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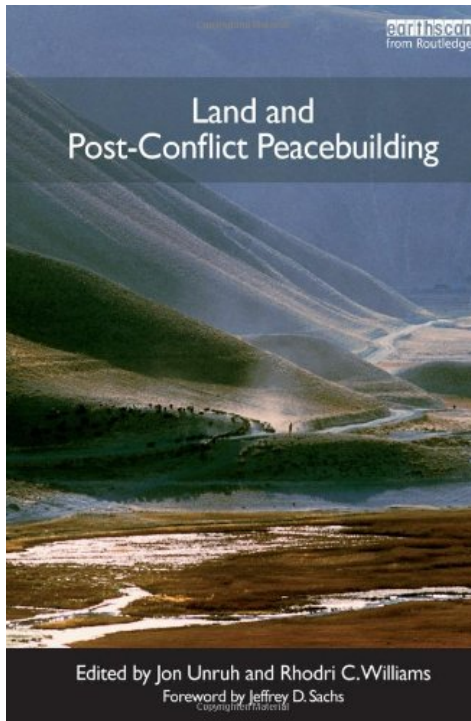
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Post-conflict land tenure issues in Bosnia: Privatization and the politics of reintegrating the displaced

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Post-conflict land tenure issues in Bosnia: Privatization and the politics of reintegrating the displaced

Rhodri C. Williams

Land tenure issues in post-conflict Bosnia and Herzegovina¹ have been influenced by the fact that land in Bosnia, while a scarce and sought-after resource, is not capable of providing quick returns. The collapse of Yugoslav socialism left behind a landscape of small, neglected agricultural plots, failed industrial complexes, and unplanned, inadequately serviced peri-urban settlements. Significant governance reform and private investment remain necessary before the economic potential of Bosnia's land can be fully realized.

While not a high-value economic asset in post-conflict Bosnia, land became a high-value political asset. Faced with international pressure to allow property restitution and the return of displaced people, nationalist leaders in Bosnia allocated public land to displaced people of their own ethnicity in a bid not only to provide for their immediate humanitarian needs as they vacated claimed property but also to permanently integrate them in order to secure local ethnic constituencies. International attempts to encourage the restoration of a multiethnic Bosnia by restricting land allocations were overly broad and economically destabilizing and were abandoned in 2002.

Ultimately, neither international ambitions to reintegrate Bosnia through widespread return of displaced people nor domestic nationalist agendas to perpetuate ethnic separation through resettlement were entirely successful. Return and resettlement patterns varied widely, and the economic and spatial legacy of socialism often had a crucial influence both on individuals' choices regarding durable solutions and on the success of international and domestic programs meant to influence such choices. Thus, although the post-conflict land tenure debates focused on humanitarian and human rights issues associated with the immediate post-conflict phase, many of the outcomes were determined by governance and economic reform factors typically associated with longer-term development. Although post-conflict tensions over land resources tend to be primarily economic in nature, understanding the significance of land as a political asset is crucial to peacebuilding efforts, particularly in the wake of ethnic conflict and displacement.

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¹ In this chapter, the term *Bosnia* is used to refer to Bosnia and Herzegovina.



BACKGROUND

The 1992–1995 conflict in Bosnia took place in the broader context of the collapse of the Socialist Federal Republic of Yugoslavia (SFRY). The unraveling of this multinational socialist state resulted from the confluence of a vacuum of political authority, economic collapse, and the long-standing failure of the Yugoslav authorities either to address ethnic grievances or to provide sufficiently durable institutions to contain them. In a series of crises from 1990 to the present, all six of the constituent republics of the SFRY (Bosnia, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, and Slovenia) eventually achieved statehood, and one autonomous province, Kosovo, controversially declared independence.

Prior to the conflict, Bosnia’s history was marked by a delicate but sustained pattern of accommodation among three dominant sectarian groups: Muslim Bosniaks who descended from Slavic converts to Islam during Ottoman rule (1463–1878), Catholic Bosnians who came to identify themselves with the Croats of neighboring Croatia, and Orthodox Bosnians who looked to coreligionists in Serbia to the East. Although Bosnian Muslims, Croats, and Serbs are united by ethnicity and language, their religious and cultural differences led them to consider themselves to be separate ethnic groups (see figure 1).

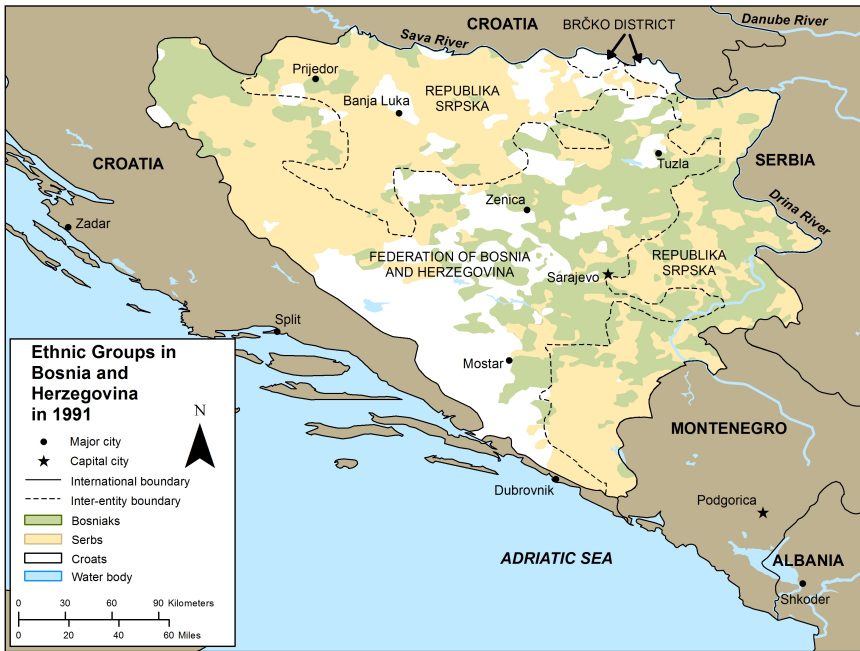


Figure 1. Pre-conflict distributions of Bosnia’s ethnic groups
 Source: Ceha (2008).

The 1992–1995 conflict in Bosnia and the Dayton Peace Agreement

Attempts to contain competition between the SFRY’s various ethnic groups through a complex system of constitutional decentralization broke down as severe economic pressures at the end of the Cold War laid bare the fragility of the SFRY’s institutions (Woodward 1995). In the conflict that raged after Bosnia’s declaration of independence in 1992, the Bosniaks fought largely to uphold the integrity of the country, while nationalist Bosnian Croat and Serb contingents sought to create ethnically pure enclaves with a view to possible secession. In this context, control of strategically important territory was central to the conflict aims of all parties. Such control was typically achieved through the ethnic cleansing of opposing ethnic groups and the prevention of their return through the destruction of their property or its allocation within local ethnic patronage networks (Cox and Garlick 2003).

By 1995, ethnic cleansing and conflict had killed over 100,000 people and displaced half the population, with 1 million Bosnians seeking shelter abroad and a further 1 million internally displaced. The homes and lands of those uprooted were neglected, destroyed, or occupied by others. The economy essentially ground to a halt, with agricultural, commercial, and industrial activities crippled

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by the double legacy of conflict and socialism (FAO 1999a). As many as 2 million people countrywide were receiving some form of food ration from the World Food Program (Watson and Filipovitch 1998). Even today, landmine contamination affects nearly 1 million people, primarily in rural areas where land is central to livelihoods (ICBL 2008).

In recognition of the regional nature of the conflict, the 1995 Dayton Peace Agreement on Bosnia-Herzegovina (DPA) that ended the conflict in Bosnia applied not only to the domestic actors but also to the neighboring former Yugoslav republics of Croatia and Serbia, which had pursued a conflict of their own both directly and through proxies within Bosnia. The post-conflict political framework in Bosnia confirmed the *de facto* unmixing of the population by creating a new state composed of two federal units—one entity comprising parts of Bosnia under Serb control (Republika Srpska), and another (the Federation of Bosnia and Herzegovina) composed of cantons dominated by Croats and Bosniaks. New central government institutions were relatively weak and did not enjoy explicit control over natural resources beyond a DPA mandate to set foreign trade policy (DPA 1995, annex 4, art. 3). As a result, the entities assumed control over natural resources within their jurisdiction.

All parties were required to respect human rights (DPA 1995, annex 6) and support a transition to democratic government, including the creation of new institutions at both the entity and state levels (DPA 1995, annex 4). The DPA also mandated a large peacekeeping force led by the North Atlantic Treaty Organization (NATO) and a powerful civilian administration, led by the Office of the High Representative (OHR), with powers to pass laws and dismiss public officials where necessary to implement the peace (DPA 1995, annexes 1A and 10). In addition to such coercive means, the international community offered positive incentives for reform in the form of economic assistance and the prospect of Bosnian integration into European and Atlantic institutions.

The conflict in Bosnia involved both systematic destruction and massive redistribution of wealth. But it was not fought over natural resources, and natural resources were not used to sustain the conflict, as has been the case in many other conflicts (UNEP 2009). As a result, the DPA did not address natural resources as such. The post-conflict period has seen significant unregulated extraction of high-value natural resources, particularly timber (ESI 2004). However, such activities arguably represent a means rather than an end; for the nationalist power structures that diverted power from Bosnia's formal institutions and resisted implementation of the DPA, resource extraction has been part of a broader pattern of illicit income streams that have supported the pursuit of essentially political goals.

Given that the conflict was fought over political control of territory and populations, the DPA firmly specified the parties' obligations to take specific steps, including restitution of property, to facilitate the return of displaced people to their homes (DPA 1995, annex 7). In the post-conflict period, land has been important for meeting residential, subsistence, and commercial needs, but has not been associated with quick profits or even longer-term speculation. Instead,

control of land has primarily been associated with humanitarian aims (reintegration of displaced people) and political goals (engineering of Bosnia's post-conflict demographic structure).

For domestic parties, allocation of land to resettle displaced people represented a means of addressing humanitarian needs while achieving pragmatic goals related to the consolidation of political constituencies and patronage networks. International actors, by contrast, were driven by the conviction that Bosnia's displacement crisis should be resolved through the return of displaced people to their original homes rather than by their resettlement elsewhere. Land allocation to displaced people also raised complicated issues related to economic transition, privatization, governance reform, and European integration.

History of land tenure and administration in Bosnia

Bosnia lies at the heart of the western Balkans and is characterized by a variegated topography and climate. Most of the land in Bosnia is hilly or mountainous, and both urban settlements and agricultural activities tend to be concentrated in lowlands and river valleys. The northernmost part of Bosnia, which borders on the Sava River, is a relatively flat and fertile extension of the Pannonian plain. This region, comprising 40 percent of Bosnia's territory, was home to over half its population and 70 percent of its cultivated land before the 1992–1995 conflict (JLZ 1983). Aside from agriculture, other primary activities such as animal husbandry, forestry, and mining have traditionally played an important role in the area's economy (see figure 2).

After several centuries as an independent principality, Bosnia was incorporated into the Ottoman Empire in the early sixteenth century. Given its location, it became a bridgehead for further conquests to the north and a military frontier zone when these territories fell to the Austro-Hungarian Empire in the late seventeenth century. Over time, the essentially feudal Ottoman timar land administration system gave way to a landed hereditary aristocracy (JLZ 1983; Malcolm 1996). As the Ottoman Empire receded, the Austro-Hungarian Empire took over the administration of Bosnia from 1878 until the empire's breakup in 1918. The Austrians made only incremental changes to the Ottoman system, introducing a two-book system with separate land registries and cadastres, promoting optional redemption of serfs, and imposing only light regulation on the system of *vakufs* (Muslim charitable trusts) that had come to hold one-third of all usable land in Bosnia (Malcolm 1996). Moves to promote agricultural development and establish foreign agrarian colonies on newly available land along the former frontier came in the context of broader investment in primary industries and transport infrastructure (Malcolm 1996).

In 1918, Bosnia was incorporated into the newly independent Kingdom of Serbs, Croats, and Slovenes (the first Yugoslavia). The mandatory abolition of serfdom followed in 1919, accompanied by land reform that broke up Bosnia's largest estates, transferring title to the families that had worked them as serfs

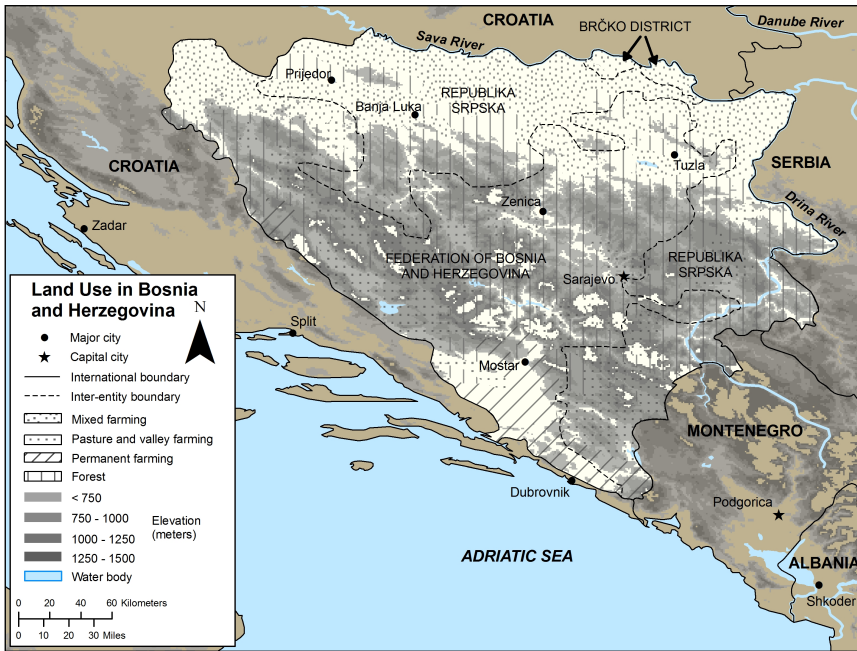


Figure 2. Elevation and predominant land uses in Bosnia

Source: University of Texas Libraries (1992).

(Malcolm 1996). The worldwide economic crisis of the 1930s was felt severely in underdeveloped Bosnia, and an already large agrarian population increased to comprise nearly 85 percent of the region’s households by the early 1930s (JLZ 1983). Bosnia was devastated during World War II but emerged as one of the constituent republics of the SFRY (the second Yugoslavia), created in 1945 and ruled by the Partisan leader Josip Broz Tito.

The early years of Tito’s Yugoslavia were characterized by Stalinist centralized control. However, even the most radical post-conflict rounds of nationalization did not do away with private property rights altogether but simply limited their scope. Residential property was limited to two large or three small apartments, while rural households were limited to ten hectares of high-grade agricultural land (UN-HABITAT 2005). All housing and land in excess of these limits was nationalized, along with all business enterprises and urban land. While nationalization affected both the urban and rural holdings of vakufs and other religious foundations, much forest land was already state property in Bosnia and simply remained so. Commercial use of private property was strictly regulated, with private rent levels set by local governments and agriculturalists subjected to forced delivery quotas at fixed prices (Palairret 2000).

After Tito’s break with Stalin in 1948, centralization was reversed, and successive constitutional reforms led to significant devolution of powers, both in

a political sense (from the central government to the republics) and in economic activity. The “self-management” system adopted by the SFRY in the 1970s replaced central planning with “an intricate system of negotiations and voluntary agreements among countless autonomous actors” (ESI 2004, 13). Such actors included both commercial enterprises and non-economic institutions, comprising “all other subjects that were socially useful but not productive in economic terms” such as administrative bodies, municipal governments, public housing enterprises, universities, and hospitals (UN-HABITAT 2005, 18). An important component of self-management was the institution of socially owned property, which effectively diffused responsibility for previously state-owned property, attributing it to the Yugoslav people collectively. A long-term legacy of this system has been the erosion of any form of accountability in Bosnia, with self-management itself a poor substitute for democratic interest politics, and social ownership a means of externalizing the costs of failure to invest in public assets onto society as a whole (ESI 2004).

Surprisingly, the overwhelming majority of rural landholdings in Bosnia (about 90 percent) remained in private hands by the time of the 1992–1995 conflict. Early attempts at forced collectivization were abandoned in the face of rural unrest and hunger, and nationalization of private land beyond the ten hectare agrarian maximum yielded little due to the effects of prior land reform and natural fragmentation under Bosnian inheritance law. What land did fall to the state eventually became socially owned and was made available to large agricultural combines, which monopolized virtually all government agricultural programs and subsidies (ESI 2004). Official Yugoslav ideology favored industrialization and a phasing out of rural smallholder farming, but little assistance was provided to peasants in achieving this transition. Meanwhile, poor transport and low official prices for agricultural produce led peasants to avoid placing their crops on the market (Palaret 2000). Instead, working-age men endured lengthy commutes to factory jobs, while the rest of the family grew crops for household subsistence or simply held onto unused land as a hedge against future insecurity. This resulted in the creation of a large peasant-worker class in Bosnia that was impoverished by the post-conflict collapse in industry but no longer able to fall back on commercial agricultural production.

In cities and towns throughout the former Yugoslavia, post-conflict industrialization reinforced trends toward urbanization, placing new pressures on housing markets and infrastructure. During the 1950s, employees were required to pay into a general housing fund that subsidized construction, and tenants were granted stronger rights to state-allocated apartments (UN-HABITAT 2005). With the introduction of self-management, most urban land and much of the apartment stock became socially owned property. Apartments were allocated by the enterprises or institutions that had built them according to official criteria and waiting lists. Recipients acquired occupancy rights to socially owned apartments, allowing them and their households to remain permanently as long as they did not leave the apartment for more than six months without justification. Although need was meant to be a key criterion in allocation, apartments were often used

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by employers “to lure scarce skilled labor and management to their enterprises,” creating a situation in which all paid into housing funds but the most privileged received the highest benefits (Le Normand 2008, 6).

With socially owned apartments largely reserved to the management class, urban socially owned land came under pressure from peasant-workers seeking to establish a residential foothold near their workplace. In Yugoslavia, municipal governments were responsible for allocating the right to use urban land plots to individuals or enterprises against a fee meant to cover extension of utilities and services. This right could not be privately exchanged as such, but did automatically transfer to buyers of private property built on lawfully allocated construction land. In the 1960s, a wave of illegal construction broke over the outskirts of Yugoslavia’s towns, with private individuals staking out available construction land to build homes (Palairet 2000). Although such informal settlements could legally have been destroyed, squatters tended to be tolerated and eventually issued user rights to their plots (Ó Tuathail and Dahlman 2006). However, plans to upgrade informal settlements foundered on the fact that neither self-builders nor municipalities had the means to pay for the extension of utilities to unplanned lots scattered at the urban periphery (Le Normand 2008). Even in city centers, mismanagement resulted in extensive deterioration of infrastructure and depreciation of public assets (ESI 2004).

In short, the situation immediately prior to the 1992–1995 hostilities was already characterized by the effects of chronic mismanagement of land resources. Fragmentation of rural land plots combined with policies discouraging commercial agriculture had led to both the loss of farming skills and degradation of land and rural infrastructure through a long-term lack of investment. The same factors had also contributed to a spontaneous and unregulated migration to peri-urban settlements, where patterns of squatting and illegal construction on socially owned land were tolerated but not made sustainable through the extension of infrastructure and utilities.

ANALYSIS

This case study focuses on the interplay between land tenure issues and international efforts to promote the return of displaced people during the first decade of implementation of the Dayton Accords in Bosnia, from 1996 to 2006. It includes the stabilization phase immediately after the conflict, but focuses on the tensions that arose as the transition phase slowly and fitfully gave way to consolidation and early recovery. In Bosnia, transitional priorities such as demobilization and refugee return were often described as Dayton tasks, reflecting the fact that both the national obligations to undertake them and the international role in their oversight clearly derived from the peace agreement. By contrast, the consolidation and early recovery phase tends to be associated with Europe, as European institutions and European Union (EU) integration were meant to replace the post-conflict DPA framework, providing positive incentives for the national authorities to push on with governance and economic reforms beyond those envisioned in the peace agreement.

The struggle to shift the footing of the international intervention in Bosnia fully “from Dayton to Europe” continues to this day, with ongoing debate about when to completely phase out the OHR, relinquishing its intrusive mandate in favor of the soft power wielded by the EU Special Representative, an office that was merged with OHR in 2002 (ICG 2009). In many respects, Bosnia’s progress toward normalcy has been extremely rapid, with the insertion of peacekeeping forces and demobilization accomplished shortly after the conflict, regular local and national elections being held since 1996, completion of property restitution by 2003, and the return of over 1 million people, or nearly half of those displaced. Most of Bosnia’s remaining problems fall within the Europe docket, but are of such severity that they continue to threaten the post-conflict gains made in the Dayton era. These include weak, divided political leadership and endemic obstacles to economic growth (ESI 2004).

Demands on land in Bosnia have been made on the basis of both humanitarian need and the need to achieve broader economic reform. Humanitarian measures related to land include both the restitution of abandoned land and homes to people displaced from them during the conflict and the allocation of socially owned land to groups made vulnerable during the conflict—including displaced people. These measures have been intensely political, with international efforts to re-create multicultural constituencies by returning displaced people to their homes competing directly with the efforts of nationalist parties to perpetuate ethnic separation by permanently resettling displaced coreligionists.

In theory, the conflict-related humanitarian issues related to restitution and allocation of land should have been dealt with during the transitional (Dayton) phase, allowing an orderly shift of attention and resources to the reform-related economic issues meant to be addressed during the consolidation (European) phase. In practice, it proved no easier to draw a neat line between these phases at the micro-level of land tenure issues than at the macro-level of national politics. Instead, the persistent legacy of communist laws and practices frustrated the agendas of both international and domestic parties, whose efforts to promote their favored humanitarian outcomes may, in turn, have complicated the prospects of longer-term land tenure reform.

International return policies

The early peacebuilding priorities of the international community in Bosnia involved establishing basic security and setting the political foundations for a viable state. The return of displaced people was understood from the beginning to be the key to restoring political stability, and was promoted as a central aim—even when it threatened to undermine security conditions. The extraordinary emphasis placed on return was rooted in the fact that it was seen as an antidote to the strength of the nationalist parties that had sought to partition Bosnia, which were granted broad autonomy and recognition elsewhere in the DPA. International state building efforts aspired to “override such divisions . . . from above” through support to Bosnia’s nascent state institutions, but also crucially “from below” through return

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(Cousens and Cater 2001, 45). In this context, return came to dominate the civilian peacebuilding agenda to the virtual exclusion of topics such as urbanization and agricultural reform, which at first “seemed irrelevant and were largely ignored” (Rose, Thomas, and Tumler 2000, 8).

The fact that early peacebuilding did not explicitly address land administration issues did not reflect satisfaction with Bosnia’s post-conflict land tenure system, but rather the sense that such issues were best addressed through political and development processes outside the immediate scope of the post-conflict settlement. However, the DPA did provide key parameters for such processes. First, it demarcated the internal boundaries between Bosnia’s entities and guaranteed its external borders and sovereignty. Second, it obligated the authorities throughout Bosnia to restore displaced people’s property and create viable conditions for their return. These provisions promised to restore basic order and legal certainty to post-conflict land relations, fulfilling an important precondition for their longer-term reform.

The key development questions surrounding land in post-conflict Bosnia had more to do with unlocking long-suppressed potential than with resolving burning disputes. For land tenure reform in Bosnia, “the fact that the country is in transition from socialism to capitalism is just as important as the fact that there was a war” (Rose, Thomas, and Tumler 2000, vii). After the conflict, rural land remained locked in a network of small and fractured subsistence plots that were often hoarded and left fallow, rather than put to productive use through active sales and lease markets. Meanwhile, urban areas displayed the effects of decades of unplanned growth and neglect of public services and utilities.

Land administration problems were essentially political, and the fundamental nature of the reforms needed to address them—privatization, markets, and better governance—had been a matter of consensus, at least in principle, since well before the conflict. On the other hand, however pressing these goals may have been, they were not, in and of themselves, central Dayton tasks and required local knowledge, development expertise, resources, political judgment, and democratic legitimacy beyond what the international community could offer. To give just one example, possible means of privatizing socially owned agricultural land included transfer to local government authorities, sale to the highest bidder, preferential sale to buyers in a position to consolidate the land with adjoining privately held parcels, and restitution to pre-nationalization owners. Given the bewildering array of policy options, technical issues, and budgetary implications inherent in land tenure questions, international actors involved in peacebuilding tended to leave such issues largely to those working on development.

In practice, however, it proved impossible to completely separate the process of land tenure reform from the priority goal of return. By 1998, restitution of the property of displaced people had clearly emerged as the main policy supported by international actors to promote return. However, from the earliest days of the return process, it was clear that simply restoring rights to and possession of land would not automatically foster sustainable return. For rural returnees, the effects of the conflict posed significant sustainability issues, particularly when agricultural

land they depended on for subsistence was contaminated by landmines (Keith 1999). However, longer-term transitional issues weighed heavily as well. The collapse of Bosnian industry precluded a return to the pre-conflict peasant-worker lifestyle with its minimum benefits of social security access and wage supplements to agricultural income. As a result, less developed parts of Bosnia saw a forced retreat into the wholesale reliance on subsistence farming that had been abandoned by previous generations, leaving the preferred option for many “to emigrate or, in the case of the displaced, never to return” (ESI 2004, 29).

Indeed, although post-conflict Bosnia has seen significant returns to rural areas, the conflict almost undoubtedly accelerated a process of urbanization that had gathered pace before the conflict as peasant-workers moved from remote farms to informal peri-urban settlements (OHR 1998a). Urbanization has been supported by significant post-conflict returns to cities and towns, such as those of Muslims to Dobož and Prijedor (both in northern Bosnia) and Serbs to Drvar (in western Bosnia). An equally or more significant factor in urbanization has been the resettlement of displaced people who did not wish to return to their pre-conflict homes. Their resettlement was often supported by grants of socially owned land by local nationalist authorities, in an effort to offset the effects of return by members of other ethnic groups or even directly discourage it. These resettlement measures were perceived as a direct challenge to international efforts to support political reintegration, and resulted in a dramatic expansion of international return activities, with measures in support of restitution supplemented by a new arrogation of temporary control over transactions in socially owned land throughout Bosnia.

Property restitution, return, and the rule of law

International efforts to support return got off to a slow and confused start in Bosnia, with ad hoc efforts to negotiate return quotas with local authorities, uncoordinated reconstruction projects, and projects conditioning economic assistance on support for returns producing few results in the field (ESI 1999). Those returns that did occur early on were primarily majority movements—of displaced people back to areas under the control of their coreligionists—rather than the minority returns to ethnically cleansed areas promoted by the international community in order to support reintegration.

In 1997, the OHR joined its political power to the United Nations High Commissioner for Refugees’ mandate to coordinate returns under annex 7 of the DPA, creating a new Reconstruction and Return Task Force (RRTF) to coordinate the process. Conditions for progress improved with the use of donor-funded reconstruction to induce return to destroyed rural villages, as well as introduction of greater freedom of movement through the introduction of uniform license plates in both entities and increased willingness by peacekeeping forces to arrest indicted war criminals and provide security in return areas. However, there were clear signs that low-level ethnic cleansing and reallocation of abandoned housing was continuing. As a result, a number of Dayton-mandated agencies began to

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focus return efforts on ending property reallocation and restoring abandoned homes to their displaced owners. Through this process, the RRTF established the Property Law Implementation Plan, an interagency effort to coordinate restitution policy and monitoring throughout the country (Philpott 2005).

This effort restored some 200,000 homes throughout Bosnia to their former residents, setting an international precedent and laying the groundwork for significant minority return and political stabilization. Under heavy international pressure, both Bosnian entities passed legislation in 1998 annulling wartime rules allowing abandoned property to be reallocated, canceling all legal rights to use abandoned property, and setting out a procedure for displaced people to claim their former homes and lands from local administrative bodies (OHR 1998b, 1998c). During 1999, OHR used its powers to amend the post-conflict restitution laws, harmonizing and tightening their provisions in response to obstructive practices noted by field monitors (Williams 2005).

Notably, the restitution laws provided for the return of private property of any kind, whether it was held in fully registered ownership or merely lawfully possessed by its pre-conflict resident. However, the only category of socially owned property liable to restitution consisted of apartments to which pre-conflict occupancy rights pertained. Socially owned agricultural land and business properties were not subject to restitution, except that user rights to land on which private houses had been built were implicitly restored along with the houses. While the inclusion of socially owned apartments was necessary if restitution was to have any effect on urban return, the modalities of restoring these conditional quasi-ownership rights exacerbated return-related tensions that had been inherent in the DPA from the beginning.

The contingent nature of rights to socially owned property had originally been exploited by the warring parties, who cynically used socialist rules penalizing absence from an apartment to cancel the occupancy rights of displaced victims of ethnic cleansing. Although the international community stopped this practice, the restitution laws imposed new penalties on pre-conflict occupancy right holders who failed to return to their apartments. Unlike private property, which was subject to virtually unconditional restitution, the restoration of occupancy rights was subject to conditions meant to encourage return. Under the laws, pre-conflict occupancy right holders faced legal deadlines to reclaim their apartments. These conditions were clearly analogous to the old use requirements, in that unjustified failure to return could again result in the cancellation of displaced people's rights (Williams 2005).

Following an extended debate, OHR removed these conditions, noting their exploitation by local actors to thwart return, and instead equated occupancy rights in socially owned apartments with private property. A key motivation for this change was the concern that compelling the displaced to return in order to exercise their rights was putting the cart before the horse. From the beginning of the restitution process, international actors had been aware that if they focused exclusively on return, they risked being drawn into a highly politicized debate

among national actors. “Achieving returns was, above all, a political process, rather than technical or humanitarian” in nature (ESI 1999, 3). In analyzing the motivations of the different parties, many observers found that, while none had a direct political interest in promoting return, all had an interest in meeting the criteria for future European integration—including the requirement “that laws . . . be implemented transparently and fairly” (ICG 1999, 22). This clearly militated in favor of OHR “shifting the focus of its pressure away from the inter-ethnic element (reversing ethnic cleansing) towards the rule of law element (eliminating misuse of housing)” (ESI 1999, 15).

The elimination of legal conditions for restoring abandoned socially owned apartments was a crucial first step in rearticulating restitution as a vehicle of rights rather than of return. As this shift became an increasingly explicit article of international policy in Bosnia, it exposed differences over return among international actors contested on similar terms to some of the domestic parties’ disputes (Philpott 2005). By explicitly accepting that the beneficiaries of restitution were free either to return to their properties or to treat them as assets to assist in resettling elsewhere, OHR broke down resistance to the process among hard-line nationalists who no longer faced the specter of the full rollback of their wartime gains (Cox and Garlick 2003). However, as the restitution process accelerated countrywide, another set of problems became increasingly obvious, highlighting the fact that even if the relationship between restitution and return was now settled, that between restitution and resettlement of those who did not wish to return was not.

Resettlement and land allocation

Acceptance of property restitution on the basis of individual rights represented a compromise between international interests in mass return and domestic nationalist interests in mass resettlement. Although it was seen as a retreat from the assertion in the DPA that “early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia” (DPA 1995, annex 7, art. 1.1), it was arguably necessary in light of another DPA principle: the obligation to respect the voluntary and informed choice of destination of all displaced people and refugees within Bosnia (art. 1.4). While it was now clear that return could not be a precondition for restitution, completion of the restitution process remained necessary in order to allow all claimants to make fully voluntary choices between return and resettlement. However, full implementation of the restitution process clearly implied a great deal of secondary displacement of current occupants, and serious questions remained about how to provide both short-term shelter and long-term housing assistance to such people.

With donor reconstruction-driven return to destroyed property firmly established by 1999, the shift in focus to restitution-driven return to occupied urban homes underscored these questions (ESI 1999). At that point, nearly 100,000 occupied urban apartments were in contention nationwide; where would those



Figure 3. Post-conflict distribution of Bosnia's ethnic groups

Source: Zec and Hamzic (2006).

families go? Many occupants were themselves displaced people who had claims to homes elsewhere. When such occupants faced eviction while their own claims were still pending, or when they had no such claim, the restitution laws obligated local authorities to provide temporary accommodation on a humanitarian basis. However, when displaced occupants did not wish to return to their pre-conflict property, and would not be able to cover their own resettlement costs by selling it, some type of resettlement assistance was necessary. Proposals by entity-level and local authorities in Bosnia to provide such assistance—often on the basis of grants of socially owned construction land—were initially accepted, albeit with skepticism, by international officials.

International actors in Bosnia tended to see local resettlement initiatives as one of a number of stratagems to maintain the effective partition of the country brought about by ethnic cleansing (see figure 3). Most observers accepted that nationalists on all sides of the conflict stood to gain by maintaining ethnic separation and preventing the watering down of their political constituencies. The Bosniaks, as a plurality of the population, had less to lose in this regard than the Serbs and Croats, but Muslim nationalist leaders took few concrete actions to back up their rhetorical support for return (ICG 1999). Meanwhile, Serb and Croat nationalists staunchly opposed return, claiming that none of the displaced people they represented wanted to go back to their pre-conflict homes. Stratagems

for discouraging return had taken a number of forms in Bosnia, all of which had been defended on more-or-less credible humanitarian grounds while serving more-or-less obvious segregationist designs.

The most obviously obstructive practices—property confiscations—were adopted during the conflict and countered through the restitution laws. These practices built on the failure to protect fleeing minorities and the destruction of their property or its reallocation to coreligionists displaced from other parts of the country. In any given area, reallocation not only physically blocked return of the original owners but also discouraged the return of current occupants to their original homes by giving them an incentive to remain. The humanitarian grounds given for adopting such policies were often a pretext, with the best-appointed abandoned homes serving as patronage rewards for the loyalty of local military, judicial, or police officials (Cox and Garlick 2003). The seriousness of efforts to maintain ethnically pure constituencies was demonstrated immediately after the conflict by instances of self-cleansing—in which nationalist paramilitaries forced their coreligionists out of homes on territory slated to be transferred to the control of other groups under the DPA and into homes abandoned by ethnic minorities elsewhere (OSCE 1996).

This practice—permanently resettling members of one group in homes from which members of another group had been displaced—was not the only practice involving openly hostile resettlement of displaced people. Displaced people were also moved to locations where, even if they did not occupy property belonging to people of another ethnic group, their physical presence was intended to discourage the other group's return (UNCHR 1998). The most notable example involved free allocation of construction land in the south of the country to displaced Croats, who were helped—initially with resources provided by the government of neighboring Croatia—to construct homes in strategic areas where the return of other groups to ethnically cleansed villages could threaten the consolidation of a Greater Croatia (ESI 2004). Similar practices included occupying properties, such as grazing land or religious facilities, that could not be claimed by individuals under the restitution laws but that were central to the livelihoods or cultural practices of returning communities. Some practices, such as destroying abandoned apartment buildings and issuing user rights to new structures, were more clearly extensions of wartime property reallocation.

A third and less obviously objectionable practice involved the ostensibly humanitarian resettlement of people displaced when the housing they occupied was claimed by its original owners. After the adoption of the restitution laws, proposals proliferated to allocate land for this purpose. In Sarajevo, construction land was earmarked for ambitious plans to build new settlements for Muslims evicted from claimed properties (ICG 1999). Meanwhile Republika Srpska (RS) began, with tacit international consent, an entity-wide program of allocating socially owned land plots to displaced Serbs (Ó Tuathail and Dahlman 2006). Initially, the RS government promised to provide homes on allocated lands; but in practice, insufficient resources existed to do more than waive the fee normally

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collected by local municipalities for such allocations and to sporadically provide construction materials (ESI 2004).

While takeovers of private homes and property clearly violated the letter of the DPA and were cut short by the restitution laws, the allocation of socially owned land to promote resettlement potentially violated the DPA's spirit. Hostile resettlement practices involved violations of the authorities' obligations to support return that were obvious enough to lead the OHR to issue a temporary decision meant to ban this practice in May 1999, soon after the restitution process began (OHR 1999b). The decision voided, retroactively to the outbreak of the conflict, all allocation decisions related to socially owned land previously "used for residential, religious or cultural purposes, or for private agricultural or business activities" (OHR 1999a). This decision left a great deal of undeveloped land at the edges of cities and towns and on the premises of socially owned agricultural combines available for legal allocation and resettlement.

Faced with increasingly widespread land allocation that supported ostensibly voluntary resettlement without directly threatening existing return movements, the international community had difficulty articulating a skepticism that nevertheless remained deep-seated. Suspicions related to land allocation were rooted in the conviction that local nationalists, having failed to block incoming returns by members of rival groups, were now seeking to clandestinely shore up their political base by minimizing outgoing returns by their coreligionists to other areas. Such practices would be consistent with a practice of maintaining "captive" ethnic constituencies, as in Mostar, where hardline Croat authorities not only resisted minority return but sought to "prevent the departure of Croats living as displaced people . . . by threatening to withdraw their rights to pension, education and social services" (ICG 1999, 13).

Nationalist parties, particularly on the Serb and Croat sides, had also actively discouraged their displaced constituents from casting their votes at their places of origin during Bosnia's periodic elections (ICG 2002). Such pressure on displaced people to vote where they were displaced was thought to be one of the major factors behind the triumph of nationalist parties throughout Bosnia in the first post-conflict elections, held in September 1996 (Cousens and Cater 2001). This was one of two credible (and not mutually exclusive) views of the agendas driving local land allocation policies that emerged as immediate post-conflict concerns gave way to peacebuilding priorities: "the first as part of a top-down designer strategy to consolidate ethnic cleansing and secure nationalist homelands, the second as a bottom-up ad hoc adaptation to the desperate circumstances newly evicted displaced people found themselves in after 1998" (Ó Tuathail and Dahlman 2006, 306).

As land allocation became more widespread and visible in returnee areas in the RS, OHR came under increasing political pressure, particularly from Bosniaks, to go beyond the earlier decision protecting community and cultural property and ban the practice altogether. These developments coincided with the August 1999 appointment of a new high representative, the Austrian Wolfgang

Petritsch, who would quickly adopt a more assertive use of the OHR's powers in support of his conviction that return constituted "the single most important issue for the reconstruction of Bosnia" (OHR 2000a).

In December 1999, OHR extended its earlier decision limiting land allocation by a further six months, appending an unusual explanatory note that described both the perils in any eventual expansion of the ban and methods for taking such a step (OHR 1999c). The note effectively conceded that the earlier decision had been violated with impunity, that OHR did not have the capacity or a mechanism for enforcing it, that some local authorities had complained that it had blocked legitimate investment projects, and that OHR itself had not yet decided what legislative amendments would be adequate to justify removal of the ban. On the other hand, the note asserted that extension of the ban would strengthen local RRTF officers' ability to monitor it, pointed out that the domestic authorities had taken no steps to reform the relevant law themselves, and noted that exceptions could be allowed for legitimate investment projects.

These observations foreshadowed a radically expanded decision in April 2000, which shifted the burden of proof, assuming that all allocations of socially owned land were discriminatory unless proven otherwise. All allocations of socially owned land since the outbreak of the conflict were deemed null and void, except when OHR issued a waiver based on "a clear showing by the competent authorities . . . that a proposed transfer . . . is non-discriminatory and in the best interests of the public" (OHR 2000b). In this decision, OHR added to its already considerable peacebuilding responsibilities the role of "the central planning authority for all of Bosnia . . . for which it had little personnel capacity, no in-house expertise and an already acknowledged enforcement problem" (Ó Tuathail and Dahlman 2006, 313).

Noncompliance with the decision remained widespread, and even the few waiver requests that came in quickly outstripped the capacities of the single human rights officer initially put in charge of reviewing them from an office in Sarajevo. Through its description of socially owned land as "the patrimony of all the citizens of the municipality, [including] . . . displaced persons who were formerly domiciled in the municipality," the OHR had also equated land allocation with wartime property confiscations, encouraging inflated expectations of what it could do to tackle the problem (OHR 2000c).

For many Muslims and international observers, land allocation was little more than a bid to consolidate ethnic cleansing by other means:

As the international community has become increasingly determined to uphold the right of refugees to repossess their property, the nationalist regimes have fought back by focusing on creating incentives for their own displaced persons to settle permanently where it will benefit their respective national agendas. . . . Land allocation policy in the RS seems, in fact, to be specifically targeted at diluting the demographic and political effects of . . . return, since land grants occur most frequently in those areas of return that had non-Serb majorities before the war (ICG 2002, 11–12).

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Whatever the intentions of local authorities, however, there is evidence that land allocation programs not only speeded property restitution but may have even facilitated minority return. Gearóid Ó Tuathail and Carl Dahlman cite the European Stability Initiative (ESI), a research organization hired by OHR, which found no measurable effect on minority return (Ó Tuathail and Dahlman 2006). In fact, despite the failure of the OHR decision to control allocations, ESI found that less than 5 percent of the displaced in Bosnia had received an allocation and only a small minority of these had the resources to actually begin building a house on their plots. For local authorities, who had committed to implementing property restitution but were reluctant to house those vacating claimed properties in rudimentary temporary accommodations, the allocation of free land was a face-saving alternative. It served both those local authorities still tacitly interested in permanent resettlement of their coreligionists and others merely eager to be seen as having the wherewithal to provide evictees with the prospect of permanent housing. Grants of land may also have blunted any resentment felt by the evicted toward returning minorities, decreasing resistance to return (ESI 2007).

Whatever the psychological effect of land allocations on the return process, the wholesale distribution of such plots to members of the local ethnic majority continued to be seen by international observers as both discriminatory and negligent. Local authorities were bound under the DPA to create the conditions for return and yet were devoting much of the scarce public resource they presided over to resettlement projects. The international community initially refused to accept land plots as a form of alternative accommodation, in part because the latter was meant to be means-tested and temporary rather than distributed indiscriminately to occupants of claimed properties (OHR 2000f). However, later amendments sought to link entitlement to alternative accommodation to the question of whether land plot beneficiaries had sought OHR waivers (Philpott 2006). Ultimately, the fact that most beneficiaries were too poor to build on such plots disqualified the plots as either alternative accommodation or a basis for permanent resettlement.

In its report to OHR, ESI advocated dropping the ban and focusing instead on encouraging sustainable and democratically legitimate approaches to land use planning that would identify and address the real housing and livelihood needs of Bosnia's citizens (Ó Tuathail and Dahlman 2006). The approach suggested by ESI reflected two realities: (1) the OHR ban had merely made land transfers illegal without stopping them, fostering legal insecurity and inhibiting legitimate investment; and (2) land allocation policies had failed to either block return or support sustainable resettlement for those who did not wish to return. As Ó Tuathail and Dahlman note, neither the "top-down" goal of consolidating ethnic cleansing nor the "bottom-up" goal of sustainably housing evictees had been achieved (Ó Tuathail and Dahlman 2006, 306). As it became clear that the Dayton concerns regarding return that had justified the ban were not salient, attention turned to the Europe issues raised by the persistence of the underlying construct of socially owned land.

Moving toward Europe

Although the land allocation ban remained unenforceable, it was extended twice under High Representative Petritsch, essentially for lack of a better idea. In both cases, the decision noted that “the conditions in which the authorities . . . are able to dispose or otherwise allocate state-owned real property, including former socially owned property, in a manner that is non-discriminatory and in the best interest of the public do not now exist throughout Bosnia” (OHR 2000g, 2001a). The second extension decision also sought to mitigate the impact on investment by exempting leases of certain nonprivatized business premises. In August 2001, OHR facilitated the convening of a domestic working group to seek a legislative solution to the problem (OHR 2001b). The conclusions of the working group reflected increasing awareness of the economic aspect of land allocation, with greater reference to promoting transparent land development policies and accommodating privatization and denationalization. The conclusions included the first hint of a retreat from the presumption that all allocations were discriminatory, with a call for realistic approaches to past transactions that took into account “the interests of those individuals who, in good faith, personally invested their time, money and effort in an attempt to build a new life” (OHR 2002a).

During the same month, May 2002, Lord Paddy Ashdown of the United Kingdom took over as high representative and quickly established that the priorities of his tenure would be anti-corruption efforts, judicial reform, and economic development: “first justice, then jobs, through reform” (OHR 2002b, 2002d). However appropriate this shift from Dayton issues to European concerns may have been in light of the impending completion of the restitution process, the OHR would nevertheless have to find a solution to the land allocation problem. In short order, Lord Ashdown found himself accepting the resignation of an RS mayor for failing to act on a previous OHR decision revoking a waiver (OHR 2002c), extending the allocation ban for a third time with further investment-friendly categories exempted (OHR 2002e), and using his powers to remove the resigned mayor’s successor on the same grounds (OHR 2002f).

However, even as the new high representative dutifully hewed to his predecessor’s line on the return aspect of land allocations, development-related issues related to housing and land were piling up. The post-conflict property restitution process was on course for completion during 2003, with a number of municipalities having already processed their entire caseload by late 2002 (OHR 2002h). As this process concluded, the emphasis began to shift to provision of services that would both make return sustainable and provide a safety net to the most vulnerable people affected by the process. Accordingly, “full implementation of Annex VII [of the DPA]” was defined as allowing safe return to restituted homes “with equal expectations of employment, education and social services” (OHR 2003a). For those with “no prospect of being able to provide for their own needs” after the restitution process, the Property Law Implementation Plan agencies

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urged the competent ministers to “begin instituting measures that would ensure a seamless transition from provision of alternative accommodation under the property repossession laws to effective long-term social policies” (OHR 2003b).

Outside of the return discussion, the impact of Bosnia’s neglected land tenure system on the economic development prioritized by the new high representative was increasingly clear. One of the original planks of Lord Ashdown’s employment strategy involved “reforms on property and landownership law, so that people can invest and plan with confidence” (OHR 2002b). This led to the inclusion of entity-level laws on land registry, drafted with international assistance, on the list of twelve laws “crucial for the creation of the ‘Single Economic Space’ and the normal functioning of the [Bosnian] economy” (OHR 2000d, 2002d). In the event, OHR imposed many of these laws in October 2002, controversially exercising its Dayton powers to forward essentially post-Dayton, consolidation-phase goals (OHR 2002g).

Claims to nationalized property constituted another persistent land issue, with the need to move rapidly (so as not to deter investment) conflicting with the overambitious denationalization proposals put forward by entity authorities without the resources to implement them (OHR 2000e). As a result, the socialist construct of socially owned property remained in place by default, undercutting both transparency and legal certainty in transactions related to urban construction land and the rural holdings of former agricultural combines.

This situation became increasingly untenable after a February 2000 Constitutional Court ruling that asserted “a constitutional duty to transform all socially owned property into other forms of ownership, and in particular privately owned property.”² With both the futility of the land allocation ban and the necessity of land tenure reform well established, the scene was set for a shift in international policy. This was foreshadowed in the final OHR decision extending the ban in April 2003, which explicitly gave entity-level authorities one month to adopt legislation, “in particular the consolidated and harmonized Law on Construction Land” regulating the nondiscriminatory allocation and management of socially owned property (OHR 2003c).

On May 16, 2003, the OHR imposed harmonized Laws on Construction Land in both entities (OHR 2003d, 2003e). Tellingly, although the news release announcing the imposition referred to the return rationale for the original decision, it gave equal weight to the 2000 Constitutional Court ruling and claimed to “clarify the issue of landownership, removing a major obstacle to economic growth” (OHR 2003f). The imposed laws fulfilled the Constitutional Court’s criteria by dividing socially owned construction land into state-owned and private property, largely on the basis of whether it had already been developed by a private actor. However, in doing so, the new laws dropped OHR’s previous insistence that all prior allocations be scrutinized to ensure their nondiscriminatory nature. Instead, allocations

² Partial decision U5/98-II of 18 and 19 February 2000, Constitutional Court of Bosnia and Herzegovina.

undertaken during the period covered by the ban were again effectively presumed nondiscriminatory, with the onus on aggrieved parties to bring specific allegations (of wrongfully cancelled pre-conflict use rights) under a special review procedure. A two-year deadline was set for such claims, after which people who had been allocated land plots for resettlement were free to seek their transformation into private property.

In recent years, there have been a number of attempts to take stock of the effects of international reconstruction and return efforts (Kirkengen 2006; Bagić and Dedić 2005), including surveys of social and political attitudes in Bosnia that incorporate questions about the effect of returns (Oxford Research International 2007). However, little attention has been paid to the specific outcomes of post-conflict land allocations and broader resettlement efforts. Many settlements on allocated land plots may have been abandoned due to viability or safety concerns. A survey of resettlement plots in two RS municipalities (Ó Tuathail and Dahlman 2006) noted significant problems with the sites chosen, including dangerous locations (floodplains and steep slopes), little available arable land, and long distances to urban markets and jobs. Predictably enough in light of the difficulties in upgrading pre-conflict peri-urban settlements, very few plots had been provided with electrical, water, and sewage connections; access roads remained poor and sometimes impassable; and residents enjoyed little access to medical care, schools, refuse collection, and other social services.

From this perspective, anecdotal findings related to Doboj, an RS municipality (ESI 2007), are likely to be borne out more generally. There, it appears that the land allocation provided an important psychological boost to property restitution and broader reconciliation by allowing occupants of claimed homes to move out with a sense that their long-term housing needs would be met (ESI 2007). In practice, however, the policy failed to provide solutions to more than a fraction of this population; of 26,000 Serbs displaced to Doboj at the end of the conflict, only about 2,000 remained on allocated plots by 2007 (ESI 2007).

OHR's May 2003 abandonment of its attempt to control land allocations came at a time when property restitution was nearing completion; a formal handover of all remaining return issues to domestic authorities was planned for the end of the year (OHR 2003g). By this time, it was clear that return would be a significant factor, and that a degree of Bosnia's pre-conflict multiethnicity would be restored. Although the nationalist political parties that had prosecuted the conflict continued to pursue ethnic engineering goals, they were quick to accommodate to a new reality in which minority returnee communities demanded services, and more traditionally ideological—if still tacitly ethnically aligned—opposition parties presented real alternatives to voters. Some unresolved issues remained regarding restitution and return, but the attention of all actors was shifting. In effect, the struggle between international integrative forces and domestic partitionist forces had been fought to a draw.

In fact, the international community had always drawn a rhetorical link between resolution of displacement issues and development questions such

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as land tenure reform. For instance, the first OHR decision suspending land allocations was justified with reference both to return and to the assertion that “reallocation and . . . unlawful sale of socially-owned land also threatens to undermine the processes of [post-nationalization] restitution and privatization” (OHR 1999a). Likewise, a number of early land tenure reform efforts by development actors consciously sought to support durable solutions to displacement. In 2000, for instance, a study on the Bosnian real-estate market commissioned by OHR noted the importance of effective legal institutions to allowing displaced people to freely exercise the rights restored to them through the restitution process:

[A] functioning property market can have profound and positive effects on the success of policies dealing with the war displaced. These effects include: giving prospective returnees and displaced persons more information on the value of affected property rights and therefore a basis for making decisions on whether to return or to invest in their properties, and providing additional options for economic use of properties, such as the opportunity to sell or exchange homes to which they do not wish to return (Rabenhorst 2000, 4).

Given the international community’s continued commitment to promoting return in 2000, such arguments might have been premature, whatever their merit. In fact, the Dayton implementation agenda tended to accord land tenure issues relatively low priority until late in the restitution process, at times to its own detriment. For instance, early warnings by the Food and Agriculture Organization of the United Nations (FAO) that landmine contamination of agricultural land could hinder rural return and perpetuate dependence on humanitarian aid went largely unheeded as international mine clearance agencies set their priorities (Keith 1999). In the process of drawing up agricultural policies jointly with the entities, FAO emphasized the responsibility of the agricultural sector to support post-conflict recovery and relied on lessons learned by the RRTF in proposing specific measures that would support reintegration of displaced people (FAO 1999a). Nevertheless, the resulting policies were not given high priority by the international community and were shelved by entity-level authorities after elections in 2000 (ESI 2004). As late as the end of 2010, Bosnia’s legal framework for agriculture and rural development remained incomplete (Commission of the European Communities 2010).

With time, remaining displacement issues have come to be viewed as a legacy of the conflict and discussed primarily in terms of integration of internally displaced persons into residual reconstruction programs and improved social protection systems, as well as regional cooperation to resolve outstanding refugee issues (Commission of the European Communities 2008). Meanwhile, the trend since the final OHR decision returning authority over land allocations to domestic actors has been for land tenure reform to be cast predominantly as an economic transition issue associated with the European integration process (Commission of the European Communities 2008; FAO 2006).

Ultimately, the land allocation process in Bosnia did not meet the expectations of any of the parties involved. The international community found itself unable to enforce the transfer ban it had declared and ultimately dropped it. In cases where land allocations were clearly meant to discourage return, they failed, and even where they genuinely sought only to cushion the humanitarian impact of the return process for those evicted from claimed properties, the failure to back up allocation with construction assistance and service connections led to widespread abandonment of plots. Both partitionist and integrative attempts to engineer demographic developments by restoring or allocating land—and even the provision of land as humanitarian assistance—failed without the type of investment and security that only longer-term reform could bring.

FACTORS AND CONSTRAINTS AFFECTING OUTCOMES

Before considering general factors affecting land tenure policies related to the reintegration of displaced people, it is important to examine the relevance of the Bosnian case as a model for peacebuilding practice. A number of factors made Bosnia unusually susceptible to international efforts to promote reconstruction and reconciliation.

- *Tradition of tolerance.* Although it is possible to overstate the extent to which the Bosnian ethnic groups lived in harmony before the conflict, there is a genuine tradition of tolerance that has contributed to public acceptance of the legitimacy of post-conflict institutions and laws. The most striking examples involve evidence that many minority returnees have come to accept and trust local officials and even police in areas from which they were brutally expelled only a little over a decade ago (ESI 2007). The contrast with Kosovo, where the ethnic Albanian experience of decades of official discrimination has effectively delegitimized many public bodies, is instructive (Katz and Philpott 2006).
- *Massive international investment.* Per capita spending on the Bosnian reconstruction has dwarfed that in other emergency settings, and the international civilian and military presence has been large and sustained.
- *Strong international mandate.* The international community's influence in Bosnia has been immeasurably strengthened by the OHR's mandate to take measures such as imposing laws and dismissing public officials where necessary to ensure implementation of the DPA. The fact that Bosnian politicians did not challenge the legitimacy of these powers until recently provided international actors with leverage to force domestic actors to agree to necessary but politically unpopular steps such as property restitution. However, the practical limits of these powers were demonstrated by the widespread flouting of the land allocation ban, and their legitimacy has come into increasing question as Bosnia moves from post-conflict reconstruction to European integration (ICG 2009).

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- *Positive incentives.* Bosnia's geographical position at the edge of Europe has made it a credible candidate for integration into regional and trans-Atlantic organizations such as the Organization for Security and Co-operation in Europe, the Council of Europe, NATO, and the EU. This has allowed peacebuilding actors to act as gatekeepers to these bodies, holding out the prestige and recognition conferred by admission in exchange for adoption of the reforms necessary to join.
- *Nature of the resolution of the conflict.* None of Bosnia's three ethnic groups was decisively militarily defeated or expelled, and thus all three have been required to engage with each other. This is in strong contrast to, for example, Croatia and Kosovo, where large Serb minorities fled nearly en masse and have experienced difficulty reestablishing themselves as either a demographic or a political presence. In the area of property restitution, for instance, the similar situations of the three parties in Bosnia gave each not only something to lose but also something to gain from supporting the process. Likewise, land allocation in support of resettlement was employed in various manners and to various extents by all sides in Bosnia.
- *Unitary legal tradition.* Arguably, an enduring effect of Ottoman rule was the widespread acceptance of uniform legal rules and institutions for land administration, resulting from the pressure on productive land to support nearly constant military campaigns. The result has conformed to the widespread observation that rising land values encourage formal property rights frameworks (Deininger 2003). Bosnia's tradition of centralized land administration has meant that parallel systems for land administration there, although developed by conflicting parties, were largely compatible because they were all based on shared legal and institutional premises. Thus, while post-conflict Bosnia is characterized by a degree of institutional multiplicity typical of federal systems, domestic legal pluralism has not been an issue. On the other hand, during the early period of implementation of the DPA, internationally imposed requirements for restitution were in clear conflict with domestic administrative practices favoring permanent resettlement of displaced populations (Waters 1999).

Keeping the above in mind, the Bosnian case can nevertheless contribute a good deal to understanding of the use of land to support post-conflict reintegration of displaced people. One key similarity between Bosnia and other post-conflict situations is the extent to which demographic and socioeconomic trends that preceded the conflict have shaped the parameters for peacebuilding. In Bosnia, a process of informal urbanization had been underway since the 1960s, with rural workers establishing footholds at the edges of cities by constructing housing on undeveloped land. These settlements were tolerated and formalized, but often remained unconnected to services and utilities because of their unplanned and scattered locations. The conflict in Bosnia accelerated urbanization, with thousands of people who were ethnically cleansed from the countryside resettling in cities

such as Sarajevo and Tuzla. Even when displaced people return to their original homes, they often leave younger family members behind in urban areas where they tend to have better educational and employment opportunities.

LESSONS LEARNED

The central lesson to be drawn from post-conflict land administration in Bosnia is the need to fully understand the agenda and motives of local actors in relation to land and property resources, as well as to realistically assess the capacity of international actors to intervene in these issues in a sustained and constructive manner. On the national side, it is particularly important to recognize that established patterns of land use and administration are likely to be mobilized to serve particular post-conflict ends. In the case of Bosnia, Yugoslav-era practices of unplanned urbanization provided a blueprint for resettlement policies that served both the legitimate objective of housing people displaced by the post-conflict restitution process and more problematic goal of ethnic engineering.

In other settings, both local land administration traditions and the aims of the parties to the conflict may differ significantly. However, land will almost inevitably be an issue, due to its combined symbolic, economic, and strategic importance. Moreover, local authorities will inevitably have better knowledge of local land issues and greater capacity to administer land and property than international actors. In Bosnia, this was reflected by the fact that the international community was late to awaken to the potentially discriminatory aspects of land allocation, failed to appreciate the reasons that allocation programs would be unlikely to be sustainable, and overreached in attempting to assume authority over past and future allocations.

This is not to say that the international community should be passive in the face of arbitrary and discriminatory land administration practices. Rather, experience in Bosnia underscores the advantage of timely, achievable measures to preempt or mitigate efforts to manipulate land assets over sweeping attempts to ban or retroactively undo them. In this sense, the original OHR decision of May 1999 banning land allocations that were manifestly intended to discourage return appears to have been both clearly warranted and precisely targeted. By contrast, later decisions retroactively extending the ban to all allocations simply forced most such transactions into informal channels, discouraged legitimate investments, and damaged OHR's credibility.

While these conclusions might appear to be relatively straightforward, they come at a time of ongoing debate over the appropriate role of international actors in engaging in post-conflict housing, land, and property (HLP) issues. For instance, the United Nations Human Settlements Programme (UN-HABITAT), the agency that currently chairs the main international humanitarian working group on HLP matters, has in the past recommended an unusually robust approach. In its 2007 *Post-Conflict Land Administration and Peacebuilding Handbook*, it proposed that peacekeeping missions should enjoy a remit to temporarily substitute themselves

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for national land administration bodies, with powers to secure and protect land records, ban unlawful land transfers, facilitate dispute resolution, issue building permits, inventory abandoned property and allocate it for use, and, after one year, facilitate root-and-branch reform of the national land administration and management function (UN-HABITAT 2007).

Subsequent statements of international policy on post-conflict HLP matters have been less ambitious in scope. For instance, UN-HABITAT and others have encouraged humanitarian actors working in the field in post-conflict situations to take a do-no-harm approach and to refrain from interposing themselves in HLP disputes wherever possible (GLTN, CWGER, and UN-HABITAT 2009). Similarly, a checklist on HLP issues for UN humanitarian coordinators framed its recommendations primarily in terms of assessment, monitoring, capacity-building, and advocacy with national actors, rather than assumption of an executive role (PCWG 2009).

In the context of this ongoing effort to identify the appropriate role of international actors in post-conflict land management, a number of specific lessons drawn from the experience in Bosnia may be helpful:

- *Participatory processes and voluntariness.* It is now increasingly well established in international law and humanitarian policy that choice of destination for internally displaced persons should be voluntary, and that domestic authorities have the primary duty to create the conditions for the exercise of free and informed choice between return and resettlement elsewhere in the country. As such, even indirect pressure to stay (such as the allocation of land without fees or means-testing) or to return (such as the closure of camps and exclusive availability of humanitarian aid at return sites) is suspect.

In this context, experience in Bosnia shows that economic support measures—including those that can be achieved through land tenure reform and participatory land use planning—are more likely to achieve meaningful integration than attempts to restore or provide land as an incentive to return or resettle. Indeed, voluntary choices on ending displacement can be facilitated by ensuring that aid and reintegration support follows displaced people, not the other way around. For instance, in the case of Bosnia, FAO has recommended demand-driven forms of agricultural assistance to displaced people with rural backgrounds, such as extension services and micro-lending (FAO 1999b).

- *Assessing available land.* A key lesson from Bosnia is that significant support to current occupants of claimed properties may be necessary to lay the ground for restitution. However, one of the most important parameters in any provision of land to displaced people, whether for immediate humanitarian shelter or longer-term resettlement, is the need to ensure that the selected sites are both physically appropriate and legally unencumbered. Settling displaced people on land that is exposed to natural hazards, owned or claimed by others, or lacking in services and transportation infrastructure is unsustainable and may be politically destabilizing.

For instance, the relatively widespread abandonment of allocated land plots in Bosnia was largely due to poor physical features, services, and location. Unresolved land tenure and privatization issues, along with the destabilizing effect of the OHR decisions banning allocations, tended to undermine the legal certainty of such allocations as well (Ó Tuathail and Dahlman 2006). Given Bosnia's pre-conflict history of expanding informal settlements, the interest of displaced people in urban resettlement should have been anticipated—along with the limitations of indiscriminate land plot allocation as a device for sustainably achieving this end.

- *Nondiscrimination and means-testing.* Land allocation policies would clearly be discriminatory if eligibility were defined solely on the basis of ethnicity. In Bosnia, land was made available to an ostensibly ethnicity-neutral group—people vacating claimed property—in a situation in which this status clearly correlated with ethnicity at the local level. Measures that could be taken to avoid the possibility of discrimination in such situations might also constitute the basis of sound social welfare policy.

In particular, the Bosnian experience speaks for the development of criteria for land and housing allocation that focus on objective need, including means-testing, and planned and flexible forms of assistance that correspond to beneficiaries' objective situations. In many parts of Bosnia, separate, parallel programs have been set up under various laws to provide social protection in a manner that fails to distinguish between vulnerable groups (such as indigent returnees or people seeking resettlement) and politically favored groups such as war veterans. Such failure to coherently prioritize the aims of social welfare programming renders it unlikely that any of the objectives for such programming will be achieved.

Ultimately, the Bosnian example underscores the legal and practical limitations of attempts to secure sustainable post-conflict demographic outcomes by restoring or allocating land to displaced people. In cases such as Bosnia, where basic elements of land administration—such as participatory planning, agricultural policy, taxation, registration, infrastructure, and utilities and service provision—are near collapse, attempts to promote either return or resettlement are unlikely to be viable without broader reform. Equally important, but more elusive in practice, durable solutions should be driven by the choices of the displaced and supported by the efforts of domestic and international authorities, not the other way around.

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