

Housing, land and property rights are recognized in both international law and international standards ("soft law"),...

reflect the complex social relationships among people with respect to land and its resources. There is a continuum of land tenure types that includes all legitimate types – based on the recognition that land has a social function and is not just a commodity. 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 (United Nations, 2019, p. 4).

Because the legal framework plays a significant role in determining the security of tenure people have in relation to their housing, land and property, it is critical to ensure that the urban law framework is "HLP sensitive" across the conflict cycle. Having a more robust legal framework which prioritizes tenure security for the most vulnerable members of society will proactively bolster cities against the unforeseen impacts of humanitarian crises, in line with the New Urban Agenda commitment of "moving from reactive to more proactive risk-based, all-hazards and all-of-society approaches" (NUA, 2016, p. 78).

Meanwhile, urban law issued during and after periods of crisis must actively protect against HLP violations in urban areas, support the restoration of HLP rights, and ensure that post-conflict urban development is just, inclusive and "builds back better".

THE URBAN LAW AND CONFLICT SERIES

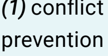
Situated at the intersection of Goals 11 ("sustainable cities and communities") and 16 ("peace, justice and strong institutions"), this publication series is intended to empower governments – including legislative drafters and consultants, judicial bodies, and local authorities and policymakers – to autonomously enhance domestic law, policy and practice by assessing existing urban law frameworks through a conflict-sensitive lens.

In doing so, the aim is to help countries realize law and policy frameworks that better secure the housing, land and property rights of its population during periods of conflict, specifically the ever-increasing portion of populations residing in urban and peri-urban areas.

The series is also intended to promote awareness of both the complexities and importance of securing HLP rights in the urban context. This publication series presents a consideration of how urban law can mitigate the factors leading to weak tenure security in urban areas prior to, during and following conflict and provide legal solutions to these challenges.

The publication series is intended to address how urban law can be better adapted to address HLP issues at the following four stages of the conflict cycle: (1) conflict prevention, (2) emergency response, (3) early recovery and (4) reconstruction. During the conflict prevention phase, this entails ensuring that the urban law framework promotes inclusive land tenure security, reduces the likelihood of land being a trigger or root cause of conflict, and mitigates any potential impacts of conflict on HLP rights. In the emergency response phase, HLP-sensitive urban law should mitigate the immediate impacts of conflict on HLP rights, by, inter alia, minimizing residential disruption and displacement, safeguarding land tenure records, furnishing emergency shelter and documenting secondary occupation. During the transition and early recovery phase, urban law has a role to play in facilitating the return of displaced persons through property restitution and compensation procedures, HLP dispute-resolution mechanisms, housing allocation, debris removal and building repairs. Finally, urban law has a particularly critical role when it comes to urban reconstruction: urban law should support equitable and inclusive post-conflict urban planning and reconstruction interventions, such as local recovery plans, land readjustment and informal regularization, and make provisions for capacity building in key urban governance institutions.

The publication series is intended to address how urban law can be better adapted to address HLP issues at the following four stages of the conflict cycle:



(1) conflict prevention

(2) emergency response

(3) early recovery

(4) reconstruction.

Individual publications in the series are each dedicated to one phase of the conflict cycle, and within each chapter, urban law is broken down into the four aforementioned thematic areas: urban governance, planning law, housing law and land management.

Using this structure, the publication series contains an identification of how different types of urban law instruments can be developed, revised and used to address the various HLP issues that emerge in times of conflict and to promote access to adequate housing, secure land tenure and effective property rights across the conflict cycle.

The series also features exemplary provisions and case studies of urban law instruments throughout that demonstrate HLP-sensitive principles at work. As such, the authors of the publication series have taken primarily a descriptive and exemplary approach to addressing the legislative and policy needs of each country or municipality in relation to HLP and urban law.

It should be noted that while this series is intended to provide a framework for assessing urban law with reference to a given subject matter, there is no presumption that a specialized piece of legislation exists for that specific issue. The practice of issuing specialized legislation as opposed to amending broader pieces of national legislation or following a common law approach of judicial precedent-setting is a matter of preference closely tied to a country's legal culture and history. Lawmakers must adapt the law in a way that is appropriate and effective within their national, regional and local context. This tool instead is intended to focus on the content of the law and bring awareness to any substantive gaps which need to be addressed to better realize the housing, land and property rights of urban populations in conflict and post-conflict settings. Whether these gaps are filled through amendments to existing law, the drafting and issuance of new legislation and soft law instruments, or by setting a new judicial precedent is a matter of choice which should be tailored to the needs of the country making use of the guiding framework.

Each publication within the series concludes with a summary of the way forward, including ten cross-cutting principles for making urban legislation more HLP-sensitive; that is, to making urban law and policy more attuned to the diverse housing, land and property rights and associated entitlements of urban residents before, during and following conflict.

Houses in Camaguey, Cuba © UN-Habitat/Hector Bayona 2022

Housing, land and property-sensitive urban law for conflict prevention

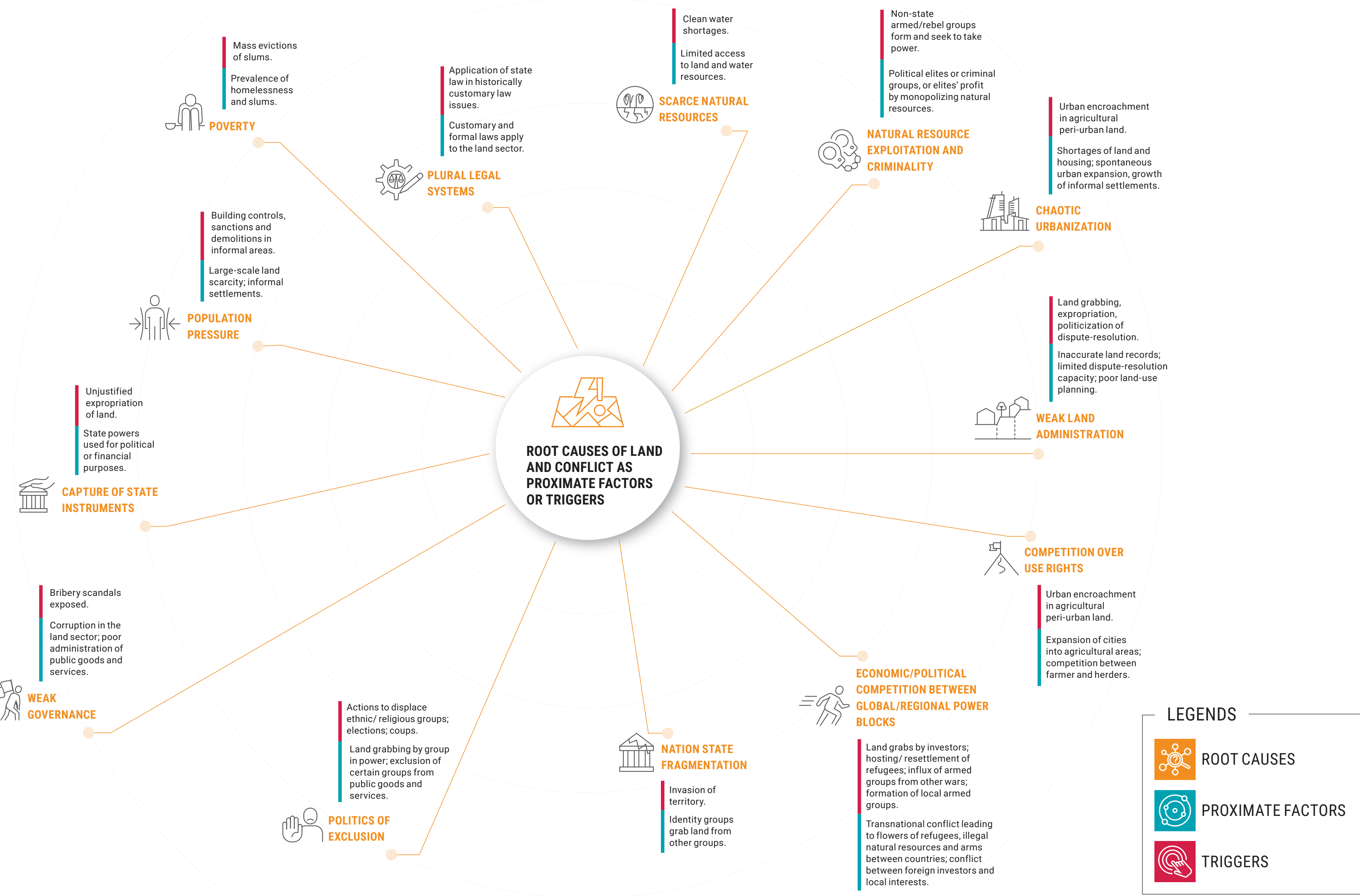
Although HLP issues seem to emerge as a result of humanitarian crises, they often extend from root causes related to land tenure insecurity that were in existence well before the beginning of armed conflict and mass displacement. Some of these causes, such as the exclusion of certain groups from formal land and housing markets, may be root causes of the conflict itself.

For these reasons, HLP-sensitive urban law must not only address potential root causes, proximate factors and triggers of conflict (see figure 1 below), but it must also preventatively address the causes of tenure insecurity that are exacerbated by conflict conditions.

Root causes of tenure insecurity, which amplify the adverse impacts of conflict on HLP rights, include tenure-insecure informal settlements, inaccurate property registry and cadastre, discriminatory access to land and housing, unenforced building codes, and unplanned urban expansion on peri-urban agricultural land, inter alia.

These issues may be proximate factors of conflict, but they may also have no impact on the emergence of conflict and only worsen the HLP impacts of conflict.

Figure 1. Root cause analysis of land and conflict



UN-Habitat/GLTN (2017).

HLP-sensitive urban law must therefore pursue the overlapping objectives of promoting conflict prevention and security of tenure.

Conflict prevention is defined as "a process of building systems where actors are more likely to choose peaceful pathways, by taking advantage of favourable structural factors or mitigating the impacts of unfavourable ones, building incentive structures that encourage peace, and containing violence when it does occur" (United Nations/World Bank, 2018, p. 100).

The United Nations recognizes three core principles of conflict prevention, namely, that it be sustained, inclusive and targeted. Sustained conflict prevention refers to the need to address structural issues comprehensively, strengthen institutions and adapt incentives for actors to manage conflict without violence. Inclusive conflict prevention builds broad partnerships across groups to identify and address grievances that fuel conflict.

Finally, targeted conflict prevention proactively and directly targets patterns of exclusion and institutional weakness that increase risk.

In the urban environment, population pressure places a strain on land and service delivery, which in turn can create grievances related to land scarcity, tenure insecurity, discriminatory practices and historical injustices in the allocation of land and property rights (United Nations/World Bank, 2018, p.149).

Urban law can contribute to conflict prevention by addressing structural issues that prevent certain groups from gaining secure access to land, housing and basic services, as well as by enabling all affected stakeholders to air grievances related to decisions that impact their land and property rights and by creating pathways for pacific dispute-resolution. Urban governance, spatial planning, land management and housing provision are key areas where urban law can mitigate risks that would otherwise create conditions for land-based conflict and exacerbate conflict-induced HLP issues.

Box 1. Relevant international law and guidelines for conflict prevention in urban law

- **International Covenant of Economic, Social and Cultural Rights (1976), Article 11:** The States Parties to the Covenant recognize the right of everyone to an adequate standard of living for [themselves] and [their] 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.

- **Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the Right to Adequate Housing (1991):** Certain aspects of the right [to adequate housing] that must be taken into account [...] include the following: (a) legal security of tenure [...]; (b) availability of services, materials, facilities and infrastructure [...]; (c) affordability [...]; (d) habitability [...]; (e) accessibility [...]; (f) location [...]; (g) cultural adequacy [...]. States parties must give due priority to those social groups living in unfavourable 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. [...] While the most appropriate means of achieving the full realization of the right to adequate housing will inevitably vary significantly from one State Party to another, the Covenant clearly requires that each State Party take whatever steps are necessary for that purpose.

- **Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, Guideline 25:** All parties should take steps to prevent and eliminate issues of tenure of land, fisheries and forests as a cause of conflict and should ensure that aspects of tenure are addressed before, during and after conflict, including in situations of occupation where parties should act in accordance with applicable international humanitarian law. In order that tenure problems do not lead to conflicts, all parties should take steps to resolve such problems through peaceful means. States should revise relevant policies and laws to eliminate discrimination and other factors that can be a cause of conflicts.

- **The New Urban Agenda (2016):** [78] We commit ourselves to supporting moving from reactive to more proactive risk-based, all-hazards and all-of-society approaches, such as raising public awareness of risks and promoting ex-ante investments to prevent risks and build resilience, while also ensuring timely and effective local responses to address the immediate needs of inhabitants affected by natural and human-made disasters and conflicts; [35] We commit ourselves to promoting, at the appropriate level of government, including subnational and local government, increased security of tenure for all, recognizing the plurality of tenure types, and to developing fit-for-purpose and age-, gender- and environment-responsive solutions within the continuum of land and property rights, with particular attention to security of land tenure for women as key to their empowerment, including through effective administrative systems.

- **Sendai Framework for Disaster Risk Reduction (2015):** While the enabling, guiding and coordinating role of national and federal state governments remain essential, it is necessary to empower local authorities and local communities to reduce disaster risk, including through resources, incentives and decision-making responsibilities, as appropriate (Principle 19(f)).

- **International Guidelines on Urban and Territorial Planning (2015):** Local authorities, in cooperation with other spheres of government and relevant partners, should: [...] (f) Ensure that urban regulations are implemented and functionally effective and take action to avoid unlawful developments, with special attention to areas at risk and with historical, environmental or agricultural value (Guideline 3). Local authorities, in cooperation with other spheres of government and relevant partners, should: [...] (f) Facilitate land tenure security and access to control over land and property, as well as access to finance for low-income households (Guideline 8).

- **Guidance Note of the Secretary General on Land and Conflict (2018):** Competition and conflict over land is likely to intensify with the growing pressures of climate change, population growth, increased food insecurity, migration and urbanization. [...] 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 internally-displace persons to recover their land rights; women's land rights; large scale land-based investments, including the issue of free, prior and informed consent in Indigenous/customary land; and for improved land governance, land administration and

the continuum of land tenure types. [...] From a prevention perspective, land entry points could include: land information management [...] land policy, land (management) reform, land administration, dispute-resolution and capacity development. [...] states should be assisted in their land administration systems through facilitating [...] the prevention of conflict or the violation of land-related rights where displacement could occur.

- **The Pinheiro Principles (2011):** Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence. States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control. [...] States shall take steps to ensure that no one is subjected to displacement by either state or non-state actors. States shall also ensure that individuals, corporations and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement (Principle 5). Everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home. States shall ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or her home (Principle 6).

I. URBAN GOVERNANCE

Box 2. **Urban governance key messages**

- National law and policy should enable the decentralization of power and resources to local and regional levels to promote government accountability and legitimacy in adherence with the principle of subsidiarity. The decentralization of power and resources to local and federal levels has been a significant force for preventing and mitigating conflict by boosting political and social inclusion.

- Urban law can reinforce multilevel governance among national, subnational and local governments through provisions establishing multilevel consultation mechanisms and by clearly defining the respective competences, tools and resources for each level of government. Such requirements have the benefit of, first, serving as a safeguard against arbitrary, politically or personally motivated decision-making at the local level and, second, ensuring that public measures to improve tenure security and access to housing are not undermined by contradictory policies or practices at other levels of government.

- The clear identification and separation of administrative roles and responsibilities in urban law promotes efficiency in the provision of public services at the local level, and creates transparency for urban residents, both of which are key factors for conflict risk reduction.

- Urban law should establish proportional representation systems, which support conflict prevention by making urban governance bodies more inclusive and responsive to minority groups. They can also safeguard the tenure security of urban populations by ensuring that the negative externalities of urban development do not disproportionately affect one community more than others.

- There are many ways in which urban law can facilitate robust civil society participation in local governance, which can significantly reduce conflict risks and empower communities, particularly those who are underrepresented or living in informal settlements. Additionally, it

can enable tenure-insecure groups, either individually or through civil society organizations, to advance policies and projects that can strengthen their tenure rights.

- Urban law can advance the modernization of local administration systems by requiring the adoption of digital approaches that increase the efficiency of decentralized governance systems and facilitate more inclusive access to public services in the urban sphere. Even more critical in the context of conflict prevention and mitigation, the digitalization of government processes and service delivery can render urban governance systems more resilient to conflict impacts.

- Effective decentralization and local autonomy require appropriate financial autonomy. Urban law should ensure that local authorities' financial resources are commensurate with their tasks and responsibilities to guarantee their financial sustainability and self-reliance. From a crisis perspective, fiscal autonomy is important because limited autonomy lowers local government's ability to respond to disaster quickly in the best interest of urban residents.

- Legal provisions that strengthen the capacities of local institutions are essential to both conflict prevention and security of tenure. They reduce the risk of non-state actors competing for authority by providing public services and can ensure that spatial planning, land administration and housing institutions at the local level can support the timely development of formal land and housing markets and maintain an accurate property registry.

- The mismanagement of land and natural resources can both restrict urban populations' access to basic services, such as clean water supply, and undermine the tenure security of communities situated near important natural resources for urban centres. Additionally, poor natural resource governance can also contribute to new conflicts and obstruct the peaceful resolution of existing ones. For this reason, the legal framework for governing natural resources should establish governmental authority over environmental problems, harmonize the mandates of different ministries or agencies to ensure clear allocations of responsibility and power, require the coordination of agencies with local authorities, and include environmental protection in the mandate of all relevant government agencies.

Decentralization and subsidiarity

When power is concentrated at the central level as opposed to being delegated to lower levels of government, it can distance law- and policymakers from the wants and needs of local communities and create a sense of political exclusion amongst various minority groups and communities with regional and local identities. This presents a significant conflict risk, as groups that feel unheard and unrepresented within their government bodies are more likely to consider violence to advance their cause (UNDP, 2009, p. 5).

Within the urban context, the failure to effectively empower local administrative bodies can result in inefficiencies in delivering public services and in responding to local development challenges related to land and housing. Limited access to basic goods and services in particular can create incentives for violence amongst local communities or groups living in areas that are excluded from service provision. Meanwhile, the inability of local administrations to provide sufficient land and housing to meet local demand can lead to the expansion of informal settlements into peri-urban areas and urban encroachment on agricultural land.

Not only can such developments give rise to land-based disputes, such as competition over land use in peri-urban areas or boundary disputes in informal neighbourhoods, but such areas are also more susceptible to various impacts of conflict, including the physical damage of buildings and infrastructures as well as the population pressure associated with hosting displaced populations.

To mitigate these risks, national law and policy should enable the decentralization of power and resources to local and regional levels to promote government accountability and legitimacy in adherence with the principle of subsidiarity. Local authorities should be acknowledged in national legislation, and, if possible, in the constitution, as legally autonomous subnational entities with a positive potential to contribute to national planning and development. Administrative law should determine the way the local authorities are constituted, the nature of their powers and the scope of their authority, responsibilities, duties and functions (UN-Habitat, 2009, p.11).

Local governance bodies should be assigned a measure of control over political, fiscal, administrative and market activities that guarantees their autonomous functioning within their jurisdiction.

The law should clearly identify the powers and duties of local administrative bodies, such as:

- the power to collect local revenues (that is, taxes and fees);
- the power to establish municipal properties and enterprises, and to engage in public-private partnerships;
- the power to plan the spatial and socioeconomic development of the local territory;
- the duty to protect and maintain the environment, natural resources and cultural heritage;
- the duty to provide educational, health, social welfare and cultural services;
- the duty to undertake public works to provide basic services and infrastructure;
- the duty to develop sports, recreation and tourism facilities;
- the duty to protect against disasters.

The decentralization of power and resources to local and federal levels has been a significant force for preventing and mitigating conflict by boosting political and social inclusion. Where decentralization has worked well, control of power and resources has been traded, first to manage frustrations stemming from horizontal inequalities and long-standing tensions relating to exclusion from political power, and second, to manage resources such as land more efficiently (United Nations/ World Bank, 2018, p. 204). However, while decentralization has been instrumental in averting potential violence, it can also create short-term risks for violent conflict, including the following:

- The redistribution of power can give rise to new conflicts or bring to the surface previously latent tensions.
- Elite competition can be transferred to the local level.
- Local governments lacking legitimacy can be empowered.
- Central governments can arbitrarily forfeit their role in local spaces, thus leaving room for opposing local forces to collide.
- Central governments can fragment opposition through decentralization programmes.
- Inequitable regional development can emerge because of fiscal decentralization with “rich” and “poor” regions drifting further apart.

- Local majority groups (ethnic, religious, linguistic) can be consolidated at the expense of minorities (UNDP, 2009, p. 31).

These risks must be carefully weighed and considered during the formulation and implementation of decentralization reforms.

Their mitigation will largely depend on upholding high levels of transparency and public participation in the decentralization process, and on the establishment of safeguards in the organization and composition of local governance bodies. These will be further discussed below.

Multilevel governance

Effective decentralization is regarded as an element of good governance and an expression of democratic practice and effective and efficient public administration. However, the devolution of powers to the local level should not isolate local administrations from the regional and central levels of government. This would contribute to some of the aforementioned conflict risks associated with decentralization, such as the empowerment of illegitimate or corrupt local authorities or the monopolization of power by local majority groups. Instead, decentralization should enable local authorities to be key actors in democratic governance and administration, which collaborate with national and regional authorities while having their own autonomous spheres of public action (UN-Habitat, 2009, p. 1).

In this vein, multilevel governance entails the consistent coordination of various levels of government to implement coherent public policies and make sound administrative decisions. Urban law can reinforce multilevel governance among national, subnational and local governments through provisions establishing multilevel consultation mechanisms and by clearly defining the respective competences, tools and resources for each level of government (UN-Habitat, 2016, p. 87). Such requirements have the benefit of first, serving as a safeguard against arbitrary, politically or personally motivated decision-making at the local level, and second, ensuring that public measures to improve tenure security and access to housing are not undermined by contradictory policies or practices at other levels of government.

Defined roles and responsibilities

Roles and responsibilities must not only be clearly defined for each level of government, but they must also be clearly assigned to the various local authorities and administration bodies operating at the local level. The clear identification and separation of administrative roles and responsibilities in urban law promotes efficiency in the provision of public services at the local level, and creates transparency for urban citizens, both of which are key factors for conflict risk reduction.

National legislation should define the fundamental composition of local government bodies, including, where applicable:

- the district council/committee;
- the city council/assembly;
- the chief councilperson/chairperson;
- the mayor and/or executive committee;
- municipal standing committees;
- ad hoc committees;
- city clerks or secretaries;
- municipal directorates, departments or offices.

Sectoral law (for example, planning law, land administration law, environmental law, cultural heritage law, etc.) and local by-laws should more specifically establish and define functional administration entities (directorates, departments, offices, etc.) at the local level, such as the finance department, the police department, school districts, transport departments, planning departments, housing and social services departments, property registration offices, and so on.

The establishment of such roles and responsibilities will also serve to mitigate any eventual conflict impacts, as emergency settings often disrupt public services and create institutional confusion in terms of administrative roles and responsibilities. This is especially critical in contexts characterized by legal pluralism – where religious or customary institutions have assumed many of the roles of weak or corrupt public institutions. Where legal pluralism already exists and works in complement to the formal legal system, the law should also clearly recognize and define these productive relationships.

By clearly defining roles and responsibilities in the pre-conflict period, public institutions will be better equipped to address conflict impacts and provide

municipal services that can protect people's housing, land and property rights in emergency settings. It can also promote access to justice across the conflict cycle by preventing forum shopping in the resolution of land-based disputes. The establishment of a municipal body dedicated to disaster risk reduction and disaster management can further promote the mitigation of conflict impacts.

Proportional representation

The effectiveness of decentralization as a tool for conflict prevention is largely dependent upon the establishment of representative, freely elected local governance bodies. The executive and administrative authorities responsible for urban governance – most notably the city council or assembly – should be elected through a proportional representation system which ensures that power is shared across diverse groups in the urban arena. This is especially important in fragmented or heterogeneous societies, where "winner-takes-all" electoral systems could deny political decision-making to significant sections of the community (UNDP, 2009, p. 28).

Decentralization in combination with a proportional representation system can reduce the likelihood of violence in the long term by improving the quality of governance, making government more responsive to minorities and disgruntled groups, and guaranteeing minority groups' physical security and identity survival (United Nations/World Bank, 2018, p. 144). Inclusive representation in urban governance bodies not only reduces conflict risks, but it also serves as an essential safeguard for the tenure security of urban populations. It helps ensure that government decisions and plans that could impact land tenure security, such as local development plans, urban renewal plans, land readjustment or compulsory land acquisition, do not disproportionately affect one community more than others.

Local governance bodies must be representative not only with respect to the various identity groups present in urban areas, but also with respect to gender. Across the world there is still a significant gender gap in the representation of men and women in elected government positions at all levels of government. The exclusion of women from governance bodies can contribute to tenure insecurity for women by reinforcing laws and policies that directly or indirectly privilege access to housing,

land and property for men. The law can encourage the political participation of women in local governance bodies, for example through quotas within councils; however, quotas can be abused and cannot therefore be seen as a "magic bullet" (UNDP, 2009, p. 15). To drive lasting change, such provisions must be accompanied by awareness-raising measures that sensitize and inform communities, particularly men, about the value of women's education, work and the importance of increasing women's access to leadership positions for the social and economic development of their families and communities (UN-Habitat/GLTN, 2024). It should also be noted that elections can cause or exacerbate conflict in situations where political parties or candidates base their campaigns or support on ethnic, religious, racial or other divisive elements and thus exclude other groups. In such cases, the regulatory framework for candidates and political parties that contest elections may need to be reformed to require platforms to be inclusive and to criminalize divisive campaigns (UNDP, 2009, p. 28).

Public participation and social inclusion

Public engagement in urban governance should not be limited to local elections, however. There are many other means by which urban law can promote public participation and social inclusion in the management of human settlements. Local administration law and local by-laws can call for the appointment of representatives from civil society organizations in standing or ad hoc committees. Legal provisions can also be established to facilitate participatory budgeting, where the population decides on (or contributes to) decisions made on the destination of all or part of the available public funds (UN-Habitat, 2004, p. 20).

The law should also enable individuals to file petitions, motions, proposals and complaints with the local council or local administration, and allow for local authorities to call for consultative or decision-making referendums on matters of local concern. The public should have a constitutional right of access to public information. There should be a mandate for regular (monthly or quarterly) town hall meetings, and the city council should be empowered to organize exceptional town hall meetings to discuss particular or urgent local matters. The development of socioeconomic or spatial development plans should be informed by public

consultations, public reviews and written feedback at various phases of the planning process. These public participation mechanisms should also be made accessible to vulnerable groups such as children, persons with disabilities, older persons, ethnic minorities, inter alia. This may require establishing tailor-made public participation mechanisms that accommodate the specific needs of these groups, such as physical access, language barriers, literacy, vision and hearing limitations, and so forth.

Robust civil society participation in local governance can significantly reduce conflict risks and strengthen communities, particularly those that are underrepresented, poor or living in informal settlements (UN-Habitat, 2022, p. 255). Specifically, it can enable tenure-insecure groups, either individually or through civil society organizations, to advance policies and projects that can strengthen their tenure rights. Additionally, civil society organizations can become very valuable to local authorities in crisis contexts to fill gaps in service provision and address other immediate conflict needs. For this reason, having the means of engaging civil society organizations already in place can facilitate resilience in the face of emergency in the urban context.

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KOREA
LOCAL FINANCE ACT
OF 2005

Jeonju, Korea © kkim/unsplash

CASE STUDY: PARTICIPATORY BUDGETING IN THE REPUBLIC OF KOREA LOCAL FINANCE ACT OF 2005[1]

The adoption of participatory budgeting in the Republic of Korea began with the presidential administration of Roh Moo-hyun in 2002, known as the so-called "participatory government". Both the government innovation and decentralization committee and the Ministry of Public Administration and Security formally recommended the use of participatory budgeting for local administration in 2003. The Bukgu District Office in Gwangu became the first local authority to enact a local ordinance for participatory budgeting in 2004, and soon after, similar ordinances were adopted in other cities such as Ulsan and Dajeon.

The amendment of the Local Finance Act[2] in 2005 created the possibility of including residents in the budgeting process, with Article 39 (Residents' Participation in Budget Compilation Process of Local Governments) stating that "the heads of local governments may set and implement procedures for residents to participate in the process of compiling their budgets under the conditions prescribed by the Presidential Decree".

Participatory budgeting became mandatory when a 2011 revision of the Local Finance Act created the obligation for heads of local governments to prepare and implement participatory budgeting processes (No. 2018).

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[1] For other exemplary provisions on public participation and social inclusion in urban governance, see the Nairobi City County Public Participation Act (2015) and the Community and Neighbourhood Associations Engagement Act (2016) in Kenya, as well as the Organic Law on Citizen Participation of 2010 in Ecuador.

[2] Government of the Republic of Korea, Local Finance Act of 2005 (last amend. 2021), https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=55630&type=sogan&key=15.

Article 39 (Residents' Participation in Budget Process, such as Formulation of Local Budget)

(1) The head of a local government shall prepare and implement a system through which residents may participate in the budget process (hereafter in this Article, referred to as "participatory budgeting system"), such as the formulation of the local budget (excluding resolutions adopted by the local council under Article 39 of the Local Autonomy Act), as prescribed by Presidential Decree.

(2) The head of a local government may establish a participatory budgeting organization (hereinafter referred to as "participatory budgeting organization"), such as the participatory budgeting committee, under his/her jurisdiction in order to deliberate on the following related to the participation of residents in the budget process, such as the formulation of the local budget:

a. Matters concerning the administration of the participatory budgeting system.

b. Matters concerning the details of a written opinion to be attached to a budget proposal submitted to the local council pursuant to paragraph (3).

c. Other matters the head of the local government deems necessary for the administration of the participatory budgeting system.

(3) The head of a local government shall attach a written opinion of residents, collected through the participatory budgeting system, to a budget proposal to be submitted to the local council.

(4) The Minister of the Interior and Safety may evaluate the administration of the participatory budgeting system of each local government in consideration of financial and local conditions, etc. of each local government, as prescribed by Presidential Decree.

(5) The formation and operation of the participatory budgeting organization and other necessary matters shall be prescribed by ordinance of the local government concerned.

The Seoul metropolitan system of participatory budgeting, initiated in 2012 shortly after the legislative reform of the Local Finance Act, was the first to be enacted in a city of over 10 million people. It has consistently dedicated approximately 50 billion Korean won, roughly US$ 36 million, to the participatory allocation of municipal funds.[3]

3 Seoul Metropolitan Government, "Budget: Participatory Budget System", https://world.seoul.go.kr/city-hall/budget/participatory-budget-system/. Participedia, "Participatory Budgeting in Seoul, South Korea", https://participedia.net/case/4368.

Digital services

The modernization of local administration systems through digital means can increase the efficiency of decentralized governance systems and facilitate more inclusive access to public services in the urban sphere. Even more critical in the context of conflict prevention and mitigation, the digitalization of government processes and service delivery can render urban governance systems more resilient to disaster impacts.

Digital technologies hold immense potential for streamlining internal government functions. Digital infrastructure such as hardware, software, networks, servers, data centres and cybersecurity systems improve efficiency, cut costs and reduce fraud and corruption within government. Likewise, digital government services, such as the online renewal of civil documentation, application for permits and licenses, tax filings and property registrations, can improve efficiency, reduce transaction costs between governments and citizens, and remove the potential for petty corruption in service delivery (GIZ, 2022, pp. 10–13). In addition to the efficiency and response benefits of service delivery transformation, digital technologies increase transparency, auditability and oversight, and introduce new opportunities for consultation and participation in policy processes and service delivery (UNDP, 2023, p. 19). These governance outcomes contribute to conflict prevention by making public services more accessible, inclusive and transparent to urban populations across social groups and independent of their physical distribution.

Additionally, the digitalization of public services at the local level better equips local governments to respond to disaster and crisis.

In conflict contexts, there tends to be a large need for government services as regular service delivery methods are interrupted and conflict impacts create unexpected challenges for citizens such as displacement and the loss of official documentation.

Having digital systems already in place to facilitate service delivery will ensure that those displaced from their homes can continue to access essential public services and accelerate the process of responding to community needs in emergency contexts.

This is especially critical for the protection of HLP rights, as lost property or civil documentation are major barriers to those seeking to return to their home following conflict-induced displacement.

View of Ciudad Bolivar in south Bogota, Colombia © UNHabitat/Hector Bayona, November 2021

CASE STUDY: OPEN GOVERNMENT BOGOTÁ ESTABLISHED BY DIRECTIVE 005 OF 2020 MAYOR'S OFFICE OF BOGOTÁ, D.C.

In 2020, the city of Bogota, Colombia, joined the Open Government Partnership, a multilateral initiative through which partners adopt two-year action plans with concrete steps – "commitments" – across a broad range of issues to make governance bodies more accessible, more responsive and more accountable to citizens. The same year, the Office of the Mayor of Bogota formally adopted the "Open Government" model through Directive 005 of 2020.

Directive 005 establishes a virtual platform managed by the General Secretary of the Mayor's Office of Bogotá (www.gobiernoabiertobogota.gov.co), which functions as the hub for government services and resources organized into the following four pillars: transparency, participation, collaboration and citizen services.

It also commits the Mayor's Office to establish the ICT tools and resources through which the services of specialized bodies can be progressively integrated to the open government platform, by common agreement, through interoperability processes, redirection links and/or visualizations. Furthermore, the directive provides the following recommendations to district and local bodies:

- All district and local entities must efficiently manage their communities on social networks and promote two-way dialogue in real time.
- The call to any event with citizens must have mechanisms and digital tools for citizen interaction before, during and after the activity, to guarantee the direct participation of people and the institutional response to their proposals, requests and questions.
- The information and activities developed must incorporate clear and inclusive language, in accordance with the differential, population, gender and territorial approaches.
- District entities must have inclusive and democratic mechanisms to guarantee the participation and attention of people with disabilities, older adults and rural populations in the Open Government activities of Bogotá.

As of 2024, the virtual platform provides citizens the opportunity to participate in citizen consultations, participatory budgets, electoral voting and to propose local initiatives. It also provides access to a variety of government services through "SuperCADE Virtual", a digital channel through which citizens can complete various administrative procedures, such as making payments for utilities and taxes, and file requests on topics such as road maintenance, public transport, waste management, public space, public lighting and noise. To promote transparency, it also gives citizens access to public data and information through the "open agenda" and "open data" sites.

For these reasons it is recommended that local administration law encourages or – where local capacity permits – mandates the adoption of digital infrastructure and digital government services.

The issuance of soft law instruments such as manuals and guidance notes for the adoption of digital government services can support the process of digital transformation.

However, it should be noted that the digitalization of government services also introduces risks of surveillance and discrimination through both intentional misuse and biases in technology design. Moreover, digitalization can exacerbate exclusion, as the turn to digital introduces access dependencies, particularly around device, data and literacy (UNDP, 2023, p. 23). For these reasons, it is critical that constitutional and national law protects the rights of citizens to privacy, and that analogue government services remain available alongside digital services where there is not universal access to digital infrastructure.

Fiscal autonomy

Effective decentralization and local autonomy require appropriate financial autonomy. Local authorities' financial resources should be commensurate with their tasks and responsibilities and ensure financial sustainability and self-reliance. This implies that any transfer or delegation of tasks or responsibilities by the central government should be accompanied by corresponding and adequate financial resources, preferably guaranteed by the constitution or national legislation, and decided on after consultations between concerned spheres of government based on objective cost assessments (UN-Habitat, 2009, p. 12). From a crisis perspective, fiscal autonomy is important because limited autonomy lowers local governments' ability to respond to disaster quickly in the best interest of urban residents (UN-Habitat, 2022, p. 260).

The revenue sources for local governments generally fall into three broad categories: grants and subsidies (from higher levels of government, international organizations and international aid), tax revenue, and user charges and fees; however, in much of the world, urban governance systems remain largely dependent on inter-governmental transfers from central or regional governments. National law should enable local governments to expand local revenues by granting them powers to change and introduce new local taxes (UN-Habitat, 2022, p. 260).

The power to obtain revenues through property taxes should be explicitly guaranteed and policy guidance should be issued to support local administrations in establishing a property tax system where it is not already in place.

This has an important impact for tenure security, as the application of a local property tax system entails the effective maintenance of local land registries and reliable property appraisal services. The failure to establish and/or maintain land registries, cadastres and property valuation services has been a significant contributor to HLP issues in conflict contexts, as it makes the identification and protection of housing, land and property rights more difficult.

To financially empower urban governance systems, it is also recommended that the legal framework create a pathway for local governments to obtain financing from the private sector. This can take place, for example, through the issuance of municipal bonds, which would be contingent upon legally prescribed assessments of creditworthiness. Additionally, local authorities should be empowered to partner with the private sector to provide public services and undertake local development projects. To this end, the legal framework should include provisions regarding the establishment of people-public-private partnerships (PPPPs). Such provisions, along with other human rights guarantee such as prohibitions against forced evictions, should ensure that such partnerships cannot be abused to enable lucrative private development at the cost of communities with weak tenure security, particularly residents of informal settlements.

Capacity development

Weak institutions can create conditions for conflict to emerge because they produce power vacuums where non-state actors can establish parallel governance systems and compete to control the management of local resources. In the urban sphere, this is not limited to monetary resources, but also to the allocation of public goods such as electricity, water, land and property. Moreover, when public institutions are not able to efficiently provide public services because they lack financial and human resources, it can provoke conflict or exacerbate existing tensions (UNDP, 2009, p. 31). Weak spatial planning, land administration and housing institutions at the local level can especially impact tenure security by failing to enable the timely development of formal land and housing markets and maintain an accurate property registry, for example.

For these reasons, strengthening the capacities of local institutions is essential to both conflict prevention and

security of tenure. In this respect, urban law should both recognize current capacity restraints and promote the development of human resources. This should start with obligations to conduct an institutional capacity assessment (UN-Habitat, 2007a, p. 25) and be complemented by provisions that call for training, knowledge-sharing, and cooperation with specialized agencies, non-profit or community-based organizations and professional or academic experts. The law should also ensure that governance and specialized committees established through the law call for an adequate number of qualified experts, rather than just high-ranking public officials. Finally, the law should provide public authorities with adequate powers to fulfil their mandates. These provisions can also serve essential capacity-building purposes in the early recovery and reconstruction phases of the conflict cycle.

Natural resource governance

The exploitation of natural resources, including water, timber, fertile land, minerals, oil and gas, can be a key factor in triggering, escalating or sustaining violent conflicts. Furthermore, competition for diminishing renewable resources, such as land and water, is on the rise due to environmental degradation, population growth and climate change. Urban communities are especially dependent on public authorities to properly manage natural resources, particularly water resources, to meet their basic needs. Meanwhile, balancing the expansion of urban areas with the maintenance of peri-urban agricultural land is another challenge for local authorities responsible for urban governance.

In this context, the mismanagement of land and natural resources can both restrict urban populations' access to basic services, such as clean water supply, and undermine the tenure security of communities situated near important natural resources for urban centres. Moreover, poor natural resource governance can also contribute to new conflicts and obstruct the peaceful resolution of existing ones.

For this reason, the legal framework for governing natural resources, which is typically distributed across pieces of sectoral legislation, should establish governmental authority over environmental problems, harmonize the mandates of different ministries or agencies to ensure clear

allocations of responsibility and power, require the coordination of agencies with local authorities, and include environmental protection in the mandate of all relevant government agencies (UNDP, 2012, p. 26).

Agencies and ministries should also have inclusive and transparent regulatory systems in place for resource monitoring; impact assessment; pollution and land-use controls, enforcement of rules and adjudication of disputes (UNDP, 2012, p. 16). Impact assessments should consider both social and environmental impacts, with particular attention given to the tenure security of affected stakeholders.

To reduce opportunities for corruption, the process for granting permits, licences and concessions should be clearly enumerated and include the following information (FAO/UNEP, 2020: 69):

- Eligibility criteria.
- Grounds for approval, denial or revocation.
- Prescribed period for decision-making.
- Any applicable conditions.
- Compliance requirements of the permit holder.
- Required communications with the applicant.

II. SPATIAL PLANNING

Box 3. **Spatial planning key messages**

- To mitigate conflict and tenure risks, urban law should promote spatial planning processes that result in sustainable land uses, recognize existing tenure rights and make sufficient land available for the provision of housing and infrastructure.
- Spatial planning law should align the objectives and principles of spatial planning with the principles and objectives of tenure security and conflict prevention.
- To promote efficiency and predictability in the implementation of spatial plans, urban law must clearly assign roles and responsibilities to the various institutions and authorities involved in initiating, drafting, reviewing and approving spatial plans, including land-use plans. The development of spatial plans in the urban sphere should primarily be entrusted to local authorities or decentralized units of the national institution responsible for urban planning, development and land management to facilitate tenure-responsive and conflict-sensitive planning decisions.
- To ensure tenure-responsive spatial planning, legal requirements should mandate data collection related to land use, tenure types, legal and customary land rights, environmental conditions, and socioeconomic factors. It is particularly crucial to gather information that spans the continuum of land rights, encompassing both formal legal rights and informal land uses.
- An essential component of tenure-responsive and conflict-sensitive spatial planning is conducting comprehensive risk assessments to evaluate potential impacts on land tenure and housing rights. Strategic environmental assessments (SEA), disaster risk assessments (DRA), environmental impact assessments (EIA), and environmental and social impact assessments (ESIA) can all serve as critical indicators of land tenure security in the planning area.
- Incorporating gender sensitivity into risk and impact assessments is crucial, particularly in evaluating the differential impacts on women's access to land and associated tenure rights throughout the planning and implementation phases.

- To effectively protect tenure rights against future conflict impacts, legal frameworks for spatial planning should provide a functional procedural framework that allows for flexibility and efficiency in the planning process, which can readily adapt to changing conditions. This includes provisions that encourage an iterative and cyclical approach to planning, where objectives are continually reassessed and adjusted based on evolving circumstances.
- To ensure that the views, concerns and desires of tenure-insecure communities are considered when designing a new planning instrument or making land-use designations, legal frameworks should incorporate public participation mechanisms into various parts of the planning process. It is essential that stakeholder participation, whatever its form, promotes a dialogue between the affected community and those responsible for drafting spatial plans.
- When spatial planning instruments impose new land-use designations or zoning controls that restrict the pre-existing and legitimate tenure rights of owners, occupants and other types of rights-holders, affected owners and occupants should be entitled to fair and proportionate compensation for losses incurred, including the reduced usefulness or value of the affected land. The application of this principle, referred to as "regulatory takings", can incentivize planning authorities to weigh the public interest of certain land-use and zoning decisions against costs to rightsholders and the public budget.
- Legal provisions should mandate that planning authorities submit new land-use plans, including all cartographic and documentary components, to land registration and cadastral authorities. This integration of land-use plans into land information systems can pave the way for fit-for-purpose (FFP) land adjudication, recordation and registration processes, enabling rightsholders to incrementally formalize their tenure rights
- To ensure that spatial plans remain tenure-responsive, the law should make provisions for the monitoring and evaluation of spatial plans using SMART indicators and thresholds (specific, measurable, achievable, relevant and time-bound), as well as by establishing specific revision and validity periods for spatial plans.
- To mitigate the risk of incompliant developments that undermine tenure-responsive and conflict-sensitive spatial plans, the law should prescribe enforcement and deterrence mechanisms that encourage compliance with the endorsed spatial plan. Effective enforcement mechanisms impede the emergence of illicit land interests and commercial speculation, thus safeguarding community tenure rights and ensuring long-term security.

Principles and objectives

By shaping urban land use and development, spatial planning has a significant impact on urban populations' access to housing, basic services and security of tenure. Spatial planning that fails to meet the needs of growing urban populations can contribute to the emergence of housing crises, where quality housing is inaccessible due to inadequate housing supply or unaffordable housing prices. Such housing crises contribute to the development of tenure-insecure housing arrangements, such as those seen in informal settlements, they enable the unsustainable use of land, particularly in urban peripheries, and they can lead to encroachment on peri-urban agricultural land. These conditions can also facilitate the emergence of violence, as unplanned urbanization creates tension in historically agricultural peri-urban areas and creates poorly served housing communities on the urban fringes.

To mitigate these conflict and tenure risks, it is critical for the urban law framework to promote spatial planning processes that result in sustainable land uses, recognize existing tenure rights and make sufficient land available for the provision of housing and infrastructure. Planning law can do this, first and foremost, by aligning the objectives and principles of spatial planning with the principles and objectives of tenure security and conflict prevention.

The particular cultural, social, economic, environmental and geographical conditions, as well as related resources and problems, will determine the specific objectives of spatial planning instruments, such as land-use plans, however, the law can establish the overall framework of goals that spatial planning should aim to promote. These goals include, but are not limited to, the following:

- Protection of land, water and mineral resources.
- Supply of land and provision of orderly use of land.
- Conservation of the natural environment.
- Provision of social and physical infrastructure.
- Safeguarding of heritage objects.
- Enhancement of mobility and accessibility through integrated transport networks.
- Improvement of agricultural productivity for food security or economic purposes.

Meanwhile, planning and land management principles can encompass public participation, environmental restoration, conservation and sustainability, climate-sensitivity, social mixture and cohesion, accessible public spaces, gender-sensitivity and affordability. To better integrate security of tenure into spatial planning processes, it is recommended that "tenure-responsiveness", or a similar principle connoting the recognition of the full continuum of land rights, be among the legally binding principles that guide spatial planning processes. Additionally, increasing access to adequate housing and improving tenure security for existing communities should be clearly defined objectives of spatial planning when and where relevant.

Cape Town at Sunrise © Tim Johnson/ Unsplash

EXEMPLARY PROVISIONS: SPATIAL PLANNING AND LAND-USE MANAGEMENT ACT (2013) OF SOUTH AFRICA[4]

The Spatial Planning and Land-Use Management Act of 2013 demonstrates high levels of tenure-responsiveness because of the Government's efforts to address historical injustices related to land-use and property rights caused by the legacy of apartheid.[5] Among the principles applicable to spatial planning, land development and land-use management, the law cites "the principle of spatial justice" consisting of the following objectives (Article 7):

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[4] Government of South Africa. The Spatial Planning and Land-Use Management Act (2013). www.gov.za/sites/default/files/gcis_document/201409/367305-8act16of20.pdf.

[5] Apartheid is an Afrikaans word that means "separation". It is the name given to the particular racial-social ideology developed in South Africa during the twentieth century. At its core, apartheid was implemented with the aim of racial segregation which led to the political and economic discrimination which separated black (or Bantu), mixed race, Indian and white South Africans.

- Past spatial and other development imbalances must be redressed through improved access to and use of land;
- Spatial development frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal settlements, former homeland areas and areas characterized by widespread poverty and deprivation;
- Spatial planning mechanisms, including land-use schemes, must incorporate provisions that enable redress in access to land by disadvantaged communities and persons;
- Land-use management systems must include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas;
- Land development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas;
- A Municipal Planning Tribunal considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of the application.

These provisions represent best practice in ensuring that the principles and objectives underpinning land-use planning and management are responsive to the full spectrum of housing, land and property rights and land tenure typologies in the country. It also does this in a manner that is highly relevant to the historical context of the country considering the particular racial, ethnic and socioeconomic inequalities affecting modern South African society.

Designated local institutions and authorities

While a variety of institutional actors should be involved in the administrative process of developing of spatial plan, in many cases planning is a top-down process dominated by centralized government authorities. This can make local plans unresponsive to local needs, including those related to tenure security, access to infrastructure, basic services and sources of livelihood. It can also reinforce latent grievances related to access to land, services and resources by encouraging development in certain areas while excluding others, or by allowing urban development to encroach on historically agricultural land.

For this reason, spatial planning in the urban sphere should primarily be entrusted to local authorities or decentralized units of the national institution responsible for urban planning, development and land management. Local authorities are essential in tenure-responsive spatial planning because they often have more sophisticated knowledge of the de facto land tenure and land-use dynamics in the city. However, to ensure vertical coordination, the law should require higher-level approvals and reviews from regional or national authorities to initiate and endorse land-use plans.

To promote efficiency and predictability in the implementation of spatial plans, urban law must clearly assign powers and duties to the institutions and authorities responsible for initiating, drafting, reviewing and approving spatial plans, including land-use plans. Recognizing the capacity of the existing institutions is a key element of deciding how to allocate these powers. Rather than simply decentralizing powers, legal provisions should be possible within the existing capacity of the institutions in place and, through flexible legal drafting, support the capacity-building efforts of local institutions. This includes providing financial resources, technical expertise and human resources necessary for effective land-use planning and management.

Multilevel and multisectoral integration

Spatial planning consists of an ecosystem of multi-scale planning instruments and sectoral development strategies, such as national development frameworks, regional territorial plans, integrated metropolitan plans, urban master plans, local land-use plans, transport plans, zoning ordinances and building codes. The complexity of this system poses the risk that conflicting spatial plans and development policies undermine security of tenure in urban areas by creating uncertainty as to the legal status of land and its future development.

As such, it is recommended that the various spatial plans in different planning areas and at separate administrative levels be linked to one another through top-down and bottom-up mechanisms that align the development approaches at different scales (UN-Habitat/GLTN, 2016, p. 11). These mechanisms should align development approaches across different scales and sectors to ensure cohesive and inclusive urban development strategies.

Furthermore, effective decision-making in spatial planning requires integrating the perspectives and needs of different levels and sectors. In other words, national policies should be responsive to local conditions, and local and regional authorities must adhere to national regulations (Haub, 2009, p. 10).

Likewise, intersectoral coordination, particularly with environmental authorities, is necessary to ensure that spatial plans do not expose affected communities to climate change or public health risks, for example. Legal provisions which require local land-use planning authorities to coordinate with higher-level planning authorities and the relevant representatives from sectoral institutions can ensure that land-use planning is integrated into regional or national development objectives.

Tunis © Valerie Sidorova/ Unsplash

CASE STUDY: THE LAND-USE AND URBAN PLANNING CODE (2011) OF TUNISIA[6]

The land-use and urban planning code of Tunisia promotes multilevel and intersectoral coordination in the formulation of urban land use and development plans. Article 16 provides that the designated local authority, in collaboration with the territorially competent departments under the ministry in charge of urban planning, is responsible for drawing up draft urban development plans and revising them. Draft plans are forwarded to the companies and public establishments concerned, as well as to the regional administrative departments and the ministry responsible for urban planning for their written, reasoned opinion. The draft plan is then submitted to the municipal or regional council, which orders it to be posted at the headquarters of the municipalitý, delegation or governorate so that the public can become acquainted with it.

On expiry of the public observation period, the president of the municipal council or regional council is responsible for forwarding the draft plan, together with any objections or observations, to the regional departments directly concerned for their opinion. The president of the council is also responsible for automatically forwarding the draft to the regional departments or the central departments reporting to the ministry in charge of urban planning, so that they may make any necessary changes to bring it into harmony with other development plans for neighbouring areas and into conformity with the urban planning regulations in force.

Thereafter, the draft plan, together with the opinions and suggestions of the administrative departments, companies and public establishments consulted, as well as the observations and objections resulting from the public inquiry and the opinion on them of the regional departments concerned, is submitted to the municipal or regional council concerned for deliberation.

[6] Government of Tunisia. Code de l'aménagement du territoire et de l'urbanisme (2011). https://cgdr.nat.tn/upload/files/18.pdf.

Data collection and analysis

The specific information and data needed for spatial planning vary based on the type of planning instrument, the characteristics of the planning area and the objectives set forth; however, the law should identify certain topics for consideration prior to developing a spatial plan. These can include population dynamics, demographic and migration trends; actors and institutions; land and natural resource availability; environment, ecosystems and climatic conditions and hazards; past land use(s); production and trends; infrastructure; social services; topographical references; and administrative boundaries (GIZ, 2011, p. 118). Collecting land-use data relevant to these categories is important for grasping existing land-use and tenure security issues.

To ensure tenure-responsive spatial planning, legal requirements should mandate data collection related to land use, tenure types, legal and customary land rights, environmental conditions and socioeconomic factors. The investigation of land tenure needs to be a central part of pre-planning studies, analysis, discussion and decision-making for future uses (UN-Habitat/ GLTN, 2016, p. 29).

This should include not only obtaining data and information from cadastral records, land registries and land management authorities, but also be supplemented by maps, aerial photos, satellite imagery, GPS data, topographical surveys and interviews with tenure holders. This comprehensive approach is essential for conducting thorough SWOT (strengths, weaknesses, opportunities and threats) analyses to assess both the risks and opportunities presented by spatial planning in the area.

In particular, it is crucial to gather information that spans the continuum of land rights, encompassing both formal legal rights and informal land uses. This ensures that spatial plans adequately address existing tenure arrangements, especially in urban areas where informal settlements and non-residential land uses may be prevalent, for example the construction of housing in strictly industrial areas or on agricultural land in the urban periphery. Legal provisions that incentivize planners to obtain practical information about current land practices can facilitate the development of land-use plans that are sensitive to these existing tenure rights and land uses, and effectively balance urban planning objectives.

Legal provisions regulating planning should further support the acceptance of a variety of tenure documents through the land-use planning process, from data and information gathering, to stakeholder identification and engagement, to land-use decision-making. Throughout the land-use planning process, numerous records on the rights of use, ownership, rental and access to land should be collected through mapping activities that delineate land uses, land areas or parcels. These records can be used to remedy unclear land borders to address tenure security issues, and, under certain circumstances, such records could be of use later in registration or titling proceedings (UN-Habitat/GLTN, 2016, p. 25).

Risk assessments

An essential component of tenure-responsive and conflict-sensitive spatial planning is conducting comprehensive risk assessments to evaluate potential impacts on land tenure and housing rights. Strategic environmental assessments (SEA), disaster risk assessments (DRA), environmental impact assessments (EIA) and environmental and social impact assessments (ESIA) can all serve as critical indicators of land tenure security in the planning area. High levels of environmental, disaster or social risk tend to translate into increased tenure insecurity and conflict risk. The law should require that risk assessments be conducted by independent appraisers and comply with national and, where relevant, international standards to ensure credibility and thoroughness.

Risks directly impacting land tenure and housing rights, such as eviction, displacement and gentrification, should be carefully considered in these risk assessments. Identifying these risks informs whether the planning process should proceed and guides modifications to the spatial plan to mitigate or eliminate identified risks. If tenure insecurity is identified or becomes relevant during planning, improving tenure security should be prioritized as a realistic objective of the spatial plan (UN-Habitat/GLTN, 2016, p. 28).

Incorporating gender sensitivity into risk and impact assessments is crucial, particularly in evaluating the differential impacts on women's access to land and associated tenure rights throughout the planning and implementation phases (OHCHR/UN-Women, 2020, p. 35).

Despite the assumptions in assessments that women enjoy equal tenure rights, in many countries legal and customary barriers often prevent women from owning or inheriting land in their own names, affecting their security of tenure. Moreover, women are disproportionately affected by evictions and have limited access to legal services (officialdom, lawyers and private-sector services) and support, compared to men. (UN-Habitat, 2006, pp. 6-7). Therefore, integrating gender-responsive approaches in spatial planning ensures equitable land tenure outcomes and supports women's empowerment in urban development contexts. This is also critical to safeguarding the HLP rights of women in conflict and post-conflict contexts.

Flexibility and adaptability

To effectively protect tenure rights against future conflict impacts, spatial planning should respond to local conditions and community needs, including those related to land tenure. Accordingly, "planning procedures need to be flexible enough to adapt and adjust to unforeseen circumstances or developments, rather than be rigid planning steps", which are unresponsive to human needs (UN-Habitat/GLTN, 2016, p.13). This adaptability is critical to ensuring that planning systems can be resilient to disaster and conflict impacts.

Legal frameworks for spatial planning should provide a functional framework that allows for flexibility and efficiency in the planning process. This includes provisions that encourage an iterative and cyclical approach to planning, where objectives are continually reassessed and adjusted based on evolving circumstances (UN-Habitat/GLTN, 2016, p. 13). This adaptive approach ensures that planning systems remain agile, resilient to disaster and conflict impacts, fostering sustainable urban development.

Obelisk in the city of Buenos Aires overlooking de Julio Avenue © Nestor Barbitta/ Unsplash

EXEMPLARY PROVISIONS: DRAFT NATIONAL LAW ON TERRITORIAL PLANNING AND LAND-USE MANAGEMENT OF ARGENTINA[7]

One of the operative principles of land-use planning (*ordenamiento territorial*, literally "territorial ordering") provided in the draft national law on territorial planning and land-use management of Argentine is "strategic planning", being "the foundation of land-use planning in all the jurisdictions into which the national territory is divided, *through an iterative and interactive process*, resulting in a vision of the future that establishes guidelines for the sustainable development of the territory involved" (emphasis added). Other operative principles include the "coherence of planning processes", meaning "coherence, articulation and harmonization of national, regional and local plans, with norms for specific application and methodologies for integral risk management."

Finally, the law also refers to the "planning updating and revision", emphasizing the production of updated information for planning and periodic revisions of plan determinations.

[7] The most up-to-date version of the draft bill (Anteproyecto de Ley Nacional de Planificación y Ordenamiento Territorial) reviewed was a marked-up version made publicly available in 2019. It can be found at: www.argentina.gob.ar/sites/default/files/anteproyecto_de_ley_nacional_documento_de_trabajo_2019.pdf.

These principles guide the relevant local, regional and national authorities in adopting planning processes that are flexible, adaptable and iterative. Additionally, the law includes the following elements in the minimum mandatory contents of land-use plans (Article 12):

- The diagnosis of territorial dynamics, including risk analysis, objectives, strategies and long-term structural scenarios, defining critical areas.
- Comprehensive communication strategies that establish mechanisms for citizen participation, dissemination of the plan's activities and modalities of access to information.
- Instruments for control, follow-up and evaluation based on the plan's agenda and the impact produced and expected.
- Mechanisms for periodic evaluation of the territorial reality and for updating the contents of the land-use plan(s).

Each of these requirements promotes a land-use planning process that is iterative and cyclical. The law does this without prescribing a step-by-step procedure that local, provincial or national authorities must follow when drafting land-use plans for their respective jurisdictions. While the bill could provide further details regarding the institutional approval and issuance process for land-use plans, the law demonstrates good practice of not being overly prescriptive, rigid and linear with respect to planning processes. These provisions are also adapted to the highly decentralized urban planning system and institutional framework of Argentina.

This approach can promote the recognition of diverse tenure rights by ensuring that processes are responsive to unique land tenure contexts, including situations of informality and – in post-conflict contexts – displacement. Existing international experience in spatial planning has identified five iterative stages of the land-use planning process which can be reflected in urban legislation: preparation and organization; information gathering an analysis; plan formulation, negotiation and decision-making; approval and implementation; and monitoring, evaluation and updating (UN-Habitat/GLTN, 2016, pp.14–15; GIZ, 2011, p. 102).

Public participation and stakeholder engagement

Tenure-responsive spatial planning necessitates "a collaborative and interactive process through multi-stakeholder decision-making in which all relevant stakeholders, including disadvantaged groups, take part" (UN-Habitat/GLTN, 2016, p. 10). Such participatory approaches not only enhance transparency in decision-making but also help to "build trust, promote accountability, strengthen [the] commitment of all stakeholders towards improved governance, and directly limit the potential for corruption", which is an indirect contributor to conflict (UN-Habitat/GLTN, 2016, p. 10). To ensure that the views, concerns and desires of tenure-insecure communities are considered when designing a new planning instrument or making land-use designations, legal frameworks should explicitly define "stakeholders" to encompass all parties likely affected by the spatial plan, including informal tenure holders, occupants and marginalized groups.

Public participation and stakeholder engagement can take different forms, from passive dissemination of information to active engagement through inclusive planning exercises and community consultations.

It is essential that stakeholder participation, whatever its form, promotes a dialogue between the affected community and those responsible for drafting spatial plans.

Early community engagement during the preliminary phases of planning ensures that stakeholders' concerns and aspirations inform the objectives of the spatial plan. The law can promote public participation and community consultation in spatial planning by prescribing when and how participation should take place in the land-use planning process. The decision to initiate a new spatial planning process should be publicly announced and compulsory community consultation exercises should be conducted throughout planning processes.

The data-collection phase of spatial planning also provides an opportunity to engage the community through field surveys and other forms of consultative information sourcing.

Transparent review processes for public submissions should also be mandated. A draft spatial plan should be presented to the public and published for ad hoc viewing, with all stakeholders given adequate time (minimum of six weeks) to submit comments and objections.

Planning authorities should be required to review public submissions and produce revisions to justify changes made or not made based on stakeholder feedback. The adequacy of the planning authority's response to public submissions should be a legally binding criteria of the plan approval process.

Furthermore, a spatial plan should be endorsed and accepted by a super-majority of stakeholders for it to become a legally or socially binding document for land users and decision-makers (UN-Habitat/GLTN, 2016, p. 9).

THE URBAN PLANNING ACT OF TANZANIA

Victoria, Dar Es Salaam, Tanzania © k15 photos/ Unsplash

EXEMPLARY PROVISIONS: URBAN PLANNING ACT (2007) OF TANZANIA[8]

The Urban Planning Act of Tanzania obligates *"all persons and authorities exercising powers, applying or interpreting the provisions of this Act"* to *"promote and include the participation of the private and popular sectors, community-based organizations (CBOs), non-governmental organizations (NGOs), co-operatives and communities in land-use planning"* (Article 3(e)). It also provides that "the objectives of urban planning to which all persons and authorities exercising powers under, applying or interpreting this Act shall be to […] (d) ensure security and equity in access to land resources; (e) ensure public participation in the preparation and implementation of land-use policies and plans; (f) facilitate the establishment of a framework for prevention of land-use conflicts", reflecting principles of public participation and the objective to promote land tenure security. Furthermore, the law prescribes various forms of active and passive public participation in the procedure by which a "planning authority" prepares a "detailed planning scheme" that includes a local land-use plan.

[8] Government of Tanzania. Urban Planning Act of 2007. www.nlupc.go.tz/uploads/publications/sw1524483188-The_Urban_Planning_Act,_2007.pdf.

The steps outlined in Article 19 include the following:

- Initiate the process by passing a resolution of intention to prepare a detailed planning scheme.
- Convene a meeting of all stakeholders, including landholders, public and private institutions, community-based organizations and non-government organizations in the area to be affected.
- In the event of a positive resolution by the said meeting, endorsing the proposal and the planning authority shall proceed to prepare a detailed planning scheme.
- Within three months of the making of the scheme the planning authority shall conduct a public hearing or hearings in the planning area.
- Make alterations or modifications, if any, by considering the results of public hearing before submitting it to the scheme for its approval.

These provisions demonstrate good practice in that the planning authority is obliged to consider public opinion to continue with the planning process. The type of participation is also highly inclusive, inviting "all stakeholders, including landholders, public and private institutions, community-based organizations and non-government organizations in the area to be affected" to participate. The law also promotes transparency and public access to information by obligating the planning authority to publish the detailed planning scheme in the Gazette with a statement that the scheme has been approved with or without modification and may be inspected during working hours at the places and times specified in the notice (Article 20).

Compensatory obligations

When spatial planning instruments impose new land-use designations or zoning controls that restrict the pre-existing and legitimate tenure rights of owners, occupants and other types of rights-holders, affected owners and occupants should be entitled to fair and proportionate compensation for losses incurred, including the reduced usefulness or value of the affected land (FAO, 2008, p. 15).

This principle is referred to as "regulatory takings" or "material expropriation" in some countries (Azuela, 2007, pp. 4, 19), and varies across legal systems, typically being linked to the country's legal provisions on compulsory acquisition. However, the criteria for compensation associated with such losses has not been widely established, with some jurisdictions requiring severe restrictions to land use to qualify for compensation (Azuela, 2007, p. 19).

Read More: NOXIOUS USE DOCTRINE

United States Capitol Building (2004) © Christopher Ryan/ Unsplash

CASE STUDY: REGULATORY TAKINGS IN THE UNITED STATES OF AMERICA

In the United States, judicial case law has established the following relevant factors to determine whether a regulatory taking has occurred: (1) the character of the government action, (2) whether the regulation interfered with "investment-backed expectations", and (3) the extent of the diminution of value. With respect to the first point, it is recognized that the Government has broad powers to prevent land uses seen as potentially harmful to the public without the obligation to compensation for such restrictions (also known as the "noxious use doctrine").

The "investment-backed expectations" in the second criterion refers to the principle that any loss suffered by the rights holder must have been based on reasonable expectations, evidenced by actual investments. The final criterion considers the scope and severity of the restriction's impact to the rights holder, measured in terms of the reduced value of the property right exercised (Miceli and Segerson, 2014, pp 670–672). Based on these factors, a rights holder may be entitled to compensation for certain land-use restrictions that negatively impact the value of their property rights.

Evidently, balancing the right of individuals to compensation for land-use changes that restrict their land-use rights or reduce the value of their housing, land or property assets with the power of the government to regulate land use in the public interest and judicious use public resources is complex. The debate around compensatory obligations underscores the need for clarity in legal provisions regarding when and how compensation should be provided. Clear guidelines ensure fairness and predictability in spatial planning, balancing community development objectives with the protection of individual tenure rights.

And while the legislative and judicial authorities of each state must determine for themselves how to proportionately balance these competing interests, it is recommended that at minimum some right to compensation for regulatory takings exist in the law. This can have the consequence of incentivizing planning authorities to weigh the public interest of certain land-use and zoning decisions against costs not only to rights holders but also to the public budget.

Where such compensatory measures are not provided for in the national legislation related to expropriation, the legal framework for land-use planning should specify the entitlement to compensation, the appraisal or valuation method, the compensation procedure, and the scope of persons and type of rights entitled to claim compensation. The rights holders across the full continuum of land rights should clearly be able to lodge a claim for losses suffered due to land-use planning.

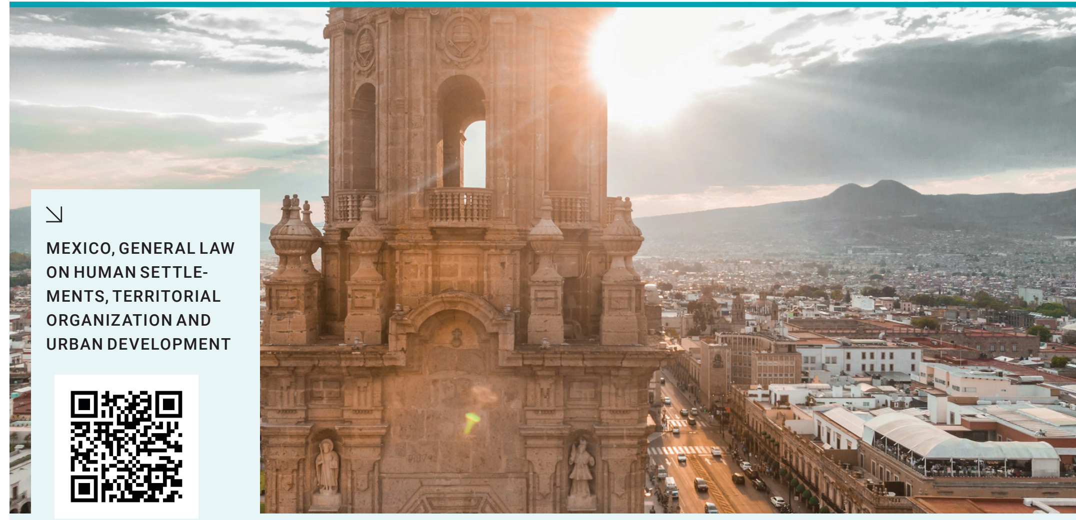
Integration with land information systems

Just as land information from the official land registry and cadastres informs spatial planning processes, it is critical that finalized and endorsed spatial plans, particularly land-use plans, are integrated into the official land information system.

Changes in land-use designations can significantly impact community members' tenure security and housing rights, either by formalizing de facto land uses or by imposing new restrictions. Where the land-use plan has strengthened land tenure, as in the latter case, it is important that the new land-uses are integrated into the official land information system. Legal provisions should mandate that planning authorities submit new land-use plans, including all cartographic and documentary components, to land registration and cadastral authorities. This integration can pave the way for fit-for-purpose land adjudication, recordation and registration processes, enabling rights holders to incrementally formalize their tenure rights.

Additionally, the tenure data collected during planning processes can serve as essential reference points for fit-for-purpose land administration more broadly. Furthermore, updated land-use plans developed through tenure-responsive processes can also play a critical role in post-conflict and recovery contexts, serving as foundational documents for rebuilding communities and securing tenure rights in volatile environments.

Aerial Photo of Green Field, Dakota, MN, United States © Tom Fisk/ Pexels



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MEXICO, GENERAL LAW ON HUMAN SETTLEMENTS, TERRITORIAL ORGANIZATION AND URBAN DEVELOPMENT

Morelia, Mexico © Jezael Melgoza/ Unsplash

EXEMPLARY PROVISIONS: MEXICO, GENERAL LAW ON HUMAN SETTLEMENTS, TERRITORIAL ORGANIZATION AND URBAN DEVELOPMENT (2016)[9]

In Mexico, the General Law on Human Settlements, Territorial Organization and Urban Development not only requires the federated states to register the municipal plans and programmes regarding urban development, reserves, land use and destinations of areas and properties (when these are consistent and adjusted with state and federal planning) in the public property registry (Article 10), it also includes provisions for the establishment of a "territorial and urban information system", (Article 97) which serves to organize, update and disseminate information and indicators on territorial planning and urban development. The system is stated to be available for consultation in electronic media on the National Information Platform and "complemented with the information other records and inventories on the territory". It enables the harmonization of information across the three levels of government and across the relevant public entities involved in urban development, including "all federal, state, municipal and territorial demarcation authorities" who produce "relevant reports and documents derived from scientific, academic, technical work or any other type of territorial planning and urban development activities". These reports and documents include those produced directly by relevant public authorities as well as those produced through the commission of associations, institutions and organizations from the social and private sectors.

[9] Government of Mexico. Ley General de Asentamientos Humanos, Ordenamiento Territorial y Desarrollo Urbano (2016). https://faolex.fao.org/docs/pdf/mex173065.pdf.

Monitoring and evaluation

Once the spatial plan becomes effective, it should be subject to regular monitoring and evaluation at designated intervals to assess its impacts, particularly on tenure security. Key indicators for evaluation should include the prevalence of evictions, land and property disputes, demographic change,[10] affordability of housing,[11] informal development, environmental degradation and local perceptions of tenure security.

In this respect, both qualitative and quantitative outcomes will need to be assessed using technology such as geographic information systems and participatory methods such as community surveys, questionnaires and interviews. The latter are particularly essential to ensure that community perspectives and priorities are integrated into the assessment process, enhancing the spatial plan's relevance and effectiveness.

The law should thus require planning authorities to establish SMART indicators and thresholds[12] that will enable authorities to determine whether a plan requires minor adjustments, substantive amendments or wholesale revision.

The law should establish recurring review periods and a validity period for the spatial plans, with the former being shorter (typically ranging from two to five years, depending on the type of planning instrument) and the latter being longer-term (five to ten years), whereupon they must be reviewed and amended or, in the latter case, revised and re-issued.

These periodic review and validity requirements ensure that spatial plans remain responsive to community needs, emerging developments and shocks, while providing stability and predictability.

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[10] This refers not only to population growth or decline, but also to changes in the composition of the population in terms of income, race, ethnicity, religion, gender and so forth.

[11] For example, the percentage of housing prices at or below 30 per cent of the average income for residents in the area.

[12] The SMART framework for goal setting includes the following criteria for monitoring and evaluating objectives: specific, measurable, attainable, relevant and time-bound. Both indicators and thresholds should conform to these criteria. Indicators define how outcomes will be assessed and usually contain a quantitative component to ensure measurability (for example, the percentage of the local population in possession of legitimate tenure documentation; percentage increase/decrease in informal development by land coverage). Threshold refers to a minimum level of performance; if a threshold is not met then it
indicates that amendments to or revision of the spatial plan is needed.

LaPaz, Bolivia © Jack Prommel/ Unsplash

EXEMPLARY PROVISIONS: THE PLURINATIONAL STATE OF BOLIVIA, LAW NO. 777 OF 2016 ON THE INTEGRATED STATE PLANNING SYSTEM[13]

The law on the Integrated State Planning System in the Plurinational State of Bolivia includes monitoring and evaluation as a key component of the spatial planning process. It specifically lists the following steps as part of the "cyclical process" of developing plans (Article 11):

1. Formulation of long-, medium- and short-term plans.
2. Assignment of resources.
3. Integrated and articulated implementation of plans.
4. Monitoring the achievement of the goals, results and actions foreseen in the plans.
5. Evaluation and adjustment of plans.

Accordingly, the law establishes a "Subsystem for Monitoring and Comprehensive Evaluation of Plans" (SEIP), which is defined as "the set of guidelines, methodologies, procedures and technical instruments aimed at systematizing, analysing and evaluating compliance with the goals, results and actions of the short-, medium- and long-term plans developed" (Article 27). This subsystem is intended to verify the progress and achievements of the planning system with respect to its goals, results and actions, examine plans' effectiveness, optimize the allocation of financial resources, and establish the appropriate corrective actions for the effective implementation of the plans. The law states that, as part of the SEIP, periodic and annual reports on the implementation of plans will be produced, taking note of the plans' goals, results and planned actions (Article 30). Thereafter, the "integrated evaluation of plans" is stated to be carried out within the framework of a quantitative and/or qualitative mid-term assessment, regarding the scope of the goals, results and actions (Article 31). Evaluations can give rise to the adjustment of established land-use plans subject to the approval of a *Decreto Supremo* (Article 32).

[13] Government of the Plurinational State of Bolivia. Ley No. 777 de 2016 del Sistema de Planificación Integral del Estado (SPIE). https://faolex.fao.org/docs/pdf/bol172493.pdf.

Sanctions for violations and enforcement

The effectiveness of new spatial plans, especially land-use plans, hinges on robust enforcement mechanisms. Failure to enforce these plans may undermine their purpose and result in wasted resources. To mitigate this risk, the law should prescribe enforcement and deterrence mechanisms that encourage compliance with the endorsed spatial plan.

This can include imposing fines for violations of land use, development and building codes proportionate to the severity of the offence. Overly severe fines may incentivize corruption in public inspections and result in mass non-compliance. Public inspectors should be independent (free of conflicts of interest), subject to monitoring, and receive adequate remuneration, amongst other measures, to minimize corruption risks, which is a risk factor for the emergence of land-based conflict.

Effective enforcement mechanisms impede the emergence of illicit land interests and commercial speculation, thus safeguarding community tenure rights and ensuring long-term security.

Cancha Chualluma, La Paz, Bolivia © Florian Delee/ Unsplash

III. LAND MANAGEMENT

Box 4. Land management key messages

- The legal framework for land administration must be adaptable to conditions in the urban sphere, particularly the unique tenure rights that exist in cities and urbanizing areas. Additionally, the law must promote the development of land administration systems that are resilient to the impacts of conflict, since these systems and their corresponding institutions are especially critical to protecting HLP rights during emergency contexts and post-conflict recovery and development.
- The law should adopt a "fit-for-purpose" approach to land administration, which is used to build land administration systems that are flexible and focused on serving citizens' needs such as providing security of tenure and control of land use, rather than focusing on top-end technical solutions and high- accuracy surveys. This approach is more tenure-responsive than traditional land administration and can more easily adapt to conflict conditions.
- The fit-for-purpose land administration approach recommends that the activities of recording and registering rights should be conducted by administrative institutions under delegated authority wherever possible, as opposed to being conducted through judicial processes.
- The legal framework for urban land administration and its institutions must support the continuum of land rights rather than just individual ownership. The continuum of land rights refers to the diversity of tenure arrangements in practice, encompassing both de facto (in fact) and de jure (in law) rights. Fit-for-purpose land administration and land information systems should also be flexible and incremental in the sense that they allow for upgrading from one kind of title to another.
- The legal framework surrounding land-based adjudication should include inclusive and "pro-poor" provisions that facilitate the recordation of legitimate tenure practices along the continuum of land rights employing participatory approaches to identifying the main elements of land information.

- To strengthen women's tenure security and mitigate the impacts of conflict upon their HLP rights, it is essential that national legislation create an enabling environment which ensures that women and men have equal access to land and property rights.
- The law should seek to reconcile formal and customary dispute-resolution mechanisms by acknowledging the value of community-based knowledge and making formal mechanisms accessible for all groups in society, especially marginalized groups and women.
- Land information should be easily available for all parties involved in the spatial development of a country, city or neighbourhood, while preserving the privacy of individuals. Freedom of access to information laws can support public access to land information, which in turn can promote greater awareness and recognition of tenure rights not only by the authorities but also by third parties. In this way, access to land information can improve tenure security and prevent the emergence of land-based disputes.
- Both the cadastre and land registry serve essential functions in providing law-based security of tenure for holders of recorded and registered tenure rights. The loss or damage of cadastral and land registry records during conflict, therefore, can result in the significant weakening of tenure security for affected persons. It is thus critical that laws on the cadastre and land registry include provisions which pre-emptively protect and safeguard land and property records against loss or damage.
- The failure to keep land information systems up to date creates substantial problems for tenure security and, in any eventual conflict context, HLP rights. As such, the law must create requirements and incentives to keep land information systems accurate and reflective of the situation on the ground, such as through land record maintenance obligations for land administration entities, mandatory registration requirements for rightsholders and digital fit-for-purpose recordation and registration.
- Compulsory acquisition is the power of the government to acquire private rights in land at cost for a public purpose, without the willing consent of its owner or occupant. It requires finding the balance between the public need for land on the one hand and the provision of land tenure security and the protection of private property rights on the other. With respect to the latter, compulsory acquisition legislation must include legal provisions for the recognition of tenure rights across the continuum of land rights.

- Also known as "acquisitive prescription" under certain legal regimes, adverse possession refers to the acquisition of property rights through occupation of the land without any opposition for a period prescribed by law. Legal provisions related to adverse possession can mitigate conflict-related risks, such as those posed by secondary occupation, by ensuring that the adverse possession period begins from the moment when the legal owner knew or should have reasonably known of the occupation of the land or property by the third party/secondary occupant.

Fit-for-purpose land administration

Land administration and land information management are essential factors in providing people with tenure security in relation to their housing, land and property, and preventing the emergence of land-based conflict. These land management systems should provide a reliable and public means through which tenure rights can be established and, consequently, protected against unlawful interference. Trustworthy land and property data can also aid in the non-violent resolution of disputes over property boundaries, competing land-use rights, access to natural resources and other land-based disputes.

However, these systems face particular challenges in urban areas where population density is high, land organization is fragmented and inconsistent, complex planning, land-use and other regulatory restrictions apply, where informal settlements and slums have emerged, and where urban development has expanded beyond administrative boundaries. The legal framework for land administration must be able to adapt to conditions in the urban sphere, particularly the unique tenure rights that exist in cities and urbanizing areas. Additionally, the law must promote the development of land administration systems that are resilient to the impacts of conflict since these systems and their corresponding institutions are especially critical to protecting HLP rights during emergency contexts and post-conflict recovery and development.

In this context, the law should adopt a fit-for-purpose approach to land administration. Fit-for-purpose land administration has been promoted by UN-Habitat, the Global Land Tool Network and the International Federation of Surveyors, among others, to build land administration systems that are flexible

and focused on serving citizens' needs, such as providing security of tenure and control of land use, rather than focusing on top-end technical solutions and high accuracy surveys. The three main components of fit-for-purpose land administration are:

1. Using affordable modern technologies for building a spatial framework, (for example, satellite imagery, orthophotos, etc.) showing the way in which land is occupied and used.
2. Using a participatory approach to identifying and recording the various legal and social tenure rights associated with occupancy and use of the land.
3. Adopting a legal framework that accommodates flexibility, and which may be developed incrementally (FIG/World Bank, 2014, p. 10).

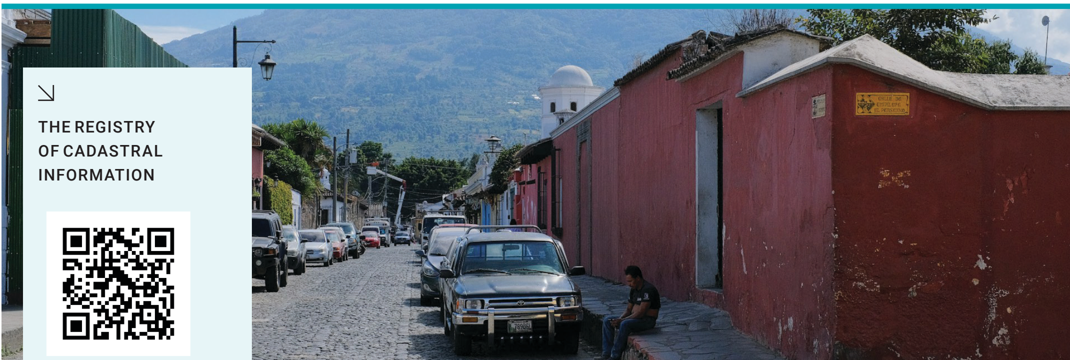
In line with this approach, the legal framework for land administration should be (a) designed along administrative rather than judicial lines; (b) comprehensive of the full continuum of land rights; (c) flexible, incremental and inclusive; and (d) non-discriminatory and supportive of gender equity. By making urban land management more efficient, inclusive, flexible and equitable, fit-for-purpose land administration effectively supports conflict prevention – particularly with respect to land-based conflict – and makes urban land management capable of adapting in times of crisis. The practical application of the aforementioned fit-for-purpose principles in land administration legislation will be discussed further below.

Institutional organization

In many countries, the processes of securing land rights are judicial in nature and significant court time is involved. This has the impact of making the recording and registering of rights slow, non-transparent, cumbersome and expensive. The fit-for-purpose land administration approach recommends that the activities of recording and registering rights should be conducted by administrative institutions under delegated authority, wherever possible. This will allow the amount of court time involved in recording and registering rights to be minimized, freeing up court time to focus on resolving land disputes, which is a key component of conflict prevention (UN-Habitat/GLTN, 2016, p. 45).

The legal framework – whether a land law, real estate law, land registration law or other legal instrument – should therefore establish or appoint an institution to be responsible for land administration and land information management at the national level. The law should define the powers that the institution and its authorities wield, and specifically indicate, for example, who is authorized to modify land records and the land registry at large. Decentralized offices of the institution should operate in urban areas and be allocated sufficient financial, technical and human resource capacity to provide land registration and other land administration services for the local population.

Moreover, there should be legal provisions that facilitate coordination between devolved institutional authorities and local authorities, especially with respect to planning exercises, land development and other urban processes that impact land organization and associated tenure rights. Where institutional capacity is lacking, the law should provide for the incremental scaling up of land administration powers and authority. An incremental approach allows governments to build technical and administrative procedures over time and within their own resource capacity, thus ensuring the institutionalization of the new approaches (UN-Habitat, 2003, p. 9).



Guatemala © Sebastian Herrmann/ Unsplash

CASE STUDY: THE LAW ON THE REGISTRY OF CADASTRAL INFORMATION, GUATEMALA[14]

The law on the Registry of Cadastral Information (RIC) of Guatemala is given the following organizational structure by law:

- Board of Directors of the RIC (*Consejo Directivo del RIC*)
- National Executive Directorate (*Dirección Ejecutiva Nacional*)

[14] Government of Guatemala. Ley del Registro de Información Catastral, Decreto No. 41-2005. https://faolex.fao.org/docs/pdf/gua54615.pdf.

- Municipal Directorates of the Registry of Cadastral Information (*Direcciones Municipales de Registro de Información Catastral*)

In addition to these three primary sets of institutions, the Registry of Cadastral Information is also empowered to "create the technical and administrative units necessary for the fulfilment of the functions assigned in this law" (Article 8). The functions, methods and internal procedures of these units are regulated by the National Executive Directorate.

The Municipal Directorates of the Registry of Cadastral Information are the decentralized bodies of the land registry, each headed by a director appointed by the Board of Directors at the proposal of the Executive Director. The director of a Municipal Directorate is responsible for the execution of the technical-legal and administrative operations in his or her municipality. In addition, each Municipal Directorate has a Social Support Office, whose primary function is to assist communities or individuals in resolving their cadastral problems when they do not have the capacity to solve them by themselves.

Furthermore, the law ascribes several functions to the Registry of Cadastral Information which deal with inter-institutional coordination and cooperation, namely:

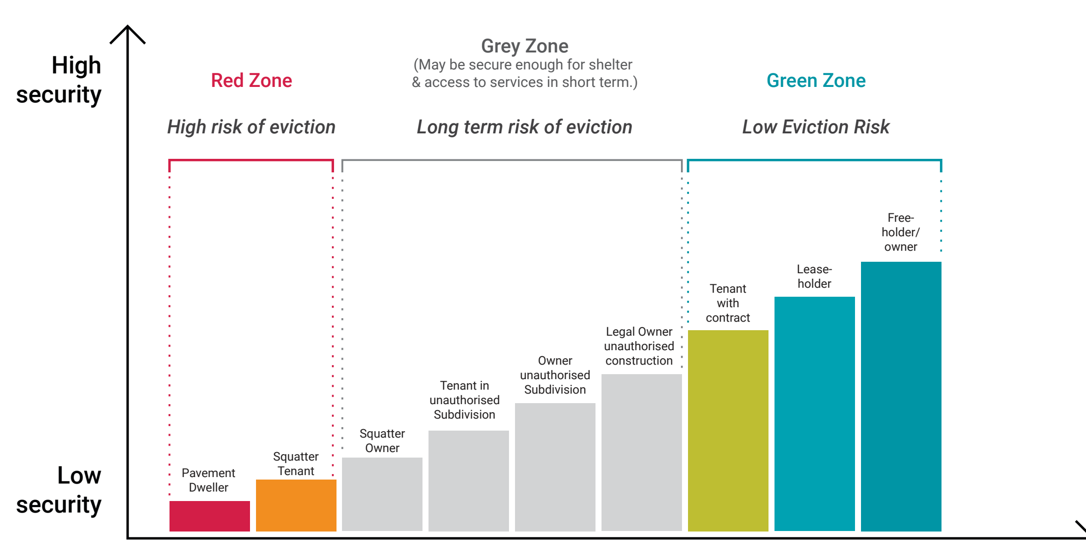
- Promote the exchange and coordination of the basic information of the Registry of Cadastral Information with that of other institutions, to obtain its maximum use for the benefit of national development.
- Coordinate with the Property Registry on the basic registry-cadastre information.
- Coordinate with the National Geographic Institute for the elaboration of the cartographic base and the obtaining of information on municipal and departmental boundaries.
- Provide reports and technical studies of the areas under cadastral or cadastre process to the institutions responsible for the resolution of agrarian conflicts, to those in charge of land adjudication and land tenure regularization programs and to any other state or private institution that may request it.
- Cooperate with administrative, judicial, municipal and other public authorities when they require reports on cadastral matters.
- Support the jurisdictional bodies in the necessary expertise for the solution of conflicts in which there is difficulty of spatial location of properties, provided that they are areas in cadastral process, areas declared as cadastral or areas that have been the object of focused cadastre.

- Enter into agreements with administrative and municipal authorities and other public and private entities that require cadastral information or studies, or provide free information and advice of interest to cadastral users.
- Promote and disseminate the cadastral process in coordination with the municipalities, community authorities and civil society organizations, by all possible means and in the different languages spoken in the country, when so required.
- Coordinate with the offices of territorial planning and real estate control of the municipalities or the offices that fulfil such functions, for the application of the present law and its regulations.

The continuum of land rights

Tenure rights are often most insecure when they are not recognizable under law. For this reason, the legal framework and its institutions must support the continuum of land rights rather than just individual ownership. The continuum of land rights refers to the diversity of tenure arrangements in practice, encompassing both *de facto* (in fact) and *de jure* (in law) rights (UN-Habitat/GLTN, 2016a, p. 52). Due to the density of urban areas and historic challenges in managing their development, land parcels typically have overlapping tenure rights, where legal ownership coexists with one or more other *de jure* or *de facto* (informal/social) tenure rights, such as leasehold rights. Security of tenure can be strengthened across the entire continuum of land rights when a land administration system includes information that caters for the whole spectrum of formal, informal and customary rights.

Figure 2. Continuum of urban tenure types and tenure security zones



UN-Habitat/GLTN, 2016b, p. 2

For this reason, it is important for the legal framework to define what constitutes a unit of real property (or "cadastral parcel") and enumerate the types of real property rights and tenure relationships that are recognized and susceptible to recordation or registration in the land information system. The organization of land units and property rights can vary substantially from country to country based on countless macro-factors such as politics, history, economy, environment, climate, demographics and culture.

In any case, these rights should reflect the actual tenure rights exercised by the population in practice and be inclusive of the full continuum of land rights existing within the country, including customary and communal land rights.

The process of expanding the land tenure rights that are recognized under national law should be informed by a consultative and participatory process to identify which rights are legitimate. The net result of this recognition process is a set of categories of legitimate rights officially agreed to within the country that will be recognized under land law and land administration legislation. This will ensure that the land administration system can record and register all rights across a country and create a truly inclusive national land administration solution (UN-Habitat/GLTN, 2016b, p. 47).

Fit-for-purpose land administration and land information systems should also be flexible and incremental in the sense that they allow for upgrading from one kind of title to another. In this sense, the land administration system design should lay a foundation for movement along the continuum of land rights, without having to jump out of one system into another – a common problem in the design of new forms of land tenure (UN-Habitat/ GLTN, 2016b, p. 58). The Flexible Land Tenure Act of Namibia provides a strong example of inclusive, fit-for-purpose land administration applied in domestic legislation.

Windhoek © Wboroma

CASE STUDY: THE FLEXIBLE LAND TENURE ACT (NO. 4 OF 2012) OF NAMIBIA[15]

The Flexible Land Tenure Act of Namibia creates new forms of land tenure which can be registered with fewer steps, in a new registration system which operates in parallel to the existing one. The Act was issued to "(a) to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title; (b) to provide security of title for persons who live in informal settlements or who are provided with low-income housing; (c) to empower the persons concerned economically by means of these rights" (Article 2). The law establishes two new forms of secure urban land tenure: the starter title and the land hold title. These forms of land title are simpler and cheaper to administer than previous forms of land title. They provide secure land tenure, and can provide security of title for people who live in informal settlements and people who are provided with low-income housing. The starter title and land hold title are held by individuals, but they are also group-based. Each holder has individual rights within a block of land (a "blockerf"). The whole block of land is initially owned under freehold tenure by the state, a private individual or a group of individuals.

[15] Government of Namibia. Flexible Land Tenure Act (No. 4 of 2012). https://faolex.fao.org/docs/pdf/nam137204.pdf.

The system is called "flexible" because it allows for upgrading from one kind of title to another. A starter title can be upgraded to a land hold title or freehold title, and a land hold title can be upgraded to a freehold title. The starter title is a basic and inexpensive form of tenure. It gives the holder rights over the dwelling at a specified location within a blockerf – but not full rights over the land on which the dwelling sits. Land rights held under a starter title cannot be used as a security for credit. The land hold title is a more advanced form of tenure. It gives the holder the same rights over the piece of land in the blockerf that the owner of any freehold title of an erf would have, as well as the right to use any common property within the blockerf (such as the streets or a recreation area) – but the land has to remain part of the scheme on that blockerf. Land rights held under a land hold title can be used as a security for credit. The freehold title gives the holder full rights of ownership over the piece of land in question (MLR/GIZ/LAC, 2016).[16]

[16] MLR/GIZ/LAC (2016). Guide to Namibia's Flexible Land Tenure Act, 2012 (Act No. 4 of 2012). https://www.giz.de/de/downloads/giz2018-0105en-guide-namibia-flexible-land-tenure-act.pdf.

Inclusive land adjudication and recordation

Land-based adjudication is the process of final and authoritative determination of the existing rights and claims of people to land, and is the first stage in the registration of title to land in areas where the ownership of the land is not officially known. This may be in the context of first registration of those rights, or it may be to resolve a doubt or dispute after first registration.

Furthermore, adjudication is also a standard procedure prior to the operation of land consolidation schemes (UNECE, 1996). The process of adjudication should only reveal what rights already exist, by whom they are held and what restrictions or limitations there are on them. However, in practice, when rights to land are ambiguous or uncertain, the process of adjudication can effectively create a significant change in *de facto* land rights and land use (FAO, 2003).

Accordingly, the process of adjudicating rights to property has a significant impact on tenure security. An adjudication process that is affordable and recognizes legitimate rights to land along the continuum of land rights can strengthen the tenure security of communities that are dependent on social forms of land tenure, particularly the urban poor.

On the other hand, an adjudication process that is compromised by corruption, excludes land rights claimants, reinforces gender-biases, discrimination and inequality, or otherwise obstructs the exercise of legitimate land or housing rights, has the effect of weakening tenure security, if not causing the forfeiture of rights. It can also, in this respect, contribute to land-based conflict by failing to create shared consensus on land rights and boundaries in practice.

As such, the legal framework surrounding land-based adjudication should include "pro-poor" and inclusive provisions that facilitate the recordation of legitimate tenure practices along the continuum of land rights. An inclusive approach is one that considers people living in poverty; in the case of cities, this means treating all its citizens equally, including those living in slums, with regard to access to land and services (UN-Habitat, 2007, p.5). An inclusive approach more broadly considers minorities as well as marginalized and vulnerable groups, such as ethnic and religious minorities, migrants, including internally displace persons and refugees, women, the disabled, young and older persons. Inclusive, pro-poor adjudication procedures play a critical role in protecting land rights and improving tenure security in the urban context, especially in peri-urban extensions of the city where informal development may have created ambiguous delineations of tenure and property rights. Additionally, equitable and independent adjudication processes will be necessary to protect fragile tenure rights in post-conflict contexts and remediate HLP disputes.

Inclusive land adjudication and recordation should employ participatory approaches to identifying three main elements of information: the location where the right can be enjoyed; the nature of the right, including associated responsibilities and constraints; and the person(s) or body who holds the right (UN-Habitat/GLTN, 2016: 48). The law should include the following minimum requirements:

- Wide publicity concerning the areas and the dates on which the claimants must appear to give evidence.
- Procedures for the appointment of an adjudication team composed of officials with local knowledge of the area, including a representative from the local community.
- The types of evidence that can be used to support a rights claim, including a combination of non-official and non-documentary forms of evidence, such as notarized contracts, court decisions, building, occupancy, or land-use permits, utility bills, tax returns, rent receipts, photographs and witness testimony.

- The determination of the rights within a flexible procedural framework.
- The announcement and publication of the results.
- The hearing of appeals within a specified time-limit, such as 30 or 60 days.
- The formal entry of the results into the registers of title (UNECE, 1996, pp. 28–29).

To increase participation, the law can provide opportunities for local residents to check and agree on the evidence of land rights collected under the guidance of a locally trained land officer. Legal provisions can also recognize the use of the Social Tenure Domain Model (STDM), an inclusive, participatory and affordable land tool that surveys communities through a participatory enumeration to accurately represent the relationships of people to land along the continuum of land rights (UN-Habitat/GLTN, 2016a, p. 52).

Green Kigali © Plaisir Muzogeye

EXEMPLARY PROVISIONS: RWANDA, MINISTERIAL ORDER NO. 002/2008 DETERMINING MODALITIES OF LAND REGISTRATION

The cell adjudication[17] committees established by Ministerial Order No. 002/2008 "determine the boundaries of and rights to and interests in and over all land which is the subject of a process of cell adjudication".

[17] The country is divided into four provinces and the City of Kigali, which are further divided into 30 districts. The districts are divided into 416 sectors and the sectors are further divided into 2,148 cells. Lastly, these cells are divided into 14,837 villages (umudugudu). www.gov.rw/government/administrative-structure.

Through the adjudication process, these committees are responsible for "safeguard(ing) the rights and interests of absent persons, non-married and non-legally married women, widows, orphans, minors and all other persons under a disability (whether physical or mental), whether such persons are represented by a guardian or not". The law also empowers these committees to take a participatory and inclusive approach to land adjudication, as they can "interview land claimants with regard to rights to and interests in or over land" and "take account of any right to or interest in or over land in respect of which for any reason no claim has been made".

Gender equity and non-discrimination

In many places, national laws, social customs and patriarchal tenure systems prevent many women from holding rights to land. Women often rely on their male relatives for access to land and if their relationship with the man breaks down (divorce, widowhood, etc.), they find themselves with no land and no way to support themselves (UN-Habitat/GLTN, 2016a, p. 59).

Conflict can accelerate these vulnerabilities for women by uprooting them from the social support structures through which they were able to access secure land and housing.

To strengthen women's tenure security and mitigate the impacts of conflict on their HLP rights, it is essential that national legislation create an enabling environment that ensures that women and men have equal access to land and property rights. Constitutional provisions should ensure non-discrimination based on sex and explicitly guarantee the equal rights of men and women to land, housing and property. The law or judicial decisions should explicitly prohibit customary and legal restrictions on women's ability to own land and buildings, including discriminatory inheritance practices. The land registry should be required to facilitate the joint documentation of marital property rights rather than requiring the land or derivative right to be titled to a sole "head of household" figure (Scalise and Giovarelli, 2020, p. 9).

Additionally, women's access to land can be organized by registration or recordation of shares in rights. Land administration systems that recognize shares in rights can thus enable women to record a partial interest in land that is not dependent on the right of a husband, father or brother.

Legal processes involving land that require community consultations, such as land-use planning, land adjudication and recordation, can promote women's engagement by setting a minimum threshold for female attendance or by enabling local authorities to conduct gender-segregated consultations.

Likewise, land commissions and similar bodies can have quotas for female membership.

Dispute-resolution

In pre-conflict settings, formal land dispute-resolution mechanisms often favour claimants with formal evidence of tenure rights and ignore customary or informal evidence of social tenure holders, such as oral testimony. This can lead to the development of parallel dispute-resolution systems – state-backed systems and community-based adjudication systems – that create incoherent land information records (Unruh, 2004, p. 10).

This perpetuates tenure insecurity among groups relying on less formal types of land tenure and contributes to significant HLP challenges in conflict and post-conflict contexts.

For this reason, the law should seek to reconcile formal and customary dispute-resolution mechanisms (CDRM) by acknowledging the value of community-based knowledge and making formal mechanisms accessible for all groups in society, especially marginalized groups and women (UN-Habitat/GLTN, 2012, p. 20).

Where possible, land administration law should support the use of alternative dispute-resolution mechanisms (ADR), including mediation, negotiation and conciliation as well as the creation, and establishment of localized land tribunals, commissions and community-based adjudication processes.

It is recommended that judicial, in-court dispute-resolution be prescribed in law only as a last resort to land and property disputes.

CADASTRAL INFORMATION REGISTRY LAW (DECREE NO. 41 –2005)

Guatemala © Jeison Higuita/ Unsplash

EXEMPLARY PROVISIONS: GUATEMALA, CADASTRAL INFORMATION REGISTRY LAW (DECREE NO. 41 –2005)[18]

Article 41 of the law on the Registry of Cadastral Information in Guatemala provides for the conciliatory resolution of disputes related to the verification of boundary markers and boundaries. It states that the Registry of Cadastral Information can solicit the intervention of a mediation institution that is officially constituted to mediate in these matters. The law allows for the relevant community authorities "who are familiar with the problem and can contribute to its resolution" to take part in the mediation, as mediators or amicable conciliators, when so requested by a party to the dispute. The law further states that for disputes arising among Indigenous groups, "the RIC shall apply the [dispute] resolution methods proposed by the parties, and which they traditionally and culturally use". This provision demonstrates noteworthy cultural sensitivity to customary law and practices in land administration procedures.

If the mediation results in an agreement and the parties express consensus in the final agreement, the conciliation minutes are drawn up and the cadastral technicians will determine the boundaries accordingly; if possible, they will then register in the cartographic material such vertices and the accepted boundaries. If no agreement is reached within 60 days, the RIC issues a declaration of irregular or disputed cadastral property, so that the parties can take the corresponding legal actions.

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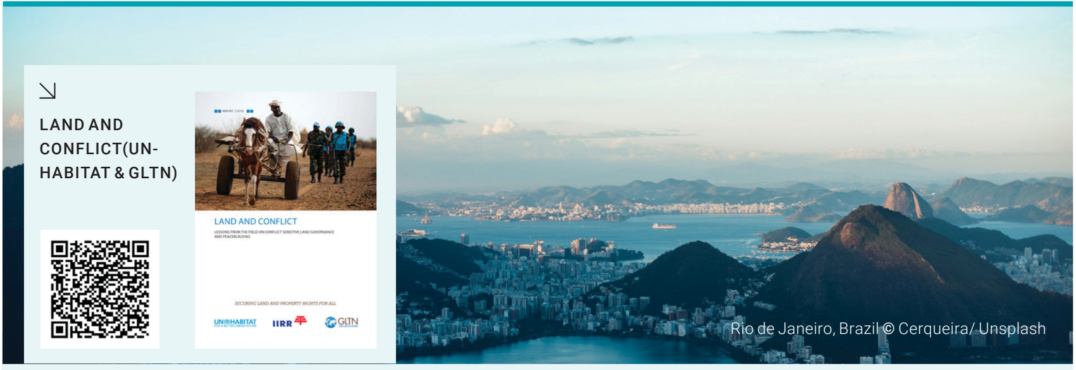
[18] Government of Guatemala. Ley del Registro de Información Catastral (Decreto No. 41-2005). https://faolex.fao.org/docs/pdf/gua54615.pdf.

When judicial processes are the primary avenue for resolving land and property disputes, as is often the case with respect to urban development processes such as land regularization or land readjustment in informal areas, capacity-building of the judicial system can improve efficiency and enable informal tenure holders to exercise their rights, including protections against forced evictions.

Legal provisions for capacity-building should include training judges on housing, land and property laws and contextualizing the application of those law based on the land tenure situation of the population in practice. This should promote an application of the law that recognizes legitimate tenure rights and protects vulnerable groups against evictions and homelessness.

The establishment of a multi-stakeholder hub within the judicial system specialized in land conflicts could further support the protection of rightsholders facing eviction and other threats to their tenure rights (UN-Habitat/GLTN, 2018, pp. 112–113).



Rio de Janeiro, Brazil © Cerqueira/ Unsplash

CASE STUDY: ACCESS TO JUSTICE FOR SECURING HOUSING, LAND AND PROPERTY RIGHTS OF INFORMAL URBAN DWELLERS IN BRAZIL[19]

Brazil has developed one of the most advanced legal frameworks for the recognition of land rights and land tenure security for the most vulnerable in Latin America and the Caribbean. The 1988 Constitution and the 2001 Cities Statute, together with a series of national laws, provide for the social function of property as well as for the right to housing and property.

[19] This is an abridged version of a case study from the following UN-Habitat/GLTN publication: Land and Conflict: Lessons from the field on Conflict Sensitive Land Governance and Peacebuilding (2018). For further details and analysis of the interventions undertaken, please consult the original publication at pages 105–114.

They build on the principles of fair distribution of benefits and burdens of urbanization, and democratic city management. For the land sector, this means that low-income informal dwellers are legally entitled to claim land rights (ownership or use) over private and public land, usually after five years of peaceful possession. In addition, it is widely recognized that property rights should be provided especially to women.

The situation on the ground, however, is quite different from what such a progressive legislation implies. A few privileged landowners control much of the land, which is not always used for a "social function" (as required by the 1988 Constitution). Instead, there are weak land governance, regulatory and planning frameworks. Evictions also take place as a result of development activities, such as large-scale infrastructure projects (for example, the 2014 World Cup and the 2016 Olympic Games) and market-led interventions (for example, upper class real estate developments and gentrification).

The holders of rights lack capacity in claiming their rights; at the same time, officials lack capacity in meeting their obligations. Governments at all levels have become major drivers or perpetrators of housing rights violations. Judicial responses to land claims have tended to favour the property rights of privileged landowners, even when this overrides the housing, land and property rights of the urban poor.

To increase access to justice for informal urban dwellers in Brazil, Habitat for Humanity partnered with local organizations and key urban stakeholders to conduct the following four land interventions:

- **Land reform:** Improved efficiency in judicial processes of land regularization.
- **Land-dispute resolution:** Legal procedures, harmonization of judicial response to land claims in informal settlements, creation of a multi-stakeholder hub within the judicial system to specialize in land conflicts.
- **Capacity development:** Rightsholders more aware of their property rights. Judicial authorities aware of national laws and tools that protect the land rights of the most vulnerable.
- **Land-policy development:** A state law for prevention and mediation of land conflicts.

The interventions resulted in a harmonized way for judges to handle land claims. It also promoted human rights, specifically the right to adequate housing and particularly security of land tenure, by facilitating access to justice for informal dwellers.

The interventions empowered communities, and especially women living in informal settlements facing threats of eviction, to understand their land rights. It helped women to communicate with judicial authorities and to take part in drafting policy proposals.

Access to land information

Land information should be easily available for all parties involved in the spatial development of a country, city or neighbourhood, while preserving the privacy of individuals. Freedom of access to information laws can support public access to land information, which in turn can promote greater awareness and recognition of tenure rights not only by the authorities but also by third parties. In this way, access to land information can improve tenure security and prevent the emergence of land-based disputes.

Access to land information for public authorities involved in urban planning is also critical. Although the lack of data is often cited as one of the main bottlenecks for urban development projects, in many cases it is also the difficult access to data that creates problems. This can be because data are poorly structured, have incompatible formats or are not accessible to others besides the producers themselves. Land data require processing to derive at meaningful land information, which is essential to support strategic decisions on spatial planning, land tenure improvement, etc., and to improve the efficiency of land institutions (UN-Habitat/ GLTN, 2012b, p. 14).

Therefore, the legal framework regulating land information systems must create means for data processing and sharing in an efficient, streamlined manner.

Rio de Janeiro, State of Rio de Janeiro, Brazil © Elise Laine/ Unsplash

Vision city © Reagan M. / Unsplash

EXEMPLARY PROVISIONS: RWANDA, MINISTERIAL ORDER NO. 002/2008 DETERMINING MODALITIES OF LAND REGISTRATION[20]

Order No. 002 of 2008, issued by the Minister for Natural Resources in Rwanda, outlines the modalities of land registration in the country. Article 22 of the Order explicitly guarantees the public's right to access land registry documents, stating "[t]he Register of Titles and the Alphabetical Index [of names of the persons who have been granted Certificates of Registration] are public documents. Anyone may consult them under the supervision of the Registrar or the Deputy Registrar, after paying the fee determined by the regulations".

[20] Government of Rwanda. Ministerial Order No. 002 of 2008 "determining modalities of land registration". https://landportal.org/library/resources/rwanda-land-lawspolicies-25/ministerial-order-n%C2%B0-0022008-0142008-determining.

Safeguarding of land records

In most legal systems, the land registry is the public entity which serves the function of guaranteeing the public's housing, land and property rights. The inscription of real rights in the registry renders these rights enforceable against not only specific parties – as in the case of personal rights, such as contractual rights – but against all third parties. In other words, the registry provides the legal basis for enforcing one's housing, land and property rights against any natural or legal person who infringes on these rights in a manner inconsistent with the law. Cadastral records establish the scope of these rights in terms of the precise parcel of land where these rights apply and are enforceable. Thus, both the cadastre and land registry serve essential functions in providing law-based security of tenure for holders of recorded and registered tenure rights.

The loss or damage of cadastral and land registry records during conflict, therefore, can result in the significant weakening of tenure security for affected persons, especially when combined with displacement, weekend governance structures and rule of law, and the rise of illegal activities or speculative actors.

Thus, it is critical that laws on the cadastre and land registry include provisions that pre-emptively protect and safeguard land and property records against loss or damage. In many countries, the textual part of the cadastre has become fully digitalized and, in some cases, the graphical parts are as well, which provides a critical safeguard against the loss or damage of physical property records in case of conflict (UN-Habitat, 2007a, p. 18).

However, in countries where this is still to take place or is in the process of taking place – as the digitalization of a previously analogue cadastre and land registry system is a resource-intensive endeavour – there should also be provisions for creating duplicates of property records which are kept in more than one cadastral office. Moreover, digitalized land information systems also need to be secured against malfunctions and hacking, and thus it may be necessary to continue to maintain analogue records to corroborate inconsistencies which may arise in digital records.

Such legal provisions, naturally, must be adapted to the context where they apply in terms of human and financial resources.

Gishuro IDP Model Village & ECD © Prince Munyakuri/ IGIHE 2023

Korea © Y K/ Unsplash

Exemplary provisions: Registration of Real Estate Act of the Republic of Korea

The registration of the Real Estate Act of the Republic of Korea[21] makes several provisions that serve to protect and safeguard land and property records. Article 16 provides for the preparing of duplicate data of registers, stating, "When a registrar completes registration, he or she shall prepare duplicate data of registration." Article 18 describes measures for the prevention of damage to supplement registry documents, stating that "[w]here documents supplemental to registers are likely to be damaged or lost, the Chief Justice of the Supreme Court may issue orders to prevent such damage". Finally, Article 110 deals with securing the safety of information on the completion of registration. It states that a "registrar shall take measures necessary and appropriate for the prevention of leakage and loss of, or damage to information on completion of registration that he or she handles and the safe management of information on completion of registration".

21 Government of the Republic of Korea. Act No. 10580 on the Registration of Real Estate (2011). https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=45681&type=sogan&key=9.

Land information maintenance requirements

The failure to keep land information systems up to date creates substantial problems for tenure security and, in any eventual conflict context, HLP rights. Tenure insecurity in cities is particularly acute when the land registry and associated land records are not properly maintained, whether due to institutional flaws (lack of capacity, poor organization, corruption, inefficiency, etc.), obstacles or unwillingness for people to register rights (cumbersome procedures, registration costs, absence of legal sanction, etc.), or other factors (for example, conflict or disaster).

The law cannot fix all these problems, but it can create requirements and incentives to keep land information systems accurate and reflective of the situation on the ground. The law can require land administration authorities to continually update the land registry based on applications and other official notifications of land transfers and adjustments. Likewise, the population should be legally compelled to register their tenure rights with the competent authority.

The prescribed costs and procedures for this type of registration should not be inhibitive or act as a deterrent.

These obligations alone, however, are rarely sufficient to ensure that land information systems remain up to date. Land information system maintenance requirements should, therefore, be combined with a flexible, streamlined and, where possible, digitalized procedure for updating property records in line with the fit-for-purpose approach to land administration.

↘ LAND LAW OF CAMBODIA

Kratié Province, Cambodia © Britt Gaiser/ Unsplash

Exemplary provisions: Land Law of Cambodia (2001)[22]

The continual updating and maintenance of land and property records is promoted in Articles 236, 238 and 239 of the Land Law of Cambodia. Article 236 makes explicit reference to the public's obligation to facilitate the operation of cadastral services and maintenance of the land registration records, stating that "[a]ny private individuals, and in particular owners and concerned persons, have the obligation to join and co-operate for the carrying out of the cadastral surveys. They must facilitate the physical operations relating to cadastral surveys, identify owners and give notice of any changes that have occurred concerning their own parcels, the situation of the premises and any transfers of ownership."

[22] Government of Cambodia. The Land Law (2001). www.ajne.org/sites/default/files/resource/laws/7200/cambodia-law-on-land-2001-en.pdf.

Article 238 states that "[…] any subsequent changes in such [registry] data must be registered as soon as the Cadastral Administration is informed of such changes", while Article 239 goes on to state that "cadastral offices at all levels are legally responsible to ensure the due and proper maintenance of such Land Registers and the accuracy of survey operations and to preserve the documents".

Compulsory acquisition

Compulsory acquisition is the power of the government to acquire private rights in land at cost for a public purpose, without the willing consent of its owner or occupant. This power exists in virtually all nation states, although it is known by a variety of names depending on the country's legal traditions: eminent domain, expropriation, takings and compulsory purchase (Lindsay, 2012, p. 1). Compulsory acquisition power is often necessary to facilitate social and economic development and ensure the protection of the natural environment when the free market fails to deliver land in the necessary places for the provision of public services. In urban areas in particular, land is valuable and needed for public investments such as roads, railways, harbours and airports; for hospitals and schools; for electricity, water and sewerage facilities; for protection against flooding and the protection of water courses and environmentally fragile areas on urban fringes (FAO, 2008, p. 5).

Compulsory acquisition is also oftentimes needed to implement urban plans both in already built-up areas and in urban expansion areas to secure a more efficient and sustainable form of urban development in and around cities.

However, compulsory acquisition is intrinsically disruptive when it comes to individuals' and groups' tenure rights. The process entails the involuntary displacement of rightsholders contingent upon the public purpose threshold being met and the payment of "just" or "fair" compensation.

If compulsory acquisition is done poorly, it can leave people homeless and landless, with no way of earning a livelihood, without access to necessary resources or community support, and with the feeling that they have suffered a grave injustice (FAO, 2008, p. 2).

There are three common causes of rights infringements in compulsory acquisition processes: the lack or insufficient recognition of land rights of the dispossessed population, the inadequacy of compensation awards and the weakness of the rule of law needed to ensure that land is truly dedicated to the public good. Unfair procedures for the compulsory acquisition of land and inequitable compensation for its loss can not only reduce land tenure security, but can also increase tensions between the government and citizens, and reduce public confidence in the rule of law. Moreover, unclear, unpredictable and unenforceable procedures create opportunities for corruption and misappropriation of acquired landed assets. Even when compensation is generous and procedures are generally fair and efficient, the displacement of people from established homes, businesses and communities still entails significant human costs (FAO, 2008, p. 5).

This is particularly true when an entire community is displaced, as the offer of financial compensation will result in the dispersal of households since not all of them will be able to purchase alternative land in the same location. As a result, community institutions and social networks are weakened (FAO, 2008, p. 40).

As such, compulsory acquisition requires finding the balance between the public need for land on the one hand, and the provision of land tenure security and the protection of private property rights on the other hand. When governments carry out compulsory acquisition satisfactorily, they leave communities and people in equivalent situations while at the same time providing the intended benefits to society. Expropriation legislation should therefore ensure that there are sufficient procedural safeguards and overarching principles that honour the rights of all affected persons to their housing, land and property while also maintaining the efficiency and relative affordability of the compulsory acquisition operation. Conflict in the land acquisition process is reduced when there are clear legal provisions that define the specific purposes for which the government may acquire land, and when there are transparent, fair procedures for acquiring land and for providing equitable compensation. Ultimately, expropriations should be seen not only as opportunistic actions to which governments can resort, they must be part and parcel of both property regimes and land policies.

Compulsory acquisition legislation should include legal provisions for the recognition of tenure rights across the continuum of land rights.

Expropriations should provide evicted persons with compensation or alternative accommodation or land. There is also a strong case for the right to restitution of their housing, land or property when the public interest purpose for which their property was taken ceases to exist based on these provisions. Leaseholders and persons with other forms of legitimate occupancy rights are likewise entitled to compensation or appropriate and sufficient alternative accommodation or land consistent with the evictees' wishes and needs. There is a strong case for the obligation of states to resettle or provide compensation to informal settlement residents evicted through expropriation procedures based on these provisions so long as their occupancy rights are ***bona fide*** (in good faith) and legitimate while not recognized by law.

Furthermore, the law should support the principle that compensation should be provided without delay and should be an amount (if monetary) that corresponds to the real value of the property such that expropriated rightsholders would be able to obtain housing, land or property in the same area with the compensation awarded. This requires the establishment of clear and internationally recognized regulations for land and property appraisal and valuation. In sum, the compensation award(s) of the expropriation should leave affected rightsholders no worse off than they would be had the expropriation not taken place (excluding sentimental considerations).

Box 5. Recommended principles for land acquisition processes

1. **Absolute necessity requirement.** The land and land rights to be acquired should be kept to a minimum. Acquiring authorities should explore feasible alternative approaches to expropriation which could achieve the stated public purpose in consultation with the affected parties prior to the acquisition. The chosen option should aim to avoid, or at least minimize, disruption of livelihoods and evictions. For example, if the creation of an easement or servitude can serve the purpose of the project, there is no need to acquire ownership of the land parcel; or if public land can feasibly be used for the purpose envisioned, expropriation

of private land should be avoided or minimized. In sum, involuntary resettlement should be avoided where feasible or minimized, exploring all viable alternative project designs.

2. **Maintenance of living and livelihood standards:** Landowners, occupants and other real rightsholders should not be made worse off by compulsory acquisition. Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher. The compensation award(s) of the expropriation, including the possibility of resettlement on alternative land, should leave affected rightsholders no worse off than they would be had the expropriation not taken place.

3. **Prompt, equivalent and effective compensation:** Where compulsory land acquisition is unavoidable, all people affected by it should be compensated fully and fairly for lost assets. Claimants should be paid compensation that is no more or no less than the loss resulting from the acquisition of their land. The law should ensure that affected owners and occupants receive equivalent compensation, whether in money or alternative land. Regulations should set out clear and consistent valuation bases for achieving this. It is recommended that compensation, when monetary, corresponds to the replacement value of the property such that expropriated rightsholders would be able to obtain housing, land and/or property in the same area with the compensation awarded. Compensation should be provided without delay and the government should take possession of the land only after the owners and occupants have been paid at least partial compensation, accompanied by clearly-defined compensation guarantees.

4. **Participatory planning and procedures.** Participatory planning processes should involve all affected parties, including owners and occupants, government and non-governmental organizations. All people affected by involuntary resettlement caused by land acquisition should be consulted and involved in resettlement planning to ensure that the mitigation of adverse effects as well as the benefits of resettlement are appropriate and sustainable.

5. **Protection of due process and fair procedure.** Rules that place reasonable constraints on the power of the government to compulsorily acquire land strengthen the confidence of people in the justice system, empower people to protect their land rights, and increase the perception of tenure security. Rules should provide for appropriate advance consultation, participatory planning and accessible mechanisms for appeals, and should limit the

discretion of officials. Due process should be defined in law with specified time limits so that people can understand and meet important deadlines. Procedures should be transparent, flexible and undertaken in good faith. Notice should be clear in written and oral form, translated into appropriate languages, with procedures clearly explained and advice about where to get help.

6. **Effective governance.** Agencies that compulsorily acquire land should be accountable for the good faith implementation of the legislation. Laws that are not observed by local officials undermine the legitimacy of compulsory acquisition. Under this principle, it is recommended that the compulsory acquisition process be supervised and monitored to ensure that the acquiring agency is accountable for its actions, and personal discretion is limited.

7. **Right to legal assistance:** Assistance should be provided to owners and occupants so that they can participate effectively in negotiations on valuation and compensation, and file objections or appeals when possible.

Source: FAO, 2008: pp.6, 17; IFC, 2002; World Bank OP 4.12

Timor-Leste, Comoro Kampung Baru © Dili-amau-iramu/ Unsplash

EXEMPLARY PROVISIONS: TIMOR-LESTE, LAW NO. 8 OF 2017 ON EXPROPRIATION FOR PUBLIC UTILITY[23]

The Law on Expropriation of Timor-Leste defines the regime applicable to the expropriation of immovable property and establishes rules and procedures for cases in which the state, in order to pursue a public utility purpose, is compelled – in the absence of other viable alternative solutions – to take ownership of immovable property that was in the private

[23] Government of Timor-Leste. Lei N. 8/2017 de 26 de Abril Expropriação por Utilidade Pública. https://www.mj.gov.tl/jornal/public/docs/2017/traducao/Tradusaun_expropriasaun_Biling_Lei_N_8_2017.pdf.

domain. The law allows the entity benefiting from expropriation to take administrative possession of the asset to be expropriated only once the declaration of public utility has been published and notified and all the following pre-requisites for administrative possession have been met (Article 41):

1. The declaration of public utility has been published and notified, and interested parties notified of the date and time from which administrative possession of the asset by the entity benefiting from the expropriation takes effect;
2. A list of the assets to be expropriated has been drawn up in order to establish the factual elements that may be missing and the knowledge of which is of interest to the judgment of the case;
3. The rehousing plan is implemented;
4. The replacement property is handed over, free of liens and encumbrances as agreed with the interested parties;
5. The amount of the fair compensation has been deposited with a bank, to the order of the interested parties, if it and they are known and there are no doubts about the ownership of the rights affected.

These prerequisites serve as effective procedural safeguards for rightsholders during expropriation processes. The law further states that the interested parties must be given a reasonable period of time to vacate the expropriated property, which may not exceed 90 days, except when extended in cases where rehousing or loss of means of subsistence of the persons concerned has taken place. Only when the need for expropriation arises from a public calamity or from internal security or national defence requirements may the state or the competent public authorities take immediate administrative possession without any prior formality or compensation. In these circumstances, compensation is to be established through litigation (Article 13).

Adverse possession

Also known as "acquisitive prescription" under certain legal regimes, adverse possession refers to the acquisition of property rights through occupation of the land without any opposition for a period prescribed by law. Adverse possession can enable good faith occupants of land, sometimes referred to as squatters, to obtain formal property rights to land, thus strengthening their security of tenure. This legal principle promotes the efficient use of land by effectively allowing for the reallocation of land rights in the case of abandonment. Thus, while it is no replacement for a more systematic approach to securing land tenure such as those proposed by the fit-for-purpose approach, it is a tool that can enable the urban and peri-urban poor to gain legal rights to their land and housing, especially when informal settlement residents collectively seek to enforce their adverse possession rights through class action claims, for example (UN-Habitat, 2003, p. 13).

However, these legal provisions can become destabilizing in crisis contexts, where the secondary occupation of land and housing can become widespread, thus leading to competing claims to land and property. Relatively short adverse possession periods of five years or less can pose a significant risk to the housing, land and property rights of displaced persons.

Legal provisions related to adverse possession can mitigate these risks by ensuring that the adverse possession period begins from the moment when the legal owner knew or should have reasonably known of the occupation of the land or property by the third party/ secondary occupant.

IV. HOUSING LAW

Box 6. **Housing law key messages**

- Conflict prevention in the context of urban law requires laws and policies that increase access to affordable housing and honour every person's right to an adequate standard of living.
- The right to adequate housing should be guaranteed alongside other basic rights in the constitution and serve as an explicit principle and objective of sectoral law and policy, such as land law, planning law and administrative law.
- The process of developing a national housing strategy should reflect extensive genuine consultation with, and participation by, key stakeholder groups, including civil society organizations representing the homeless and the inadequately housed. When this process is inclusive, participatory and well-coordinated at both the national and local levels, it establishes a good precedent that can be referred to in post-conflict recovery and redevelopment contexts.
- It is critical that the legal framework pre-emptively adopts a harmonized, rights-based approach to evictions that protects all tenure holders along the continuum of land rights against arbitrary interference with their home and upholds their right to adequate housing in line with international human rights law.
- Considering the large numbers of people exercising leasehold rights in cities, urban law must ensure that legislative provisions surrounding leasehold agreements can protect the tenure rights of tenants in times of peace and conflict alike. With respect to residential leases, landlord-tenant laws must find a just balance in protecting the property rights of the landlord-owner, which can positively impact overall housing affordability and the security of tenure of the tenant.
- Lease registration requirements should be incorporated into legislation only where there is an adequately equipped and efficient land administration system in place. It is recommended that the cost burdens of lease registration, when and where required, largely fall on the landlord to promote housing affordability.

- With respect to the use of force majeure in lease agreements, which may become important in conflict contexts, it is recommended that the burden of proof in establishing that conflict impacts truly constituted a force majeure event (for example, housing unit was destroyed or severely damaged) should fall on the landlord.
- In conflict contexts, leases with optional renewal rights carry the risk that parties to the agreement are not able to give notice to renew or not renew the lease agreement, as may be the case, especially if one or both parties have been displaced by conflict impacts. To safeguard tenants' occupancy rights against these risks, the law should include provisions for the automatic renewal of the lease on certain conditions: continued occupation of the leased premises at the conclusion of the contract duration without the occupancy being challenged by the landlord within a prescribed period.
- Eviction law should provide for both procedural and substantive protections against eviction. The former should ensure that tenants have an opportunity to be heard by the authorities ordering the eviction prior to its enforcement. The latter should regulate the specific circumstances in which a landlord may recover possession of the property, such as breach of contract by the tenant, and should place the burden on the landlord to prove the existence of those circumstances.
- Rent regulation is a system of laws controlling rents and tenant evictions with the intention of ensuring that rentals are affordable. Rent control is an especially effective mechanism for protecting security of tenure by preventing a landlord who wants possession of a tenement from drastically raising the rents unilaterally and then evicting a tenant for non-payment. Rent control interventions include freezing rents, setting the maximum rents, or fixing the rate of rent increases.
- In conflict contexts characterized by substantial internal displacement, hosting agreements can become an important tool for displaced persons to access housing with legally recognized tenure rights. For this reason, the legal framework should stipulate provisions for concluding and registering such agreements.
- Social housing presents another avenue to ensuring that adequate housing is accessible to vulnerable groups and those with limited financial resources, including those who lack access to credit. To protect the tenure of social housing occupants across the conflict cycle, social housing legislation must provide occupants with clear, registrable tenure rights, including documentary evidence of tenure rights that are recorded in an official registry, and benefit from both substantive and procedural eviction protections.

Housing rights

Access to housing, as a basic need and fundamental right recognized in various instruments of international human rights law, is another factor that can mitigate or contribute to the emergence of land-based conflict. In urban areas, access to adequate housing enables broader access to livelihoods and reduces the social and physical exclusion of low-income communities (United Nations/World Bank, 2018, p. 152). Therefore, conflict prevention in the context of urban law requires laws and policies that increase access to affordable housing and honour every person's right, without discrimination, to an adequate standard of living.

This should begin with the recognition of the human rights to housing in national and, where possible, constitutional law. It is not sufficient for the legal framework to only protect property rights, which are primarily economic in nature and do not entitle people to property per se, but to the capacity to exercise exclusive rights *in rem*[24] over a good, and to protections of their property; protections which, moreover, can be reasonably limited by the government or third parties (for example, creditors). The right of every person to a home, instead, is an inherent entitlement that should be honoured regardless of one's ability to acquire property. The right to housing is thus inclusive of low-income groups and other marginalized groups that cannot or do not acquire formal property rights.

For this reason, the right to adequate housing should be guaranteed alongside other basic rights in the constitution and serve as an explicit principle and objective of sectoral law and policy, such as land law, planning law and administrative law. The right to housing should be aligned with the commentary furnished by the Committee on Social, Economic and Cultural Rights in General Comment No. 4, which underlined that the right to housing should be interpreted broadly as the right to live somewhere in security, peace and dignity with (i) legal security of tenure and (ii) access to services, materials, facilities and infrastructure at (iii) affordable prices, in conditions that are (iv) accessible to disadvantaged groups, (v) adequately located, (vi) culturally appropriate, and (vii) habitable (guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat,

[24] Rights in rem are property rights; they refer to the fact that property rights are exclusive, in that they can be enforced against any and all third parties. They contrast rights in personam, which are rights that can only be enforced against a specific person or group of people, such as contractual rights.

rain, wind, other threats to health and structural hazards) (CESCR, 1991). The law, again preferably at the constitutional level, should also contain explicit protections against evictions, which prohibit arbitrary and forced evictions, and provide the conditions under which evictions may be undertaken in accordance with law.

CONSTITUTION OF SOUTH AFRICA

South Africa Parliament © Juergen Ritterbach / Alamy

EXEMPLARY PROVISIONS: CONSTITUTION OF SOUTH AFRICA (1996)

The Constitution of South Africa[25] provides one of the best examples of a state incorporating its international human rights obligations on housing into its constitution. Article 26 of the Constitution contains provisions closely mirroring the right to adequate housing as articulated in Article 11(1) of the Committee on Economic, Social and Cultural Rights (ICESCR) – including, in paragraph 3, the prohibition of forced eviction.

Section 26. Housing

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures within its available resources to achieve the progressive realization of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

This close parallel between national and international law also helps to ensure that interpretations of housing rights at the international level may more directly affect the interpretation of these rights at the national level, as was seen in the influential Grootboom case heard by the Supreme Court of South Africa in 2000 (OHCHR/ UN-Habitat, 2002, p. 37).

[25] Government of South Africa (1996). Constitution. www.justice.gov.za/constitution/SAConstitution-web-eng.pdf.

National and local housing strategies

The Committee on Social, Economic and Cultural Rights observed that while states can employ diverse means of achieving the full realization of the right to adequate housing, it will almost invariably require the adoption of a national housing strategy that defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them, and sets out the responsibilities and time frame for the implementation of the necessary measures (CESCR, 1991). A national housing strategy should be aligned with any national urban policy in place or under development – and vice versus – by providing a detailed framework for action on housing that reflects any housing policy objectives outlined in the policy, such as developing housing guidelines and standards, matching housing supply with demand, and reducing housing costs.[26]

The process of developing a national housing strategy should reflect extensive genuine consultation with, and participation by, key stakeholder groups, including civil society organizations representing the homeless and the inadequately housed. Furthermore, the strategy development process should ensure coordination with sectoral ministries to reconcile related national policies (economics, agriculture, environment, energy, etc.), as well as with local authorities who will be responsible for applying the housing strategy to their local context (CESCR, 1991).

In this way, the national housing strategy will inform the development of local housing strategies that are tailored to the specific housing, land tenure and market conditions of the urban area. When this process is inclusive, participatory and well-coordinated at both the national and local levels, as described above, it establishes a good precedent that can be referred to in post-conflict recovery and redevelopment contexts, where new conflict-sensitive strategies on housing will need to be developed and adopted at national and subnational levels.

[26] Examples of national urban policy housing policies and initiatives taken from the 2024 National Urban Policy of Jordan.

Cairo © Omar Elsharawy/ Unsplash

CASE STUDY: EGYPT HOUSING STRATEGY (2020A)[27]

Issued in 2020, the National Housing Strategy of Egypt was prepared by the Ministry of Housing, Utilities and Urban Communities with the technical support of the UN-Habitat Egypt Office. The strategy is intended to create an enabling environment that increases the supply of affordable housing in Egypt, and it is aligned with global and regional requirements, including the Sustainable Development Goals, the New Urban Agenda, the Arab Strategy for Housing and Urban Development, the Sustainable Development Strategy (Egypt Vision 2030), and Egypt's National Strategic Plan for Urban Development 2052. The preparation of an Egyptian Housing Profile in 2016 was an essential first step towards the national housing strategy, which involved the participation of all governmental agencies, academic entities and representatives of relevant local communities.

The Egyptian strategy document also adopted a participatory approach, which resulted in a document characterized by an inclusive view of the roles of different actors, and how those roles were integrated to achieve maximum benefit from physical and spatial resources, and then directed those resources to achieve maximum social and spatial justice. The strategy was based on the constitutional right to housing, which was introduced in the 2014 amendment to the constitution:

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[27] UN-Habitat (2020a). Egypt Housing Strategy. https://unhabitat.org/sites/default/files/2020/09/egypt_housing_strategy.pdf.

"The state guarantees citizens the right to adequate, safe and healthy housing, in a manner that preserves human dignity and achieves social justice. The state is committed to developing a national housing plan that takes into account environmental particularity, ensuring the contribution of self and cooperative initiatives in its implementation, organizing the use of state lands and providing them with basic facilities within the framework of comprehensive urban planning for cities, villages and a strategy for population distribution. All in order to achieve public interest and improve the quality of life for citizens and preserve the rights of future generations. The state is also committed to developing a comprehensive national plan to address the problem of slums, which includes re-planning, providing infrastructure and facilities, improving the quality of life and public health, and ensuring that the resources necessary for implementation are provided within a specified time period" (Article 78).

Eviction law and policy

Vulnerability to eviction is one of the defining characteristics of tenure insecurity. In the urban environment, evictions have been increasingly used to remove individuals, groups and communities with weak tenure rights from their homes to take advantage of increasingly valuable urban and peri-urban land for development. Residents of informal settlements in particular are vulnerable to eviction for development purposes, a risk that is heightened in the context of post-conflict reconstruction. For this reason, it is critical that the legal framework pre-emptively adopts a harmonized, rights-based approach to evictions that protects all tenure holders along the continuum of land rights from arbitrary interference with their home and upholds their right to adequate housing in line with international human rights law. Eviction law includes specialized pieces of legislation, policy, judicial decision or distinct legal provisions that elaborate when and how evictions may be carried out, as well as the conditions and situations in which they are explicitly prohibited. As a starting point, prohibitions of forced and arbitrary eviction can be included in the constitutional right to adequate housing, as seen in the case of South Africa above. This rights-based approach to housing and legal eviction should be carried into specific law and policy at national, regional and local levels.

For example, provisions on evictions can be stipulated in criminal codes, rental or landlord-tenant laws, compulsory acquisition laws, urban planning law, land and real estate law, local land ordinances and building codes, inter alia. The approach to eviction across these areas of law should be harmonized to ensure that a rights-based approach prevails against one that is punitive or discriminatory in nature or practice. A singular, framework legislation on eviction can aid in this respect and serve to protect low-income groups against arbitrary interference with their homes (UN-Habitat, 2003, p. 11).

Eviction legislation should uphold the principle that evictions only occur in exceptional circumstances and require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be:

a. authorized by law;

b. carried out in accordance with international human rights law;

c. undertaken solely for the purpose of promoting general welfare or to recognize competing rights that are legitimate and hold legal priority;

d. reasonable and proportional;

e. regulated to ensure full and fair compensation and rehabilitation when and where appropriate (for example, development-based evictions).

The protection provided by these procedural requirements should be explicitly non-discriminatory, in that it applies to all vulnerable persons and affected groups, irrespective of class, race, age, gender, ethnicity or religion, and irrespective of whether they hold title to home and property under domestic law.

The law should stipulate appropriate civil or criminal penalties against any public or private person or entity within its jurisdiction that carries out evictions in a manner not fully consistent with applicable law and international human rights standards.

It must ensure that adequate and effective legal or other appropriate remedies are available to all those who undergo, remain vulnerable to, or defend against forced evictions (OHCHR, 2007, p. 6).

Manila, Philippines © Charles Deluvio/ Unsplash

EXEMPLARY PROVISIONS: CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES (1987), PRESIDENTIAL DECREE NO. 2016 OF 1986 AND URBAN DEVELOPMENT AND HOUSING ACT (NO. 7297) OF 1992

The Constitution of the Philippines of 1987 explicitly protects the urban and rural poor from illegal evictions, stating that *"[U]rban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner"* (Article 13, Section 10). Within the same section, it further provides that *"[N]o resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated."* These protections were essential to introduce in the context of urban land reform, which was defined in the constitution as follows: *"a continuing programme [...] which will make available at affordable cost, decent housing and basic services to under-privileged and homeless citizens in urban centres and resettlement areas"*.

Vulnerable communities across the continuum of land rights were also protected against eviction by Presidential Decree No. 1517 on "Proclaiming Urban Land Reform [...]"[28] and Presidential Decree No. 2016 of 1986 on "Prohibiting the Eviction of Occupants from Land Identified and Proclaimed as Areas for Priority Development (APD) or as Urban Land Reform Zones [...]."[29] The former recognized how *"the traditional concept of landownership"* – as opposed to the continuum of land rights – *"has aggravated the problem arising from urbanization such as the proliferation of blighted areas and the worsening of the plight of the*

[28] Presidential Decree No. 1517 on "Proclaiming Urban Land Reform in the Philippines and Providing the Implementing Machinery Thereof." https://lawphil.net/statutes/presdecs/pd1978/pd_1517_1978.html.

[29] Presidential Decree No. 2016 on "Prohibiting the Eviction of Occupants from Land Identified and Proclaimed as Areas for Priority Development (APD) or as Urban Land Reform Zones and Exemption of Such Land from Payment of Real Property Taxes." https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/26/18959.

urban poor and has spawned valid and legitimate grievances in urban centres giving rise to social tension and violent conflicts". These laws protect *"legitimate tenants"* who have built a home and resided on the land in Urban Land Reform Areas for ten years or more, or who legally occupied the lands by contract, against eviction during urban renewal processes and grants them the right of first refusal to purchase the same land *"within a reasonable time and at reasonable prices"*.

The more modern Urban Development and Housing Act (No. 7297) of 1992[30] also sought to *"uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas by making available to them decent housing at affordable cost, basic services and employment opportunities"*. These citizens are the intended beneficiaries of the Act and defined as individuals or families that have incomes under the national poverty line, who do not own housing facilities and who do not enjoy security of tenure. The law states that "eviction or demolition as a practice shall be discouraged", however it may be allowed when the occupation poses a danger, when government infrastructure projects are to be immediately implemented, or when there has been a court order for eviction. The law also establishes the following requirements for evictions of "underprivileged and homeless citizens":

- Notice upon the affected persons or entities at least 30 days prior to the date of eviction.
- Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated.
- Presence of local government officials or their representatives during eviction or demolition.
- Execution of eviction only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise.
- Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures.
- Adequate relocation, whether temporary or permanent.

[30] Republic Act No. 7279, "Urban Development and Housing Act of 1992". www.officialgazette.gov.ph/1992/03/24/republic-act-no-7279/.

Landlord-tenant law

Considering the large numbers of people exercising leasehold rights in cities, urban law must ensure that legislative provisions surrounding leasehold agreements can protect the tenure rights of tenants in times of peace and conflict alike.

Landlord-tenant law is the area of law that regulates the relationship between landlords and tenants by stipulating their respective rights and duties in relation to the contractual leasing of a piece of immovable property. With respect to residential leases, these laws must find a just balance in protecting the property rights of the landlord-owner, which can positively impact overall housing affordability by promoting active rental housing market in urban areas, and the security of tenure of the tenant. This is especially critical in urban areas, where a significantly higher proportion of the housing stock falls into the rental market compared to that of rural areas.

There are several aspects of landlord-tenant law that become important in times of crisis and as such should be drafted with care to mitigate the risks of adverse tenure impacts on tenants. These include registration requirements, *force majeure,* lease renewals and procedural eviction protections.

Lease registration

Lease registration requirements can be a double-edged sword. On the one hand, such requirements can strengthen the tenure security of tenants by furnishing them with documentary evidence of their tenure rights that are officially recognized by the legal system, and therefore by judicial authorities in the event of competing claims. In times of crisis, such evidence can be used as protection against arbitrary evictions and, in the post-conflict context, could even be used in property restitution procedures. However, in contexts where the land administration system lacks capacity to maintain property records, the obligation to register lease agreements can create further bottlenecks in the land registry and undermine the tenants' rights claims if their lease is never registered for such reasons. Therefore, lease registration requirements should be incorporated into legislation only where there is an adequately equipped and efficient land administration system in place. It is recommended that the cost burdens of lease registration, when and where required, largely fall on the landlord to promote housing affordability.

Force majeure

Force majeure refers to the extinction of contractual obligations in the case of unforeseen, unpredictable and uncontrollable catastrophes that prevent either one of the parties to the lease from fulfilling their contractual obligations. Conflict is typically considered an event that can trigger *force majeure,* which can lead to the dissolution of the lease contract. Like registration, *force majeure* can be a double-edged sword in the sense that it can enable landlords to prematurely terminate a lease, which can exacerbate displacement and contribute to homelessness in crisis contexts. However, on the other hand, it could also enable tenants to relieve themselves of their financial obligations to pay rent under the lease agreement when they have had to flee due to conflict risks. As such, it is recommended that the burden of proof in establishing that conflict impacts truly constituted a *force majeure* event (for example, housing unit was destroyed or severely damaged) should fall upon the landlord.

Lease renewal

Legal systems usually accommodate several different types of lease agreements, ranging from short-term or "temporary" leases (up to one year) to standard length leases (for example, 5–10 years) to life-long leases (for example., 100-year), the latter of which are often found in countries where the state retains bare ownership rights over land. Leases can terminate on the conclusion of their prescribed duration, they can grant one party the option to renew the agreement at the conclusion of the lease duration, or they can be automatically renewed.

Where lease agreements terminate at the conclusion of their prescribed duration, there is no possibility for a renewal; if the parties would like to continue their relationship, they must conclude a new lease agreement.

Lease agreements with the option to renew enable one party to the agreement to exercise the option to renew the contract at the end of its prescribed duration, contingent upon timely notice in advance. Automatically renewing leases refers to those where the lease will be automatically renewed when its prescribed duration is finished, unless either party has indicated that they would not like to renew the lease with sufficient notice. In conflict contexts, however, it may become very difficult to give notice to renew or not renew the lease agreement, as may be the case,

especially if one or both parties have been displaced by conflict impacts. For tenants with optional renewal rights, this is a particularly significant tenure risk. As such, it is recommended that the law include provisions establishing that if a tenant continues to occupy the leased premises at the conclusion of the contract duration, and their occupancy is not challenged by the landlord within a prescribed period (no less than one month), then the lease is automatically renewed under the same conditions as the old lease agreement.

Eviction protections and proportionality

Under landlord-tenant law, evictions are permitted when the tenant has breached the lease agreement by failing to respect their contractual duties. At their most basic, these duties include the obligation to pay timely rent and to preserve the premises. If a tenant persistently fails to pay rent or damages the property without reasonable cause, the law should allow for the landlord to initiate eviction proceedings.

However, in this case the tenant should be entitled to procedural eviction protections. These protections ensure that tenants have an opportunity to be heard before being evicted. This includes mandating that a notice be served on the tenant terminating the tenancy, that there be no eviction unless the court orders it, that the application to court for the eviction must be served on the tenant, and that the tenant be heard by the court before any possession or eviction order is made (UN-Habitat, 2020, p. 7).

The legal duties of tenants can include other obligations, however, such as reporting repairs or maintenance issues, using the premises exclusively for their intended purpose (that is, residential), respecting neighbours and building/condominium regulations, allowing landlord access for prescribed purposes with sufficient notice, avoiding illegal activities on the premises, avoiding causing damage to the premises and adhering to the terms and conditions outlined in the lease.

However, it would be unjust if the isolated infringement of certain tenant obligations, such as breaking a minor building rule (for example, no noise after a certain hour) or paying rent a few days late, could enable a landlord to promptly evict their tenant. In this respect, it is important that the law provide substantive eviction protections that limit both the times at which and reasons for which a tenant may be evicted, as well

as procedural eviction protections that embrace the principle of proportionality.

Substantive eviction protections include mandating that after a notice to quit is sent to a tenant the tenant must continue in possession with all their contractual tenancy rights (now a statutory tenant), until and unless the court orders eviction. Alternatively, they may mandate that a landlord may only recover possession of the property in specific circumstances such as breach of contract by the tenant and place the burden on the landlord to prove the existence of those circumstances. Such provisions must be complemented using proportionality in eviction proceedings.

This refers to the principle that the measures taken to evict a tenant must be balanced and appropriate in relation to the circumstances of the case. This principle ensures that eviction, as a drastic measure, is only used when it is necessary and reasonable, considering various factors such as the tenant's behaviour, the severity of any breaches of the lease, and the potential impact on the tenant and their household.

Rent regulation

Rent regulation is a system of laws controlling rents and tenant evictions aimed at ensuring that rentals are affordable. It is designed to reduce both the incidence and fear of homelessness by setting substantive and procedural guidelines to control increases in rent and eviction of tenants (UN-Habitat, 2020, p. 2). Rent regulation is used to keep rents below the free market or equilibrium price and to prevent the landlord evicting tenants in a bid to circumvent the control. These measures are especially important in the urban context, where housing demand tends to outpace housing supply, creating housing shortages and contributing to widespread housing unaffordability.

Rent control is an especially effective mechanism for protecting security of tenure by preventing a landlord who wants possession of a tenement from drastically raising the rents unilaterally and then evicting a tenant for non-payment. Rent control interventions include freezing rents, setting the maximum rents, or fixing the rate of rent increases to slow down the raising of rents to the equilibrium price. These measures can promote security of tenure for tenants both by promoting overall housing affordability in urban areas, as well as by preventing the occurrence of "substantive" evictions caused by increases in rental prices.

However, such measures must be paired with effective substantive and procedural eviction protections. If rent increases are controlled but evictions are not, then a landlord may evict a tenant to circumvent the rent control and get a new tenant at a higher rent. Effective rent regulation therefore requires rules for eviction protection coupled with rules to control rent (UN-Habitat, 2020, p. 5).

Lagos, Nigeria © Tunde Buremo/ Unsplash

CASE STUDY: FAIR RENT METHOD IN THE LAGOS-NIGERIA TENANCY LAW OF 2011

The Tenancy Law Act of 2011 revised its previous 1948, 1965 and 2007 Rent Acts to regulate rent through the "fair rent" method. This approach does not limit rents by pegging them to a percentage of the property value ("percentage method") or by setting explicit maximum rental prices ("rent controls"); instead, it prohibits "unreasonable" rent increases and relies on the court assessing whether rents are exploitative or not, having regard to the individual premises, comparable premises, the dealings of the parties, and the state of the market. The law also provides both substantive and procedural eviction protections.

Section 37

1. Subject to any agreement to the contrary, an existing tenant may apply as in form TL 11 to the court for an order declaring that the increase in rent payable under a tenancy agreement is unreasonable.

2. In determining whether an increase in the rent is unreasonable, the court shall issue hearing notice as in form TL 12 to the landlord and shall consider the application on the following grounds –

   a. the general level of rents in the locality or a similar locality for comparative analysis;

   b. evidence of witnesses of the parties;

   c. any special circumstances relating to the premises in question or any other relevant matter.

4. If satisfied that the increase in the rent is unreasonable, the court may order as in form TL13 that the increase in the rent be changed to a specific amount.

5. Notwithstanding the provisions of any law, it shall be unlawful for a landlord to eject a tenant from any premises pending the determination of the action.

The fair rental method has the advantage of promoting the principle of proportionality in eviction proceedings, since it allows the court to consider the effects of a rental shortage, any of the prior history of the tenancy or of the parties in what may be fair in a landlord and tenant situation. The fair rent method is also considered more flexible, responsive to changing markets and in keeping with the temporary nature of rent control. However, this approach can limit protection because what is a fair having regard to properties similar in location and repair is not always fair having regard to economic factors such as a stagnant minimum wage, coupled with rising inflation that facilitates rentals at a usurious rate of return on the landlord's investment (UN-Habitat, 2020, pp.28–29).

Hosting agreements

Hosting agreements, also referred to as homestay agreements or house-sharing agreements, are contracts that outline the terms and conditions under which a host provides accommodation to guests. They also provide legal evidence of one's right to occupy a housing unit granted by the property owner. When a friend, family member or partner hosts someone for an extended period, host agreements can be used to establish the guest's domicile (temporary/current address) for administrative purposes (obtaining civil documents, paying taxes, voting registration, etc.). In conflict contexts characterized by substantial internal displacement, hosting agreements can become an important tool for displaced persons to access housing with legally recognized tenure rights.

For this reason, the legal framework should stipulate provisions for concluding and registering hosting agreements. The procedural elements of concluding a hosting agreement should be streamlined and simple, such as the completion of a hosting agreement form containing the full address of the premises, key biographic data of the host and guest, the duration of the hosting agreement (with an option for indefinite hosting agreements) and the signatures of both parties. Such agreements can be immediately effective on their being signed or require registration with a local authority. Registration requirements can strengthen the evidentiary value of host agreements in case of future contestation; however, registration procedures must be simple, effective and cost-efficient.

Social housing

Rent regulations are one way of promoting access to affordable housing in urban areas and enhancing the tenure security of tenants. Social housing presents another avenue to ensuring that adequate housing is accessible to vulnerable groups and those with limited financial resources, including those who lack access to credit. Social housing should provide access to housing at rates that are similar to, if not lower than, those that would be found on the informal land market, in order to explicitly target groups that would otherwise occupy housing with limited security of tenure.

They should also meet the other criteria of adequate housing as elaborated by the Committee on Economic, Social and Cultural Rights, namely they should provide access to services, materials, facilities and infrastructure, be safe and accessible to disadvantaged groups, located near to social services and sources of employment, and culturally appropriate.

There are two broad typologies of social housing: what can be referred to as public housing, and (2) what can be referred to as subsidized social housing. Public housing refers to housing that is developed and administered by public, private or non- or limited- profit entities, cooperatives or a mix of providers, and is provided to eligible households to rent or buy significantly below market rates. To qualify for public housing, households must usually satisfy several criteria – which tend to be based on income levels, citizenship, a household's current housing situation or other household characteristics – intended to ensure that the housing units are allocated to those most in need. Subsidized social housing refers to public measures to subsidize affordable housing development by third party entities (non-profit or private sector) by incentivizing the supply of social (submarket price) housing through, inter alia, grants, tax credits, loans and/or loan guarantees to social housing providers as well as private-public partnerships.

Box 7. **Public housing and subsidized social housing**

Providing public housing[31] is an effective means of increasing access to affordable housing for low-income households, improving living conditions and quality of life, and creating employment opportunities in the construction sector. Additionally, this approach can stimulate economic growth by creating a multiplier effect on local economies. However, there are limitations to this housing solution, including limited availability of public funds, long construction times, inadequate maintenance and management of public housing facilities, corruption risks and limited choice for residents in terms of location and design.

[31] Public housing refers to housing that is developed and administered by public, private or non- or limited-profit entities, cooperatives or a mix of providers, and is provided to eligible households to rent or buy significantly below market rent.

Also, demand for public housing tends to largely exceed its supply with the result that qualifying households are often on waiting lists for years before they benefit from the policy, if at all. Additionally, public housing in certain areas has been associated with negative externalities related to crime, substance abuse and educational achievement. Despite these limitations, public housing provision can be an effective tool for providing affordable housing to target groups and increasing their security of tenure. Legal frameworks that support the proper planning, implementation, and monitoring can help maximize the benefits of this approach while minimizing its limitations (Hilber and Shöni, 2022).

Subsidized social housing[32] has several advantages when compared to the direct provision of public housing, namely in that it does not have the same funding and scaling limitations that public housing projects tend to have. Measures promoting subsidized social housing supply can help address the shortage of affordable homes in regions with high housing prices, and provide access to safe and decent housing, improving the overall quality of life for low-income families. However, subsidized social housing developed through private markets and market actors also poses risks and limitations. Namely, subsidized housing costs must carry over into the final price of the housing unit or rent to ensure that the measures effectively promote affordability. It can also be difficult for governments to subsidize housing prices from the supply side enough to ensure that housing is affordable to the most low-income and vulnerable segments of the population (UN-Habitat, 2008). It is recommended that social housing legislation make provisions for both types of social housing to maximize their respective advantages and balance out their disadvantages. Criteria to apply for social housing allocation should be sufficiently narrow and targeted to ensure that the groups most in need of housing are prioritized and to minimize bottlenecks in housing allocation processes due to excessive demand. However, these provisions must also be sure to avoid directly or indirectly discriminating against certain groups, which can contribute to conflict risks such as politics of exclusion. Social housing facilities with a socioeconomically diverse group of residents have been shown to promote inclusion and social cohesion, which significantly mitigate conflict risks. Social housing that exclusively targets low-income groups, on the other hand, has often contributed to social marginalization and been associated with negative externalities related to crime, substance abuse and educational achievement.

[32] Subsidized social housing refers to public measures to subsidize affordable housing development by third party entities (non-profit or private sector) by incentivizing the supply of social (submarket price) housing through, inter alia, grants, tax credits, loans and/or loan guarantees to social housing providers, as well as private-public partnerships. Source: OECD (2020). Social housing: A key part of past and future housing policy. Employment, Labour and Social Affairs Policy Briefs. http://oe.cd/social-housing-2020.

This social stigma can be as strong as, if not stronger than, the marginalization experienced in certain informal settlements, or "slums", since the latter have the benefit of typically producing strong social and community networks. As such, it is critical that social housing law and policy in urban areas be both targeted and inclusive.

Social housing legislation must also provide clear, registrable tenure rights. Social housing residents should have access to documentary evidence of their tenure rights, benefit from substantive and procedural eviction protections, and their rights should be registered in a dedicated social housing registry that is integrated with the general land registry and land information system.

Minha Casa, Minha Vida em Eunápolis © Manu Dias/SECOM

CASE STUDY: PROGRAMA MINHA CASA MINHA VIDA (PMCMV) IN BRAZIL (BIDERAN ET AL, 2018)

The *Programa Minha Casa Minha Vida* ("My House My Life") was created in 2009 with the enactment of Federal Law number 11.977 and has been the largest housing programme ever implemented in Brazil. The goal of the programme was to create financial mechanisms, namely federally funded subsidies and tax incentives, to encourage the production or renovation of housing units by private contractors to be sold to households with a monthly income of up to 5,000 Brazilian reais (US$2,300).

The programme has played an important role filling the Brazilian social housing gap. Subsidies are very high, enabling the supply of social housing to the lower-income segment of the population.

The programme accepts families with a monthly income of up to ten minimum wages, which are distributed in three brackets (faixas). Bracket 1 (Faixa 1) accepts families with household income up to three minimum wages, and in Phase 2 of the programme the price ceiling per unit varies from 54,000 to 76,000 Brazilian reais (US$17,000 to US$23,000) depending on the location of the development. Faixa 2 accepts families with a total income of between three and six minimum wages; and Faixa 3 accepts families with a total income between six and ten minimum wages. Among these beneficiaries, priority is given to homeless families, those living in unhealthy or at- risk conditions, female-headed households, and people with physical disabilities.

However, the programme has faced challenges with respect to social inclusion due to the peripheral locations of the projects. These locations are typically associated with poor urban integration and are inadequately served by basic infrastructure such as public transit and public utilities. The distance of projects from jobs and education facilities has a significant impact on intra-urban mobility, among several other costly consequences, such as the lack of health facilities, parks, libraries, shops and other essential social and economic goods and services. Across the country projects have been located outside the urban areas or on the fringe of cities, failing to take advantage of the vacant land inside the urban area already served with public facilities, public transport and other amenities. Moreover, the private retention of empty and idle land in areas with infrastructure aggravates the scenario, imposing even higher costs for the access of urban land. In sum, the poor location of the projects may induce an inequality of opportunities to the residents.

Conclusion

While there is much literature on law and policy related to HLP in post-conflict contexts, relatively little attention has been given to addressing tenure security as an essential component of conflict prevention and HLP risk mitigation. HLP issues arise in conflict contexts, but many of the challenges surrounding these issues, such as return, restitution, adjudication and dispute-resolution, can be traced back to tenure insecurity caused by poor governance, chaotic urbanization, weak land administration and inadequate housing law and policy. HLP rights in the urban context are often particularly complicated, and urban law has the potential to mitigate the conditions that lead to both conflict and HLP issues by reinforcing the tenure security of urban populations through accountable, inclusive and responsive urban governance, spatial planning, land administration and housing law and policy. As the first publication in the "Urban Law and Conflict Series", this report has examined how urban law can be reformed to prevent conflict and mitigate the adverse impacts of conflict on HLP rights.

The first section of the report considers the role of urban governance in conflict prevention and HLP mitigation. Urban governance contributes to conflict prevention when decision-making in local administration reflects the will of the local population without discrimination or exclusion of any identity group; for this reason, urban law should support decentralized, multilevel governance frameworks with proportional representation systems and substantial opportunities for civil society participation. Additionally, urban governance promotes peace and stability when local administrations efficiently, transparently and inclusively fulfil their functions, such as the provision of public goods and services (infrastructure, utilities, etc.). In this respect, legal provisions for the clear identification and separation of administrative roles and responsibilities, the digitalization of governance processes and services, as well as the capacity-building of local administration bodies is essential, particularly with respect to the management of natural resources surrounding urban areas such as land and water sources.

The second section of the report highlights how spatial planning law can significantly influence security of tenure in urban areas and mitigate issues related to chaotic urbanization and population pressure,

which have been identified as land-related, root causes of conflict. Urban law does this by fostering spatial planning processes that result in sustainable land uses, recognize existing tenure rights and make sufficient land available for the provision of housing and infrastructure, thus reducing the need for urban populations to resort to informal tenure in slums and informal settlements. Legal provisions for conflict-sensitive and tenure-responsive spatial planning will require data collection as well as risk and impact assessments related to land tenure and resource use that are gender-sensitive; they will establish a planning process that is cyclical and iterative so that it can dynamically respond to changing conditions, including tension and conflict; and they will ensure that public participation mechanisms are inclusive, effective and empowering, requiring information sharing and consultations that influence the outcomes of the planning process.

They should also include provisions for monitoring, evaluating and reissuing urban plans, as well as for just and proportionate sanctions and enforcement mechanisms to prevent the development of insecure and unsafe housing arrangements.

Furthermore, urban law should address the issue of "regulatory takings", whereby legitimate rightsholders are compensated for new land-use designations or zoning restrictions that reduce the usefulness or value of the affected land under certain circumstances.

The third section of the report discusses how the legal framework should establish land administration systems that can adapt to conditions in the urban sphere, particularly the unique tenure rights that exist in cities and urbanizing areas, and that are resilient to the impacts of conflict, since these systems and their corresponding institutions are especially critical to protecting HLP rights during emergency contexts and post-conflict recovery and reconstruction.

Land administration systems must be fit-for-purpose, which entails a more flexible, efficient, inclusive and adaptable approach to managing urban land. To adopt the fit-for-purpose approach, the law should entail a call for the recordation and registration of rights through administrative – as opposed to judicial – processes; it should recognize legitimate forms of tenure across the continuum of land rights; it should allow for the incremental upgrading of less formal rights to more formal titles; it should make land adjudication processes inclusive

and “pro-poor”; and it should strengthen women’s tenure rights, first and foremost by repealing any discriminatory legislation and outlawing discriminatory practices in the allocation of land rights to women, minorities, and other disadvantaged groups. Land administration law should seek to reconcile formal and customary dispute resolution mechanisms by acknowledging the value of community-based knowledge and making formal mechanisms accessible for all groups in society, especially marginalized groups and women. To foster transparency and public trust in land rights, access to land information should be guaranteed by law, for example through freedom of information laws or provisions, to the extent that it does not infringe individuals’ right to privacy or undermine a valid government use (for example, military/defence). To mitigate conflict risks related to the loss and damage of cadastral records and property documents, the law should require the continual maintenance and updating of land registries as well as the duplication and, where possible, digitalization, of land records. Finally, land issues that become flashpoints during and following conflict, such as compulsory acquisition and adverse possession, must be regulated to protect legitimate rightsholders across the continuum of land rights against forced evictions and homelessness.

In the final chapter of the report, housing law is examined as a key issue for strengthening the tenure security of urban populations and thereby contributing to conflict prevention and the mitigation of adverse HLP impacts. Urban laws and policies must seek to increase access to affordable housing and honour every person’s right to an adequate standard of living in line with international law by enshrining the constitutional right to housing, developing a participatory and coordinated national housing strategy, and adopting a harmonized, rights-based approach to evictions that provides both procedural and substantive protections to affected persons. To mitigate conflict risks related to renting housing arrangements, the law should protect against the unintended expiration of lease agreements due to notification challenges in conflict contexts, the use of *force majeure* clauses to prematurely end lease agreements, and the absence of public records attesting to rental rights or the lack of formal hosting agreements. With respect to the latter, the law should stipulate provisions for concluding and registering hosting agreements, which can serve as a critical tool for providing security of tenure to displaced persons in emergency contexts. Rent controls, which can eventually be adjusted in emergency contexts, and social housing should be established by law to increase tenure security by making

more affordable housing available on the formal land and housing market.

As seen, urban law can function as a double-edged sword: it can exclude certain segments of the population, incentivize informal development, promote tenure insecurity for the marginalized, and create land administration and management procedures that are too cumbersome to be adhered to in practice.

On the other hand, urban law can serve as a critical tool for conflict prevention and the mitigation of HLP risks through urban management bodies and processes that recognize a diversity of tenure types, promote public participation in urban development processes, increase access to housing that is adequate and affordable, and establish safeguards pre-emptively protecting the HLP rights of those displaced or otherwise affected by conflict.

More specifically, the following are common elements of HLP-sensitive urban law for conflict prevention: the adoption of a human rights-based approach and objectives; proportionality and the balancing of competing interests; context-specificity and incremental capacity-building; gender-sensitivity and social inclusion; conflict-sensitivity; integrated decision-making and multilevel coordination; inclusive, transparent and participatory processes; adaptation to the continuum of land rights; effective governance and due process; and access to independent appeal and dispute-resolution mechanisms. Urban law frameworks that are aligned with these approaches and objectives will be better equipped to promote security of land tenure, reduce the likelihood of land being a root cause of conflict, and mitigate any potential impacts of conflict on HLP rights.

References

Azuela, Antonio (2007). ***Taking Land Around the World: International Trends in the Expropriation for Urban and Infrastructure Projects*.** Cambridge: Lincoln Institute of Land Policy.

Chigbu, Uchendu Eugene; Masum, Fahira; Leitmeier, Anna; Mabikke, Samuel; Antonio, Danilo; Espinoza, Jorge; and Hernig, Anita (2015). ***Securing tenure through Land-Use Planning: Conceptual framework evidences and experiences from selected countries in Africa, Asia and Latin America*.** Washington D.C.: World Bank Conference on Land and Poverty.

Bideran, Ciro; Hiromoto, Martha H.; Ramos, Frederico R. (2018). ***The Brazilian Housing Program Minha Casa Minha Vida: Effect on Urban Sprawl***. Washington D.C.: Lincoln Institute of Land Policy.

Deutsche Gesellschaft für Internationale Zusammenarbeit (2011). ***Land-Use Planning: Concept, Tools and Applications***. Eschborn.

__________ (2022). ***Digital Governance for Recover Forward***. Bonn.

Food and Agriculture Organization of the United Nations (2003). "**Chapter 4: Land information systems: Services and tools of public administration**", in the ***Multilingual Thesaurus on Land Tenure***. Rome.

__________ (2008). ***Compulsory acquisition of land and compensation*** (Land Tenure Studies No. 10). Rome.

__________ (2012). ***Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.** Rome.

__________ (2020). ***Framework for Integrated Land Use Planning: An innovative approach***. Rome.

FAO/United Nations Environment Programme (2020). ***Legislative approaches to sustainable agriculture and natural resources governance***. FAO Legislative Study No. 114. www.unep.org/resources/publication/legislative-approaches-sustainable-agriculture-and-natural-resources.

Government of the Republic of Korea, ***Local Finance Act*** of 2005 (last amend. 2021), https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=55630&type=sogan&key=15.

Guilherme, Recena Costa (2023). "Compensation for Lawful Expropriation." *Jus Mundi* [online].

Haub, Olaf (2009). ***Understanding of Land-Use Planning and Its Relevance in Namibia.*** Namibia Land Management Series No. 1. Windhoek: Ministry of Lands and Resettlement (Namibia) and Namibia Institute for Democracy. http://specialcollections.nust.na:8080/greenstone3/halftone-library/sites/localsite/collect/landconf/index/assoc/HASHe6fa.dir/understanding_land_used_planning_relevance_namibia.pdf.

Hilber, C. and Schöni, O. (2022). ***Housing policy and affordable housing***. London: London School of Economics and Political Science Centre for Economic Performance.

Human Rights Council (A/HRC/47/37). www.ohchr.org/en/documents/thematic-reports/ahrc4737-housing-land-and-property-issues-context-internal-displacement.

International Bank for Reconstruction and Development/World Bank (2004). "Appendix 1: World Bank Involuntary Resettlement Policy, OP/BP 4.12," in ***Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects***. Washington D.C.

International Bank for Reconstruction and Development/World Bank Inspection Panel (2016). ***Involuntary Resettlement***. Emerging Lessons Series No. 1. Washington D.C.

International Federation of Surveyors / World Bank (2014). ***Fit-For-Purpose Land Administration***. FIG Publication No. 60. Copenhagen: FIG.

International Finance Corporation (2002). ***Handbook for Preparing a Resettlement Action Plan***. IFC: Washington D.C.

International Fund for Agricultural Development (2014). ***How to do participatory land-use planning***. Rome.

Leckie, Scott (2005). ***Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework.***

Lindsay, Jonathan Mills (2012). *Compulsory Acquisition of Land and Compensation in Infrastructure Projects.* Washington D.C.: World Bank.

Miceli, Thomas J. and Segerson, Kathleen (2014). "Regulatory Takings," in *The Oxford Handbook of Land Economics*. Oxford: OUP.

Namibia Ministry of Land Reform (MLR)/Deutsche Gesellschaft für Internationale Zusammenarbeit /Legal Assistance Centre (2016). *Guide to Namibia's Flexible Land Tenure Act, 2012 (Act No. 4 of 2012)*. Namibia Ministry of Land Reform (Directorate of Land Reform and Resettlement). Windhoek.

No, Won (2018). *Redistribution and Deliberation in Mandated Participatory Governance: The Case of Participatory Budgeting in Seoul, South Korea.* https://core.ac.uk/download/pdf/158456882.pdf.

Norwegian Refugee Council/International Federation of Red Cross and Red Crescent Societies (2016). *The Importance of addressing Housing, Land and Property (HLP) Challenges in Humanitarian Response*. NRC / IFRC: Oslo/Geneva.

Organization for Economic Cooperation and Development (2020). *Social housing: A key part of past and future housing policy*. Employment, Labour and Social Affairs Policy Briefs. Paris.

Office of the United Nations High Commissioner for Human Rights (2007). *Basic principles and guidelines on development-based evictions and displacement*. A/HRC/4/18.

__________ (2007). *Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles'*. OHCHR: Geneva.

Office of the United Nations High Commissioner for Human Rights / United Nations Human Settlement Programme (2002). *The Right to Adequate Housing: Factsheet No. 21, Rev. 1*. OHCHR: Geneva.

Office of the United Nations High Commissioner for Human Rights and United Nations Entity for Gender Equality and the Empowerment of Women (2020). *Realizing Women's Rights to Land and Other Productive Resources*. OHCHR/UN-Women: Geneva/New York.

Rimantas, Daujotas (2023). "Prompt, Adequate and Effective Compensation." *Jus Mundi* [online].

Scalise, Elisa and Giovarelli, Renee (2020). *What Works for Women's Land and Property Rights? What we know and what we need to know.* Resource Equity.

Special Rapporteur C. Jimenez-Damary (2021). ***Housing, land and property issues in the context of internal displacement***. Human Rights Council (A/HRC/47/37). United National General Assembly: New York.

Thomas J. Miceli and Kathleen Segerson (2014). "Regulatory Takings," in *The Oxford Handbook of Land Economics.*

United Nations (2017). *New Urban Agenda*. Habitat III Secretariat. https://habitat3.org/wp-content/uploads/NUA-English.pdf.

__________ (2018). *United Nations E-Government Survey 2018: Gearing E-Government to Support Transformation towards Sustainable and Resilient Societies*. New York: United Nations Department for Economic and Social Affairs.

__________ (2019). *Guidance Note of the Secretary-General: The United Nations and Land and Conflict*. https://unhabitat.org/sites/default/files/documents/sg-guidance-note-on-land-and-conflict-march-2019-1.pdf.

United Nations Department for Economic and Social Affairs (2018). *United Nations E-Government Survey 2018: Gearing E-Government to Support Transformation towards Sustainable and Resilient Societies*. New York.

United Nations Development Programme (2009). *Governance in Conflict Prevention and Recovery: A Guidance Note.* New York.

__________ (2012). *Strengthening Capacity for Conflict-Sensitive Natural Resource Management.* https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_Capacity.pdf.

__________ (2023). *A Shared Vision for Technology and Governance.* New York.

United Nations, Economic Commission for Europe (1996). *Land Administration Guidelines: With Special Reference to Countries in Transition*. Geneva.

United Nations, Economic Commission for Latin America and the Caribbean. "Urban Planning System of Argentina." Urban Cities Platform of Latin America and the Caribbean. CEPAL [online].

United Nations High Commissioner for Refugees/Leckie (2005). *Housing, Land and Property Rights in Post-Conflict Societies: Proposals for a New United Nations*

Institutional and Policy Framework. Geneva.

United Nations Committee on Economic, Social and Cultural Rights (1991). *General Comment No. 4 on the Right to Adequate Housing*. Geneva.

__________ (1997). *General Comment No. 7 on Forced Evictions*. Geneva.

United Nations Human Settlements Programme (UN-Habitat). "Urban Legislation: What is Urban Law?" [online].

__________ (2003). *Handbook on Best Practices, Security of Tenure and Access to Land: Implementation of the Habitat Agenda*. Nairobi.

__________ (2004). *Pro-Poor Land Management: Integrating Slums into City Planning Approaches*. Nairobi.

__________ (2004). *72 Frequently Asked Questions about Participatory Budgeting*. Nairobi.

__________ (2006). *Women's Equal Rights to Housing, Land and Property in International Law*. Nairobi. https://unhabitat.org/sites/default/files/download-manager-files/Women's equal rights to housing, land and property in international law.pdf.

__________ (2007). *How to Develop a Pro-poor Land Policy*. Nairobi.

__________ (2007a). *A Post-Conflict Land Administration and Peace-Building Handbook: Series 1: Countries with land records*. Nairobi.

__________ (2008). *Quick Guides for Policy Makers: Housing the Poor in Asian Cities. 2: Low-Income Housing. Approaches to help the urban poor find adequate accommodation*. Nairobi.

__________ (2009). *International Guidelines on Decentralization and Access to Basic Services for All*. Nairobi.

__________ (2012). *Gender Issue Guide: Housing and Slum Upgrading*. Nairobi.

__________ (2015). *Issue Paper on Urban Rules and Legislation*. Habitat III, Issue Paper 5.

__________ (2015a). *Mapping the Legal Framework Governing Urban Development in Egypt*. Nairobi.

__________ (2009). *International Guidelines on Urban and Territorial Planning*. Nairobi.

__________ (2017). *New Urban Agenda*. Habitat III Secretariat.

__________ (2018). *International Guidelines on Urban and Territorial Planning Handbook*. https://unhabitat.org/sites/default/files/international_guidelines_on_urban_and_territorial_planning_handbook.pdf.

__________ (2018). *Planning Law Assessment Framework*. https://unhabitat.org/sites/default/files/PlanningLawAssessmentFramework.pdf.

__________ (2020). *Rent Regulations in Kenya, Lagos-Nigeria, Botswana and South Africa: A Comparative Analysis.* Nairobi.

___________ (2020a). *Egypt Housing Strategy*. Nairobi.

__________ (2022). *World Cities Report*. Nairobi.

__________ (2023). *Enabling Meaningful Public Participation in Spatial Planning Process*. Nairobi.

United Nations Human Settlements Programme/Global Land Tool Network (2008). *Secure Land Rights for All*. Nairobi.

__________ (2010). *Count Me In: Surveying for tenure security and urban land management*. Nairobi.

__________ (2011). *Monitoring Security of Tenure in Cities: People, land and policies*. Nairobi.

__________ (2012). *Sustaining Urban Land Information: A Framework Based on Experiences in Post-Conflict and Developing Countries*. Nairobi.

__________ (2012a). *Handling Land: Innovative tools for land governance and secure tenure*. Nairobi.

__________ (2012b). *Managing Urban Land Information: Learning from emergent practices*. Nairobi.

__________ (2016). *Tenure Responsive Land Use Planning*. Nairobi.

UN-Habitat/GLTN (2016a). *Fit-for-Purpose Land Administration: Guiding Principles for Country Implementation*

UN-Habitat/GLTN (2016b). *Framework for Evaluating Continuum of Land Rights Scenarios*. *https://gltn.net/download/framework-for-evaluating-continuum-of-land-rights-scenarios/?wpdmdl=8110&refresh=66b0b217c9fc71722855959*

__________ (2017). *How To Do a Root Cause Analysis of Land and Conflict for Peace Building*. Policy Brief. Nairobi.

__________ (2018). *Land and Conflict: Lessons from the field on Conflict Sensitive Land Governance and Peacebuilding*. Nairobi.

__________ (2019). *Designing and Implementing a Pro-Poor Land Recordation System*. Nairobi.

__________ (2024). *Women, Land and Peace. Training Guided to Advance Women's Housing Land and Property Rights in Fragile Contexts.* https://unhabitat.org/women-land-and-peace-training-guide-to-advance-womens-housing-land-and-property-rights-in-fragile-contexts.

United Nations Office for Disaster Risk Reduction (2015). *Sendai Framework for Disaster Risk Reduction (2015-2030).* Geneva.

United Nations Task Team on Habitat III. https://habitat3.org/wp-content/uploads/Habitat-III-Issue-Paper-5_Urban-Rules-and-Legislation-2.0.pdf.

United Nations/World Bank Group (2018). *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict*. IBRD: Washington D.C.

Unruh, John D. (2004). *Post-conflict land tenure: Using a Sustainable Livelihoods Approach*. FAO LSP Working Paper 18. https://www.fao.org/4/j4175e/J4175E.htm.

Urban Policy Platform. "Governance". https://urbanpolicyplatform.org/governance/.

World Bank/IBRD (2016). Appendix 1: World Bank Involuntary Resettlement Policy, OP/BP 4.12, in *Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects*.

As the world continues to urbanize, cities face greater challenges in responding to humanitarian crises and achieving sustainable post-conflict development that upholds everyone's right to adequate housing. The impacts of conflict are increasingly being experienced in urban areas around the world – as seen in modern crises such as those in Ukraine, the Gaza Strip, Yemen and Syria – putting the housing, land and property (HLP) rights of civilians at risk.

HLP issues arise in conflict contexts, but many of the challenges surrounding these issues, such as return, restitution, adjudication and dispute-resolution, can be traced back to tenure insecurity caused by poor governance, chaotic urbanization, weak land administration and inadequate housing law and policy. For this reason, urban law has a critical role to play in preventing conflicts and their collateral impacts on people's access to their HLP. In establishing the legal frameworks for the governance, management and development of urban areas, urban law can strengthen tenure security and reduce the likelihood of land being a root cause or trigger of conflict.

As the first publication in the "Urban Law and Conflict Series", this report examines how urban law can support accountable, inclusive and responsive urban governance, spatial planning, land administration and housing law and policy to prevent conflict and mitigate the adverse impacts of conflict on HLP rights.

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