Land reform and local governance in national dialogue processes

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This paper explores land issues in national dialogue processes through the case studies of Myanmar and Syria. In both countries land is a major issue contributing to conflict but can also be an entry point for dialogue. Understanding the specific nature of these land conflicts is a vital step in their eventual resolution. Although land is a central and obvious conflict issue, land conflicts in Myanmar and Syria disguise other societal conflicts. They are just the visible part of a more serious conflict which is rooted much deeper in the society and its history. Land conflicts reflect the general inequality or unfair distribution of wealth, voice and power in a society and/or the discrimination against certain groups, such as women or ethnic minorities. The paper argues the importance of developing a systemic approach of synchronising different levels of land related initiatives. An appropriate level of detail regarding land and other resources should be included in the national dialogue process and eventual peace agreements. To support this, the possibilities of existing legal framework should be fully utilised, thought put into creating new legislation where necessary, and local reconciliation infrastructures should be developed.

1 Introduction – importance of addressing land conflicts in national dialogue processes

A variety of global trends have led to a heightened awareness of land issues at the international level. Population growth is placing rising demands on arable land, water and other natural resources and environmental degradation, exacerbated by climate change. Furthermore, with increasing globalization of economies, a number of factors drive the global land rush. These include the fear of food insecurity especially after the global food price spike in 2007; the volatility of fuel prices; the creation of industrial zones; new environmental imperatives based on the carbon trade; and the financialisation of land to hedge against risky investments. Competition between users and land-uses increasingly results in confrontation and, at times, in violent conflict.[1]

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[1] UNDP 2011, 14.

When land governance and market institutions are weak, opportunities for economic gain through corrupt and illegal action can become widespread, as more people lose access to land on which they depend for their livelihoods. As greater numbers of people are left with fewer options to lead dignified lives, they may choose to engage in advocacy or extreme politics. Throughout history and around the world, many social upheavals have been related to discontent around the management of land. Land conflicts often have extensive negative effects on political, economic, social, and ecological development. When evictions and land grabbing become prevalent, people lose confidence in the state and social capital breaks down[2]. Land conflicts affect different groups in different ways. Not only do they generally have a stronger impact on the livelihood of the poor than that of the rich, but they also impact differently on men and women, urban and rural populations, ethnic majority and minority groups.

The changing character of violent conflict manifests also through land issues. Civilians now represent some 80 percent of conflict-related casualties. In many cases there is a dramatic increase especially in woman-headed households, many of who face challenges accessing or inheriting land. The illicit export of high-value natural resources such as diamonds, timber, and coltan has become a way of financing conflicts. Many protracted intra-state conflicts can continue for decades, resulting in multiple waves of population displacements and returns. Violations of housing, land and property rights (HLP), as well as international calls to restore HLP rights through restitution, are increasingly common.[3] As we see in Syria for example, displacement-induced urbanization is a common tactic in modern conflict, serving to consolidate territorial control while simultaneously straining state and international resources to cope with a huge influx of Internally Displaced Persons (IDPs).

In Syria and Myanmar land is closely tied to conflict in many ways, both directly and indirectly. Myanmar is a fragile state undergoing a period of profound economic and political reform following a period of conflict and isolation. As the poorest country in South Asia, land is the main asset for many people, especially in rural areas where most of Myanmar's population lives. However, most farmers have weak tenure security, and in the recent past have been exposed to land expropriation by the Burmese army and other state institutions of a military dictatorship. Additionally, in conflict-affected ethnic states, the strategy of government forces and non-state armed groups to finance military operations by leasing land to investors has led to land grabbing on both sides.[4] Because of these factors, land is a priority topic on the agenda of the Political Dialogue process at the national level. Land issues are also debated within the ethnic-state based dialogues.

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[2] Wehrmann 2008, 1.
[3] Ibid.
[4] Henley 2014, ii.

Syria's ongoing civil war is a result of complex interrelated factors, including religious and socio-political tensions, the erosion of the economic health of the country, and a wave of political reform sweeping over the Middle East, North Africa and Levant regions. Water scarcity and climatic conditions and their impact on land have played an important role in the deterioration of Syria's economic conditions and urban – rural dynamics. The war has caused massive displacement of people and issues such as displaced individuals' living conditions; illegal and undocumented HLP transactions; HLP disputes; access to land for livelihoods; land contamination with landmines; and lack of personal identification and HLP documentation need to be considered. In addition, displaced women are facing particular barriers in accessing their HLP rights. The peace process in Syria has so far been fixated around issues related to political transition and power sharing. Very little effort has gone into mapping the magnitude of the HLP problem and the way it may affect the peace process. However, one can discern several levels of concern that should be addressed even before a political deal is reached.

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That land is linked to conflicts, and so to peace processes, is generally accepted by scholars, policy makers and activists across ideological divides. But how land policies, violent conflicts and peace processes are linked, and how to position land policies within peace processes has not generated consensus.

Despite the reality on land conflicts, governments and the international community have in the past been ineffective in developing systematic and effective strategies to address land grievances and conflicts. Land is seen as too politically sensitive or too technically complicated to lend itself to meaningful resolution. As experience has demonstrated, this is a mistake.[5] Recent studies have shown that conflicts associated with natural resources are twice as likely to relapse into conflict within the first five years after the end of hostilities.[6]

To try to address this gap, many guidelines for how to address land issues in mediation and peacebuilding have been developed.[7] Land issues have often been included in peace negotiations and agreements. However, the focus of negotiators tends to be on the broader issues of disarmament, elections and constitution-making. The implementation mechanisms related to land issues are often left rather vague. As a result, experience suggests, land-related clauses may go unimplemented.[8]

Stakeholders, practitioners and technical advisers in both Myanmar and Syria are currently thinking how to address the immediate land issues as well as how land issues are negotiated in

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[5] UNDP 2011, 14.
[6] UNEP 2009, 11.
[7] See for example Wehrmann 2008; UNDP 2011; DPA & UNEP 2015.
[8] UNDP 2011, 9.

the framework of the overall national dialogue process. The following two chapters provide an overview of the current land-related debates in Myanmar and Syria and explore ways for how existing legal frameworks can be used to address the land issue and how the strengthening of local government structures and inclusive processes could be supported to manage diverging interests and competing claims.

2 Land Reform and Ethnic Politics in Myanmar

2.1 Land across Multiple Regimes

The current system of land governance in Myanmar is very much influenced by the system put into place during the colonial era (1824-1948)[9]. England, after it seized control of Lower Burma in 1855, used the Burman rice plantations to feed workers in plantations in India, in tea and rubber plantations of Ceylon (Sri Lanka) and Malaya (Malaysia), and in the sugar plantations of the West Indies[10] as well as its own industrial workers. The need to rationalize the rice and taxes to be extracted from Burman farmers served as the impetus for the introduction of a system to assess individual land holdings and to introduce the idea of an "individual landholder's right"[11]. As the precursor to the cadastral maps, the British administrators introduced a scheme in which "the land of every cultivator was to be measured up, and he was to receive a statement showing that he possessed so many fields and so much garden land".[12]

On 30th April 1962, right after a military coup, General Nay Win declared a policy called the "Burmese Way to Socialism," which articulated the three central concepts to the leadership: "nationalism, socialism and Buddhism"[13]. Under this declaration, the military government headed by the Burma Socialist Program Party, the only party to exist from 1962 to 1988, passed a series of laws[14] that initially sought to promote smallholder farmers and to undo the growing concentration of land in the hands of *chettiar* moneylenders from Madras India. At this time, important laws such as the Land Nationalization Act (1953) gave the state ultimate rights to the land while the Tenancy Law (1963) defined farmers as tenants on state-owned land. In addition, the Farmer's Rights Protection Law of 1963 which was enacted to prevent confiscation of land by civil courts in the event of debt-defaulting farmers. Nevertheless, the state remained the sole landlord to tenant farmers who cultivated crops in accordance with the state economic plan, without allowing freedom of crop choice.

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[9] Burmese kings, who owned all land, also extracted surpluses from farmers who were allowed tenancy rights to the land through cultivation. Even during the reign of kings, an informal land market was already developed in many areas. For more information, see Mark 2015, 3.
[10] Wolf 1982, 319-20.
[11] Furnivall 1991 [1939], 116-31.
[12] ibid: 124.
[13] Steinberg 1982, 76.
[14] Hudson-Rodd et al. 2003.

Starting in 1974, the military heavily extracted surplus from farmers both in terms of land confiscations and forced paddy procurement[15]. Farmers had to sell a quota of their paddy at minimal prices to the government, which then used it to feed civil servants, soldiers and to gain export earnings—contributing greatly to the decline of the sector. In reaction to this, with the official declaration of a transition to a "market economy," the State Law and Order Restoration Council (SLORC)[16] created a new policy in 1991 to promote private investment in agriculture production, called the Vacant, Fallow and Virgin Land Instructions, or "Wasteland Instructions.[17]" The titling-focused land tenure reform initiated by the Government of Myanmar (GoM) in 2012, with the passage of the Farmland Law and Vacant, Fallow, Virgin Land Management Law ('VFV Land Law'), continues the legacy of the colonial state when it first started surveying individual land holdings.

2.2 Land issues in Myanmar's political transition and peace process

Land ownership, access, allocation and use are at the heart of many of Myanmar's political and economic contests, such as:

- Land has been a significant focus of public debate and social mobilization following Myanmar's 2011 transition. Past and recent land acquisition and land grabs have been and continue to be a significant source of grievance against the state, the military, "crony" businesses, and some non-state armed groups.
- Recent changes in land policy and administration not only brings the possibility of securing land tenure for the country's cultivators, but it also informs the allocation of extractive resources such as timber, minerals, oil, gas, and water.
- As Myanmar's economy has opened up, land markets have attracted significant domestic and foreign investment. While this may contribute to economic growth, it has also driven up land prices and risks triggering further land confiscations.
- Control over land and land- based natural resources has been at the center of many of Myanmar's long-running conflicts between the central government and ethnic minority groups.
- For many in upland communities, customary land and resource rights remain significant not just as a source of livelihood, but also as a source of social, cultural and political identity. These de facto 'customary' tenure systems govern local use and access, but are only beginning to be recognized by Myanmar's de jure land tenure regime i.e. the draft National Land Policy.

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[15] ibid.

[16] This was the name of the military state from 1988 to 1997, headed by General Than Shwe. (Saw Maung 88-92)

[17] Mark 2015, 5.

In 2012, marking a new phase of titling-based land governance reform, the GoM passed the two new, above mentioned, land laws. These laws are intended to strengthen Myanmar's formal land administration system through the issuance of land use certificates (LUCs), thereby creating a land market. To address a highly fragmented legal regulatory framework governing land, the Government adopted a new National Land Use Policy in January 2016. This policy aims to provide a broad framework for governing Myanmar's land use, land tenure and land administration. While generally considered progressive, it has not yet been translated into law.

These changes in land governance coincide with an intense period in which the central government is negotiating a national ceasefire and has entered into a political dialogue between the central government/military and ethnic armed groups (EAGs), as well as civil society. Land plays a central role in Myanmar's long running armed conflicts and its prospects for peace. Many EAG's desire for more localized control over territory from the military government contributed to conflicts in the first place.

Land features prominently in the peace process and subsequent political dialogue between government and ethnic armed and political groups. Restitution for past land grabs, resettling refugees and IDPs, recognition for local customary land rights, devolved authority to allocate land and to collect land and resource revenues and to have a say in large scale land-based investments will all likely be at the centre of the negotiations. In this context, getting land governance right matters not just for economic growth and poverty reduction; it matters for laying the foundations for lasting peace, for creating the space for constructive political dialogue and for restoring legitimacy and trust in government.

2.3 Different Dimensions of the Land Issue

There are different but related dimensions of the land issue, including:

Land Titling: The 2012 Farmland Law sets out a new framework for the governance of farmland. The Farmland Law creates private use-rights to sell, exchange, access credit, inherit and lease land. In a significant break with past legislation, the Farmland Law develops a legal market for farmland. While the GoM claims to have titled farmers in all states and regions, the certification process, however, has yet to make much progress in some parts of Myanmar—particularly highland and conflict-affected areas. In these areas, farmers land is administrated by armed groups such as the KNU or to rely on informal systems to access land. Given the government's limited capacity, use of out-dated maps, and corruption, the quality and fairness of the certification process appears to be inconsistent.

Customary Land: Neither the 2008 Constitution nor any of the land laws provide legal protection for customary communal land practices (e.g. *damaucha, miyopalai*)—even though these were legally recognized in the colonial era. In *Scheduled Areas* under the colonial administration, the British provided political and administrative authority and land to traditional headmen in exchange for their loyalty. Even after the passage of new land laws in 2012, most

ethnic minority communities still follow customary laws for land. There are comprehensive customary land tenure systems in many ethnic minority states. In such systems, there is a variety of land categories: forests, rotational fallow, individual plots, sacred spaces, community plots, to grow animal fodder, to mitigate against disasters, etc. Ethnic armed groups prioritize recognition of customary land in the national dialogue.

Land Confiscations: Large land concessions were allocated by the military government after it adopted a market economy. In conflict areas, land and land-based resources have helped to finance conflict with the *tatmadaw*, NSAGs and armed militias using land as a source of revenue, including to harvest and trade timber, jade and in the North, opium. Over the past six decades, civil wars have contributed to the displacement of hundreds of thousands of people, to widespread land expropriation and to pervasive land tenure insecurity in conflict affected areas. While active conflicts have relied on land and resource revenues, periods of peace have also triggered a scramble for land and resources. During the early 1990s ceasefires military actors, the state, NSAGs and domestic and external investors entered border areas to acquire rights to land and resources.

The 2012 VFV Land Law has also created scope for **land expropriation of customary lands**, which often have not formal state recognition. This leads to enclosure of communal lands (such as village forests, grazing lands and fishponds) and land under shifting cultivation. Increasingly, investors together with local authorities are charging farmers with 'trespassing' and 'vandalism' (criminal codes 427 and 447), even though many have been cultivating this land for years.

2.4 Ethnic Land Issues

While the land issue is on the agenda of the national dialogue, there are opportunities within the existing legal framework to address ethnic land issues. As concerned stakeholders deepen their engagement over the future of Myanmar's land governance, not only best practices from other countries, but there are opportunities in the existing legal framework that can be used to address ethnic land issues.

The **National Land Use Policy** uses language that recognizes the existence of customary communal land for the first time. Much remains to be done to achieve full protection of this type of land. Going forward, the government intends to translate this policy into a National Land Law. Following this, appropriate institutional arrangements will have to be put in place. The fact that the law development process overlaps with the political dialogue presents an opportunity to translate the outcomes of the dialogue into legal protections for ethnic minority lands.

Land Laws Revision Process: There are ongoing processes to revise the 2012 VFV Land Law and 1896 Land Acquisition Law. This presents an opportunity to include language that recognizes customary land (in that it is not categorized as VFV land) and to ensure appropriate compensation when included in a land concession.

Land Restitution: Even as many areas are faced with risk of new land confiscations, the central government is currently dealing with past land confiscations. The Parliamentary Land Confiscation Scrutinizing Commission investigated many of Myanmar's past land expropriations and recommended the return of 474,000 acres in 699 cases. The NLD government is continuing the Commission's work with the Land Reinvestigation Committee, a multi-ministerial committee to act on the return of illegally confiscated land. These efforts have mostly been in areas not affected by conflict, but groups such as UNHCR are looking at how these mechanisms can be expanded to post-conflict areas.

UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was ratified by the Government of Myanmar on 13 September 2007. The UNDRIP promotes a set of rights "for the survival, dignity and well-being of the indigenous peoples of the world" (Article 43). Because the GoM has never taken a clear public position as to whether or not there are indigenous peoples (IPs) in the country, there has been no substantial movement on enacting protections for indigenous peoples. The IP rights language remains relatively new in the country's political debates, but is starting to slowly enter political debates. UNDRIP has been referenced in the national dialogue and in the English translation of the 2015 Ethnic Nationalities Protection Law, which currently only includes social and cultural rights. Depending on the progress of the national dialogues, it can later expand to political and economic rights, including over control of territory. Some argue that the indigenous concept can *further strengthen* the claim to self-determination made under the umbrella of federalism. There is a possibility of using these two together.

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Ethnic politics can be fluid and contradictory, constructed in response to the politics of a particular place and time[18]. The role of ethnic politics in the shaping of land institutions in Myanmar is also not straightforward. The dichotomy in Myanmar is around the more popular concept of "ethnic nationhood" versus the emerging discourse of "indigeneity." Advocates of the former idea promote it in their claim to separate, but equal members of a federal union (which the Shan, Kachin, and Chin claim to be founding states). It is a movement that is grounded in a historical national struggle for rights to self-determination without apology. Proponents of the IP discussion often cannot claim to be founding members of the Union, and do not have the state apparatus to legislate their rights e.g. Nagas. While ethnic minority groups, both armed and non-armed, have been making noticeable efforts to coordinate a common political position in regards to the right to territory in recent years, they continue to struggle with the most inclusive and effective way to formulate their political claims.

The fragmentation of ethnic alliances is further exacerbated not only by the challenge of discourse, but also in historical social structures that continues to weaken ethnic unification within and between groups. This is the case not only between the major ethnic groups, but also

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[18] Yashar 2005.

within the numerous sub-groups. In Chin State, the remote terrain, different language groups, and diverse animist practices all contributed to the creation of a tribal society that faced great pains in constructing a common nationalist identity. The Karen faced equally if not greater obstacles in the creation of a pan-Karen identity.

Myanmar's current state-building project presents an opportunity for ethnic peoples to make an effort to find common ground. Recently, most ethnic minority groups chose to organize themselves according to ethnicity (as opposed to the state/region of residence) in order to create a more unified political front within each group. This is key to strengthening the position of ethnic minorities in national dialogues, and to shift the norms and balance of power in the direction of a more federal system of land governance and more ethnically-inclusive land institutions.

This will likely take a longer-term timeframe. In the meantime, it is important to support the ongoing legislative and administrative processes that can strengthen land tenure for all ethnic groups.

3 Who Shall Own the City? Urban Housing, Land and Property Issues in Syria

The traditional land tenure systems in the Levant are complex and overlapping, stemming from hundreds of years of evolution in the legal as well as the socio-economic conditions. By the end of the 19th century the Ottoman authorities moved to codify the land management system and homogenize the legal framework for registering property. The move was mainly driven by a dire need to secure the tax base of the empire. It was part and parcel of a wide reform to readjust the relationship of a growing urban middle class to the State. The reforms however, preserved a very wide variety of traditional land tenure systems and enshrined them within a new legal code. The process of narrowing the legal definition of property and moving from a common law "deed" to a Civil Code "title" system was finally accomplished during the French mandate 1920-1946. The French not only changed the legal framework but instigated a wide bureaucracy to delineate rights, demarcate the physical property, register the tiles, cross reference registers, and adjudicate disputes. The system was innovative for its time but could not cope with the increasing demand on urban properties in the post-colonial period. The rapid rural to urban migration starting in the second half of the 20th century imposed major demand for housing and real estate in the main cities. The process of transforming peri-urban rural lands to urban brown field properties was part and parcel of a new social contract to coopt the urban middle class into the ruling Baath party patronage starting from 1963. Supply side subsidies and a promise of a free hold homeownership for all was a dream that the State could not meet. Unresolved contradictions remaining from the transformation of the traditional tenures into modern registries accumulated and added to the inability of the State to manage urban growth properly. These contradictions were an important factor among the root causes stirring in the country before the outbreak of the conflict 2011.

The over-bureaucratic nature of the cadaster system necessitated the creation of temporary records in 1974, but those temporary records lacked the rigor and solid documentation process (delineation without demarcation on the ground).The cadastral system could no longer keep up. Furthermore, the socialistic orientation of the economy drove the State to issue new laws to regulate land speculation and concentrate all urban expansion in the hands of the public sector. This led to a subjective exercise of the power of eminent domain. The expropriation process disgruntled many communities as they were poorly compensated and saw their lands being then distributed to provide housing for civil servants and the middle classes needed by the State to secure political stability and services. The haphazard procedures added insult to injury and drove many peri-urban communities away from their traditional residences as their villages were being absorbed by the growing cities. Moreover, the State invested differently in urban management processes in the different parts of the country. In some cases and under the guise of securing border areas, stringent regulatory processes were imposed on communities suspected of disloyalty to the State (the Kurdish dominated north is the most prominent case). Finally, the inability to resolve age old problems of collective land holdings and the commons established as religious and charitable endowments contributed to the shortage of legal land for development.

Spontaneous settlements grew around the main urban areas; the larger cities had by 2011 over half of their populations living in informality. However, informality is not of one simple type. Different types of informality existed in and around the major cities. Some extreme cases involved downright squatting on public and private lands. While others involved some level of security of tenure (settlements between owners and squatters endorsed by the courts but unrecognized by municipal planning departments, agreements of usufruct rights, etc.) Yet other forms of informality involve densification of brown field properties illegally without obtaining proper license. The municipalities of Syria opted to deal with the issue in different ways. Some preferred to advance urban services to spontaneous areas while others were more reticent. The provision of urban services by the State often provided auxiliary forms of registration (water and electricity meters and bills). A real estate market emerged in parallel to the formal real estate market and the two influenced each other considerably. The different levels of informality and quasi legal documentation available featured as important determinant of land prices and of community solidarity to capitalize on land prices in their areas, creating another economic stratification process in the cities.

The early manifestations of the conflict took place primarily at the urban/rural interface. HLP issues played a major part in mobilizing disgruntled communities. The State thought at first to segregate this issue from other causes of grievances (human right abuses). The first two years of the conflict witnessed a laissez-faire attitude in the spontaneous settlement areas. The State looked the other way while these areas added no less than 10% to the housing stock in less than one year. However, the demonstrations against the State did not subside and the idea of appeasing communities to quell the uprising seemed to backfire. The rebellion took a sharp turn towards heavy militarization by the early part of 2012. Most of the front lines in the battles took place in peri-urban areas and in the small and medium cities where urban growth was rapid and

the HLP rights most vulnerable. Indeed most of the damage to the housing stock estimated at over 33% of the total value of the pre-war housing stock was to be found in these areas.

Many voices within the government started to advocate for a permanent solution to the spontaneous settlement areas taking advantage that most of their inhabitants were forced out either as refugees in neighboring countries or as internally displaced persons in Syria. The lucrative potentiality of the destroyed peri-urban areas as possible sites for re-development created pressure to compensate loyalist cronies and to allow them to invest in "reconstruction solutions" based on private public-partnerships where the original populations were the weakest link. Some laws were issued to test the ground for a possible neo-liberal framework of reconstruction even while the battles were raging (law 66 for 2012). These experiments created impetus for further land speculations in the most devastated areas. The chaos and corruption created in the past six years engendered new forms of fraud, forced sale of property, forced evacuations of residents under whimsical pretexts (partly using the fact that the less than perfect tenure documents in those areas were illegal). Women were often most affected as the fate of disappeared male heads of households were not recognized by the State.

Furthermore, in different locations and under different guises all parties to the conflict participated in ethnic and or sectarian cleansing and resettlements of displaced families in the vacated properties of the displaced persons of the other communities. This phenomenon is still confined to specific locations and is mainly reflective of the practice of local actors and warlords and cannot be looked at as a major policy directive yet. However, as the conflict continues, the assumption is that displacement will become permanent and that HLP infringements will become part of an ethno/sectarian grand redesign of Syria. To that extent HLP is increasingly featured as a core issue facing the peace building process.

3.1 Impact of the HLP to the peace process

The peace process has so far been fixated around issues related to political transition and power sharing. Very little efforts have gone to map the magnitude of the HLP problem and the way it may affect the peace process. However, one can discern several levels of concern that should be addressed even before a political deal is reached. These concerns will play into the hands of all types of spoilers to the process if not addressed.

- Most of the internationally recognized operations around HLP issues in the post conflict situations tend to address grievances that accumulated during the conflict. In Syria addressing pre-conflict grievances is essential.
- There is no reliable judiciary system that can be trusted with the issue. The establishment of an independent judiciary framework will be part and parcel of the political negotiations. These negotiations have not produced any viable visions yet for the separation of powers nor for that matter how the fragmented Syrian territory will be re-aggregated in the future.

- The fixation of all the actors on the formal HLP documentation process (both actors working from Damascus and actors working across the border) may lead to a bias against the semi-legal documentations that most displaced Syrians had enjoyed in the past.

- A good deal of the HLP transactions were recorded outside the State institutions in para-legal religious authorities and make shift courts. These courts will be subject for incrimination in any future political deal that will consider the human rights abuses of all actors to the conflict. There will be a tendency among such para-legal actors to destroy their records to avoid future incrimination.

- While the official national narrative has been fixated on freehold ownership as the main dominant pattern of tenure, the reality (even from before the war) is that many urban areas have different forms of tenure (leaseholds, pawns, borrowing) etc. Attention should be made not to reinforce the old unsustainable forms of tenure and should focus on developing alternative frameworks and socially acceptable norms to the untenable freehold ideal. The weak position of women to negotiate solutions among an increasingly more militaristic and patriarchal social order will further disenfranchise women from HLP rights.

3.2 International support to address the HLP issue

Interventions on the HLP issues are only now starting to take traction among the international donors and actors. Some of the issues to be considered are:

- The architecture for adjudicating HLP disputes cannot only depend on the formation of special commissions (as was the case under the Dayton agreement). The restitution of HLP rights cannot be incorporated into the repatriation and resettlement of refugees annexes of the political agreement. They should be addressed as part of the reform of the judiciary at large. Para-legal institutions must somehow be incorporated into the deal to avoid chaos created by wartime HLP transactions.

- HLP issues will be generally looked as part of the greater reconciliation efforts between the different communities in Syria. Resources must be provided to develop local reconciliation infrastructure. The focus cannot be left to a national top down peace process.

- The HLP issues in Syria will be overwhelmingly in urban areas where the real estate markets will be critical in instigating the reconstruction process. Donors should avoid the temptation of supply side solutions to the issue, and focus instead more on demand side solutions: micro loans especially for women, hedges against evacuations and sharp price hikes (not rent controls), housing coupons, etc. In short HLP issues in semi-legal spontaneous areas must come with strong but well calibrated financial instruments to forge the win-win deals on the ground to resolve disputes.

- The issue of tenure will also have to be addressed with a critical review of the status of women in the absence of men heads of households. Women are the main heads of households in many areas and in the overall the percentage of women headed households have increased several folds in Syria. Yet the legal framework still favors the male next of kin. The issue of HLP will require close linkage to the discovery of the fate of the disappeared and the kidnapped. It will also require negotiating some basic changes to the law to provide women with more equitable solutions in the case of inheritance.

- Many of the neo-liberal models being proposed for Syria are already promoting the notion that HLP issues are unsolvable. The solutions they are proposing involve creating an urban tabula-rasa displacing IDP's permanently by providing them with minimal compensation matching their poor tenure status, and then preparing the land for re-development. The donors should focus on the right of the city as a precondition for advancing money for urban project, much as they are focusing on human rights and political transition as pre-requisites for reconstruction funding.

4 Conclusion

Land conflicts in Myanmar and Syria are the visible manifestation or outcome of the often invisible power and politics concerning access to and use of land. People seem to have limited knowledge of who has what influence on the way decisions about land are made and enforced, or how these individuals and groups use that power.

The complexity of causes leading to land conflicts, as well as their diversity and the large number of different actors involved, requires an integrated, system-oriented approach for solving land conflicts and for preventing new ones. The examples from Myanmar and Syria demonstrate that the different levels of addressing land issues should be linked and synchronised, from national to regional and to local levels.

Restitution of land rights is internationally recognized as the preferred option for restoring land rights after conflict. However, when addressing land conflicts and HLP issues it is important that the process does not focus only on restitution of the most recent conflict but it is equally important to address the historical structural issues fuelling land disputes. Otherwise there is a danger that past injustices are legitimised and new ones created. Therefore a more extensive land reform might be needed to address the structural causes of conflict, such as unequal access to land or land concentration. Since the time frame to achieve such reforms and desired settlements can be quite long there is also a need to understand the current legislative and administrative processes upon which national peace processes can build.

Implementation of land related agreements has often failed because peace agreements have not been specific enough in their land provisions. Both in Myanmar and Syria, an appropriate level of detail regarding land and other resources should be included in the national dialogue process and eventual peace agreement, although achieving this can be challenging. When levels of trust and confidence between the parties are expected to be low, it can be important to include more detailed provisions in peace agreements to provide sufficient assurances and not leave issues open to interpretation.

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