

Independent Land Newsletter (August 2004)

STRUGGLING WITH LAND REFORM ISSUES IN EASTERN AFRICA TODAY

edited by Nelson Marongwe and Robin Palmer

This Newsletter seeks to give an overview of current land reform issues in the Horn, East and Central Africa. ‘Eastern Africa’ here covers Burundi, Eastern DRC, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, Sudan, Tanzania and Uganda.

This issue is the second edition of the *Independent Land Newsletter*; the earlier one centred on Southern Africa, was circulated in June 2004, and is posted on two websites.¹ Compilation of this issue has come from voluntary contributions from land experts mainly based in the respective countries.² There was no specific format followed in the preparation of country contributions and hence the structure, content and depth of issues covered by individual contributors varies, as of course do their perspectives. The length of individual country contributions were also not fixed and as a result there is great variation but also a rich diversity of issues presented.

There has been a generally positive response to the earlier, Southern African *Newsletter*, and to early drafts of this. It would however be greatly appreciated if readers could both circulate this widely if they find it useful and respond with any comments on this edition either to Nelson Marongwe (nmarongwe@yahoo.com), who is the principal editor, or to Robin Palmer (rpalmer@oxfam.org.uk), who takes full responsibility for this final version. As in Southern Africa, land is clearly a highly contentious issue in a wide variety of ways right across Eastern Africa, as these pages amply reveal.

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¹ http://www.oxfam.org.uk/resources/learning/landrights/downloads/ind_land_newsletter_sth_afr_june_2004.rtf and <http://www.sarpn.org.za/documents/d0000850/index.php>

² Compilation of this Newsletter was made possible through individual contributions from, among others, Martin Adams, Paul de Wit, Chris Huggins, Harold Liversage, Mary Kessi, Deus M Kibamba, Ken Menkhaus, Robin Palmer and Margaret Rugadya.

BURUNDI

Burundi has been embroiled in violence for decades,³ and has been particularly hard-hit by the civil war which has been going on for the last decade. At least 300,000 people have died as a result of violence during that period, and total of 1.2 million people have been displaced from their homes: up to 470,000 Burundians are living in Tanzania. In recent months, the steady flow of returning refugees has slowed down slightly, and it is likely that the remaining refugees are waiting to see what will occur after the scheduled election period. In November 2003, the transitional national government of Burundi and the CNDD-FDD rebels signed an agreement endorsing political, defence and security power sharing. The rebel group which remains opposed to negotiations with the government, the FNL, is under considerable pressure to negotiate.

Land is significant to conflict prevention in many ways, but primarily perhaps because of the great challenge posed by the possible return of refugees, mainly from Burundi. Population density is high, averaging 230 people per sq km but as high as 360 persons per sq km in some areas. Over 80% of rural households have less than 1.5 hectares of land, and the estimates of the average land holding vary from 0.8 to 0.39 ha.⁴ Population pressure has led to exploitation of marginal lands which makes livestock and agricultural productivity increasingly fragile. In addition, woodland areas have been devastated and soil productivity is on the decline, especially on small farms which are intensively cultivated.

Land tenure in Burundi currently has both customary and modern systems operating in parallel, and with some overlapping and ‘hybrid’ systems in place. The 1986 Land Tenure Code requires all land, and all land transactions, to be registered with the state. However, the state lacks the financial resources to implement or disseminate the Land Tenure Code. As a result, customary tenure regimes are still very influential in rural areas, and land holdings remain largely unregistered.⁵

Under customary law, women have unequal access to land (e.g. they can rarely inherit land). Many studies of inequality and conflict do not take women’s issues into consideration, arguing that women do not participate in violence. This assumption is problematic however: civilian populations may provide direct or indirect support to armed forces. Growing up in female-headed households with restricted access to land, in extreme poverty, children are more likely to become involved in conflict, either for financial or for ideological reasons.

The Government of Burundi has tended to focus on land fragmentation and environmental degradation as the main land-related problems. Notwithstanding the significance of these two

³ This section is drawn from *Preventing Conflict through Improved Policies on Land Tenure, Natural Resource Rights, and Migration in the Great Lakes Region: An Applied Research, Networking and Advocacy Project* ACTS (African Centre for Technology Studies) *Eco-Conflicts Policy Brief*, Vol 3 No 1 (Christopher Huggins) <http://www.oxfam.org.uk/resources/learning/landrights/downloads/actslandconflictgreatlakespolicybrief.pdf> and at <http://www.acts.or.ke/>

⁴ Interviews; forthcoming study by USAID; and Leisz, S. (1996) Burundi Country Profile; in Bruce, John W. (1996) *Country Profiles of Land Tenure: Africa, 1996*; Land Tenure Centre, University of Wisconsin-Madison; Research Paper No. 130.

⁵ Oketch, J. S and Tara Polzer (2003) *Coffee and Conflict in Burundi*; in Lind, J. and Sturman, K. (2002) *Scarcity and Surfeit: The Ecology of Africa’s Conflicts*. ACTS/ISS, Nairobi/ Pretoria.

challenges, other land-related issues have great salience to long-term conflict prevention. These include internal displacement, the likely return of the refugees, the problems of land administration, controversial state expropriation of land and ‘land grabbing’ by individuals.

Land may be directly contributing to conflict; anecdotal reports suggest that some rebel groups use the promise of increased access to land to enlist people.⁶ The displacement of large numbers of people also creates opportunities for illegitimate use of abandoned lands, though it is unclear to what extent this is a contributing factor to conflict.

The economic and political exclusion in Burundi is based on tight networks of kinship and patronage, with strong links between the civil service, military and the private business sector. Land is one of the currencies of patronage; and it is also one of the ways in which diverted monies are invested. If this continues to be the case, it could undermine a political transition process.

Land administration is key to resolving some of these problems. The system is multi-tiered, starting at the local level, with the Bashingantahe, a ‘council of respected persons’ made up of eminent males at the local level. Some members of these ‘wise councils’ have been appointed for reasons of political influence rather than local legitimacy.⁷ The legitimacy of some chiefs and commune administrators has also been compromised due to the conflict. Therefore, local level land disputes are less easily resolved.

The formal land registration system is far from perfect. Flight of human resources is a major problem. Double-registration of plots, corruption and nepotism are also in evidence. At the judicial level, which is the ultimate guarantor of land security in the country, corruption is a problem, due partly to low salaries paid to judges. As a result, some land disputes spend extremely long periods in the courts.

The Land Code is in the process of being revised. By May 2004, a draft was ready for presentation to parliament for debate. There are several proposed changes to the Law. While there is insufficient space here to discuss the proposed revisions in detail, a few comments may be made.⁸ Many of the proposals are potentially very positive: particularly revisions on how much land may be allocated by different authorities; and the establishment of commune-level land commissions: as long as these are designed to allow full local participation of a cross-section of local stakeholders. Others could be perceived as disappointing. Improving women’s access to land should be a priority, not necessarily through inheritance but perhaps by other means. The move towards formalisation of land documentation will require a well-designed policy which will facilitate formalisation but will not result in those without papers to be dispossessed by those who are able to take advantage of money, literacy, and connections.

⁶ Interviews

⁷ Nindorera, L-M. (1998) Keeping the Peace: Reviving the Tradition of Bashingantahe in Burundi; in *Online Journal of Peace and Conflict Resolution*, Vol. 1.4; International Crisis Group (2003) (b) Refugees and Displaced Persons in Burundi - Defusing the Land Time-Bomb; Nairobi/Brussels, 7th October 2003; and interviews with Burundians in Nairobi, October 2003

⁸ See forthcoming ACTS/ISS report for more details.

Systematic registration of land is clearly a multi-year project and will require massive resources which are unlikely to become available in the near future.

Finally, it is notable that the proposals do not envisage any kind of land redistribution exercise. A maximum land ceiling would be one simple way of making at least a symbolic move towards greater equality.

There are many issues relating to the repatriation of refugees that must be tackled urgently, given the moves towards peace in the country and the very real possibility that refugees will return soon. It will be useful to look at the role of conflict management mechanisms such as the Bashingantahe in assisting administrators and citizens at the local level in managing some of the land disputes that are likely to arise.

Institutions have been charged with managing these issues during the transition process, but doubts have been raised about their ability to do this due to political, technical, and financial factors. International support for policy development as well as implementation may be necessary. Currently, all eyes are on the preparations for elections, scheduled to take place by 31 October 2004. Because preparations for elections are behind schedule, land issues are second priority.

But they should not be neglected. In the long-term, land scarcity is likely to become one of the most significant issues affecting the country and will be exacerbated by environmental deterioration. The challenge is to add value to farm production and identify off-farm opportunities in a variety of sectors, for example through infrastructural development, market access, and counterbalancing the patterns of regionalism that have characterised politics and development in the country.

As this *Newsletter* was being written, it was reported by IRIN⁹ that on 28 July the World Bank approved US \$35 million grant for Burundi to improve food security and set up a sustainable land management system. Burundi also received \$5 million from the Global Environment Facility to support the development of a national institutional framework for land management, and to strengthen national planning for land resources. ‘The project will contribute to the government’s strategic goal of improving the livelihoods of rural people through economically and ecologically sustainable investments,’ the World Bank was reported as saying, adding that roughly 90 percent of Burundi’s population lived on agriculture, which accounts for 50 percent of GDP and at least 80 percent of export earnings. The International Medical Corps commented: ‘Despite a general improvement in the sociopolitical environment after years of civil war, rural families remain so poor that they have essentially no mechanisms for coping with food security’ and that malnutrition rates had been increasing since 2002.

EASTERN DEMOCRATIC REPUBLIC OF CONGO (DRC)¹⁰

⁹ ‘BURUNDI: World Bank funds food security, land reform initiative’, IRINNEWS.ORG, 2 August 2004, <http://www.irinnews.org/print.asp?ReportID=42435>

¹⁰ This text has been adapted and summarised from Vlassenroot, K. and Huggins C. (forthcoming) *Land, Migration and Conflict in Eastern Congo*. ACTS Press/Institute for Security Studies

Since the early 1990s, parts of Eastern Democratic Republic of Congo (DRC), such as the Provinces of North and South Kivu and (since 1999) the Territory of Ituri, have been embroiled in extremely bloody conflicts. Since the signing of the Lusaka Accords and the Sun City Agreement, most of the warring parties have become part of the Government of National Unity, which was established in June 2003. However, the road to sustainable peace is not smooth and tensions remain high, as was indicated by violence in Bukavu during May and June of this year. As the Government puts mechanisms in place for transition to democratic rule, with elections due to be held next year, land reform seems not to be high on the agenda.¹¹ Nonetheless, it is a key issue in the East of the country, and Congolese NGOs are advocating for reform of the law.¹²

Background to the conflict

The conflicts in the east are complex and there are a great number of important issues involved, including (but not limited to) the international trade in cassiterite, coltan, diamonds, gold, timber, and other important resources; activities of rebel groups initiating cross-border attacks on neighbouring countries from safe havens in the DRC; the manipulation of ethnic identities, leading to large-scale antagonism between ethnic groups; intensified local competition for access to political power and control over economic assets; and international geopolitical considerations, including those of Western powers and multinational corporations.

It is clear that access to land by different actors is also a factor in the conflicts, and patterns of control over land have been altered through a number of mechanisms including forced displacement; shifts in power between customary and administrative leaders; and changes in the various socio-economic structures that allow people to enjoy the benefits of agricultural and pastoral production (such as market access). Conflict is producing new competition for land, as part of a wider renegotiation of the local economic space and re-drawing of ethnic, class, and other ‘boundaries’ between groups.

Land is, first, a ‘structural’ cause of conflict. Insecure or insufficient access to land is a significant factor in the impoverishment of thousands of rural people, particularly in highly populated areas such as parts of North and South Kivu. Particularly through migration for industrial and commercial agricultural purposes before independence, thousands of people were moved permanently out of their indigenous rural sphere, without being satisfactorily incorporated in the industrial or urban sphere.¹³ Also, through commodification of land, entire households lost the land access which was guaranteed them under custom. The reduced access to land in areas of North Kivu, for example, worked in concert with other socio-economic forces to produce a highly mobile population of young men with few economic opportunities who were ready recruits for armed groups.¹⁴

¹¹ According to interviews with NGOs, Nairobi, July 2004.

¹² See e.g. Action Sociale et D’Organisation Paysanne (ASOP), PROPOSITION D’AMENDEMENT DE LA LOI N° 80-008 du 18 JUILLET 1980 MODIFIANT ET COMPLETANT LA LOI N° 73-021 du 20 JUILLET 1973 PORTANT REGIME GENERAL DES BIENS, REGIME FONCIER ET IMMOBILIER ET REGIME DES SURETES. August 2002; and Action Sociale et D’Organisation Paysanne (ASOP), Rapport de L’Atelier Sur le Processus de Reflexion participative Concernant les Amandments a la Loi Portant Regime general des Biens, Regimes Foncier et Immobilier et Regime des Suretes, March 2004

¹³ See SIDA (2004) *A Conflict Analysis for the Great Lakes Region*. Division for Eastern and Western Africa.

¹⁴ Van Acker, F. and Vlassenroot, K. (2001) *Youth and Conflict in Kivu: Komona Clair*.

Secondly, in some areas, disputed land claims have been identified as one of the triggers - the proximate causes - of violence. This is the case in Ituri Territory, where contested purchase and expansion of agricultural and ranching concessions, in parallel with foreign support for local elites, sparked violence in 1999. Thirdly, as mentioned above, access to land (either as a productive resource, speculative investment or as a source of collateral for credit) has been one of the currencies of power, and is therefore important to an understanding of the wider political economy of the DRC. Conflicts might be related to natural resources not only in terms of physical control over the resources themselves, but also over the control of labour, capital, technology, trade routes, markets, and other factors that are necessary to make them valuable.¹⁵

Control over land is for these reasons significant in terms of ethnic identity-formation, the powers and revenue-streams of local customary leaders, and market penetration of rural economies. In areas such as the Kivu Provinces, for example, access to land is intimately bound up with perceptions of national identity, and anger against the ‘immigrant’ groups living there are to some extent stories of local struggles for land and the ‘rents’ accruing from land; yet at the same time point at structural roots of political exclusion. Examining land access therefore allows for a fuller understanding of the overall governance context within which the conflicts in the DRC have emerged.¹⁶

Masisi, North Kivu: Land Scarcity, Migration and Conflict

Masisi is part of North Kivu Province, which has the potential to rank as one of the most agriculturally productive areas of Africa. However the region is one of the most densely populated in the country. In addition to immigration from Rwanda at various times in history, the area also saw an influx of Nande people from the neighbouring Beni/ Lubero territory.¹⁷ Land distribution is skewed towards elites: the majority of the land is the property of a small number of land owners, who each have extremely large land holdings as a result of their former access to the inner circles of Mobutu’s patronage system. In a survey in the zone of Luhoto (North-Kivu) in the beginning of the nineties, it was found that 31% of these concessions covered 71.2% of the cultivable area.¹⁸ Many of the commercial extensive ranches and plantations have controversial histories of alienation from customary systems. Due to high levels of corruption and personalization of power relations that have affected the country for decades, some of these transactions lack local legitimacy.

Conflict has changed local power relations. Many farmers who, during the height of the war had sold their lands, returned and attempted to negotiate to regain their lands, resulting in some disputes. In some cases, local agreements have been reached regarding land disputes, often with the help of inter-ethnic groups of elders.¹⁹ In other areas, historical land disputes resurfaced, as

¹⁵ Fairhead, J. (2001) International Dimensions of Conflict over Natural and Environmental Resources. In Peluso, N. L. and Watts, M. (2001) *Violent Environments*. Cornell University Press

¹⁶ The conflicts are, of course, not merely domestic but regional in nature because of the extent of foreign involvement.

¹⁷ Romkema, H. (2004) *Update on the DRC Transition: The Case of the Kivu Provinces*. ISS Situation Report. Institute for Security Studies, Pretoria.

¹⁸ Tsongo, M., *Problématique d'accès à la terre dans les systèmes d'exploitation agricole des régions montagneuses du Nord-Kivu (Zaire)*, Louvain-La-Neuve, UCL, 1994.

¹⁹ CREDAP (2001) RAPPORTS DES MISSIONS D'ENQUETE SUR LES PROBLEMES ACTUELS DES AGRICULTEURS EN TERRITOIRES DE MASISI ET DE NYIRAGONGO

the balance of power between communities changed, and some inhabitants refused to pay tribute to local chiefs. This issue is likely to remain problematic, as particular communities are politically favoured and heavily armed. Given the bloody history of the region, use of illegitimate means are likely to have tragic consequences, mainly for the poorest members of those ethnic communities associated with them.

Controversial Individualisation of Land in Ituri Territory

As noted above, contested purchase and expansion of agricultural and ranching concessions, by local elites with support from foreign armies, triggered conflict in Ituri Territory which has killed at least 50,000 people. This is partly because the fundamental concept of land ‘ownership’ differs radically between different actors. Customary and market-based means of land access and acquisition operate side-by side, and are often in competition and conflict. In the 1960s and 1970s, President Mobutu denounced ‘feudal’ customary tenure regimes in the East, and the chiefs were formally stripped of their powers to allocate land. The legal notion of customary rights was never defined. This has led some experts to criticise the legislation for fundamentally ignoring customary land rights.²⁰

To some extent however, customary rights *are* built into the land legislation. In the eyes of local people, the ‘right’ to allocate land - or at least to be consulted before land distribution - belongs to them, through their customary leaders. In order to avoid possible conflicts over land, the land law provides that an individual or group seeking to be granted a lease to a particular area, even a ‘vacant’ area, will visit with the District authorities in order to consult the chief and the elders of the locality.²¹ The Law does not provide local people with the right to veto the purchase; but Land administrators admit that the permission of the local people is a *de facto* necessity.

In several cases since independence, land has been acquired without consultation with local people, or concessions have been expanded at the expense of local people, who have been displaced. In the late 1990s, local elites (mostly from one ethnic group) reportedly evicted many households in this way, with the support of members of the Ugandan military.²² The local administration was allegedly partisan and corrupt, while some chiefs also benefited personally at the expense of their communities. The eventual result, in a context of ethnic tension and the ready availability of weapons, was carnage.

Conclusion

The Government of National Unity is, understandably, primarily concerned with political issues at the moment, along with the Mining Code and Forest Code, which are seen as means to generate economic growth. However, the land-related struggles of local people should not be forgotten: the DRC requires land reform, of a legislative and possibly also redistributive nature. Customary rights and responsibilities should be clearly defined, through a consultative process. However, inequalities around land, which have indirectly contributed to the genesis of violent

²⁰ Leisz, S. (1998) Zaire Country Profile. In: Bruce, J. (1998) *Country Profiles of Land Tenure: Africa, 1996*. Land Tenure Centre, University of Wisconsin. Research paper No. 130.

²¹ Aide et Action Pour La Paix (2004) *Ce Qu’Il Faut Connaitre Sur Le Sol En Droit Congolais*. Etude Juridique No. 1. Aide et Action Pour La Paix / Norwegian Refugee Council, Goma.

²² See e.g. Pottier, J. (2003) *Emergency in Ituri, DRC: Political Complexity, Land and other Challenges in Restoring Food Security*. FAO. 2003; Sematumba, O. (2003) *Ituri: the War Within the War*. Pole Institute, Goma.

conflict in Eastern Congo, cannot be solved purely through legislative reforms. The structures - political, economic, and social - through which land access is mediated must also be reformed. This is in addition to the improvements in regional relationships which must be achieved if land-related sources of conflict are to be effectively addressed.

ERITREA

Land officially belongs to the state in Eritrea. Land law reform has been a priority of the Eritrean Government since it was founded in 1993, but, as elsewhere in Africa, implementation has proved difficult. There is a generally aggressive official attitude towards nomadic people in the lowlands, while the central government continues to seek to assert its control over traditional social groups controlling land in the highlands. Conflicts have been acute over the defining boundaries between villages and the establishment of new villages.

Land Proclamation No 58 1994, abrogated customary land rights, substituted conditional lifetime usufruct by men and women (heritable, subject to consent of the state, but with strict ceilings on land area that may be acquired) and declared land to be vested in the state. Land administration, including cadastre, was placed under the control of Regional Land Administration Bodies who may upgrade usufructs to limited-term leases on application. Under the proclamation, LABs are responsible for the administration of the extensive pastoral areas. Implementation of the law has been slow and enforcement is likely to be weak as a result

In recent years land issues have been overshadowed by conflicts, both internal and external. The 30 year civil war ended in 1991 and was followed by the 1998-2000 war with Ethiopia. The latter displaced over a million farmers, of whom 60,000 were still in temporary camps in February 2004. In mid-2003, some 8,700 Eritreans who had been expelled from Ethiopia 1998, and initially put into camps because they had no original place to return to, were given 1 ha land each in 2003. In order to ease their acceptance, the facilities extended to them (such as water, roads and schooling) were also given to neighbouring communities. A similar number remain to be resettled.

Parts of Eritrea are littered with landmines from past conflicts, while high population densities have resulted in extensive land degradation over a very long period. There remains a tense conflict over the border town of Badme and particular tensions surrounding the Kunama ethnic group of 100,000 near the border with Ethiopia. 70,000 are in Eritrea and there is a controversy over the status of 4,000 Kunama refugees in Ethiopia. The Kunama generally accuse the Eritrean Government of grabbing their land as part of a process of resettling people from the highlands into the lowlands.

ETHIOPIA

Ethiopia has a long tradition of top-down, autocratic governance. In recent years, for a variety of reasons, more space has opened for a cautious dialogue between government and civil society, particularly around the PRSP process. As part of this, land issues have come to the fore and there have been serious debates particularly around ownership, tenure security and resettlement. These debates are tied in with others concerning the country's chronic food insecurity, issues associated

with environmental degradation due to the extremely high population (the country total is now 70m) densities in the Highlands²³ and the government's economic policy of agricultural development-led industrialisation (ADLI). Successive government policies, in particular the Derg's periodic redistributions, aimed at greater equality and addressing generational conflicts, exacerbated tenure insecurity while more recent policies have denied people access to traditional off farm opportunities. Despite growing landlessness (now estimated at 25% of the population with the numbers requiring food aid rising dangerously year on year), people have been unwilling to lease their land and seek economic opportunities elsewhere because to do so would most likely mean losing their rights to land. Current government policy seems determined to keep people on the land, for fear of creating political and social problems in the cities.

In recent years, the land question has tended to have been polarised between the government position that it must remain the property of the state and opposition and donor beliefs that it should be privatised. The land expert Dessalegn Rahmato, of the Forum for Social Studies, argues for a middle way of associated ownership, a combination of individual rights and community oversight. He believes that the current land tenure system is very restrictive, causes tenure insecurity and gives the state immense power over peasants, while also being inefficient and rigid.²⁴

A cautious version tenure reform has come in the form of land certificates, being piloted in Tigray and Amhara regions. There is considerable uncertainty and lack of information about these certificates, their legal status, what they actually confer and the degree of confidence they inspire in people.

The policy of resettlement, of moving people from densely populated highlands to relatively sparsely lowlands, begun by the Derg in the 1980s, has been revived. Government plans to move over 2 million people 'voluntarily' over a three year period. As in the 1980s, some of the 350,000 already relocated complain of lack of support, broken promises and worse in the areas to which they are moved.²⁵

Given the current dire situation of Ethiopian agriculture, leading Ethiopian economists have called on government to revisit its land policy, which they see as a major impediment to the adoption of sustainable and long-term land improvement and management, to open it up for greater dialogue and to establish an independent land commission.²⁶ As yet, there are few signs that the government is prepared to move in this direction.

²³ As an example, in the Deder and Meta districts of East Hararghe Zone of Oromia Region, the average size of household plots has decreased from 0.5 ha in 1991 to 0.25 ha in 2003.

²⁴ ETHIOPIA: Interview with Dessalegn Rahmato, land tenure expert', IRINNEWS.ORG, 14 August 2003, <http://www.irinnews.org/print.asp?ReportID=35971>

²⁵ ETHIOPIA: Rural resettlement programme criticised', IRINNEWS.ORG, 1 March 2004, <http://www.irinnews.org/print.asp?ReportID=39757>

²⁶ 'Ethiopia's Struggle over Land Reform', *World Press Review*, **51**, 4, April 2004, <http://www.worldpress.org/Africa/1839.cfm> ; Ethiopian Economic Association / Ethiopian Economic Policy Research Institute (EEA/EEPRI) *A Research Report On Land Tenure and Agricultural Development In Ethiopia* (Addis Ababa, October 2002. The executive summary can be found at <http://www.oxfam.org.uk/resources/learning/landrights/downloads/ethltad.rtf>

KENYA

The driving force behind the land reform process in Kenya is public concern, as voiced by civil society organisations and the media, about the disastrous state of land administration in the country and the urgent need to put things right. Land administration in Kenya has changed little since the 1950s and 1960s and land laws overlap both in terms of jurisdiction and administrative area. The need for land policy reform and legal harmonization has been accepted since the 1980s, but there was little action until 1999 with the establishment of the Commission of Inquiry into the Land Law System (the ‘Njonjo’ Commission). The Commission’s report, completed in November 2002 and published some six months later, was highly critical of the current state of land administration and management in Kenya.

In March 2004, the Constitution of Kenya Review Commission published a draft constitution, which includes a chapter on land and property. Both of these commissions conducted hearings across the country and their recommendations sit well together.²⁷ In July 2004, the fate of the draft Constitution hangs in the balance, among other things, because of disagreements within the governing coalition over the relative powers of a future President and Prime Minister. However, the land chapter in the draft constitution seems to be broadly accepted.

The NARC Government, elected in late 2002, has agreed in principle to implement the recommendations of the Njonjo Commission and has promised to deliver a National Land Policy by the middle of 2005. In the meantime, a third Commission (the Ndung’u Commission), appointed by President Kibaki, to enquire into ‘land grabbing’, has submitted a report, but it has yet to be published.

The Minister of Lands and Housing inaugurated the National Land Policy Formulation Process (NLPFP) at a Stakeholders’ workshop in February 2004.²⁸ Six working groups, drawn from the government, NGOs, private sector, universities, etc. have been formed to come up with land policy proposals on six broad themes: urban, rural, land tenure, land information, institutional/financial, legal framework by the end of December. This will be followed by a series of workshops around the country. So far the process has moved painfully slowly but it is expected to pick up pace in the coming months now that the funding and logistics are said to have been sorted out.

Donors, namely Ireland Aid, DFID,²⁹ Sida and USAID, have contributed a total of about £1.0 million (US\$ 1.84 million) to a basket funding mechanism to cover the costs of the NLPFP, the establishment and operation of the Coordination Unit in the MoLH, technical assistance, studies, workshops, professional fees, etc. DFID is also supporting a major training and capacity building programme for the land boards and land dispute tribunals involving an estimated 7000 members

²⁷ See *A Summary of Land Policy Principles drawn from the Commission of Inquiry into the Land Law System of Kenya (‘Njonjo Commission’)*, *The Constitution of Kenya Review Commission (CKRC)*, *Proceedings of the National Civil Society Conference on Land Reform and the Land Question*

http://www.oxfam.org.uk/resources/learning/landrights/downloads/kenya_land_policy_principles.rtf

²⁸ See Kenya Ministry of Lands and Settlement, *National Land Policy Formulation Process: Concept Paper*, March 2004 http://www.oxfam.org.uk/resources/learning/landrights/downloads/kenya_land_policy_principles.rtf

²⁹ See Martin Adams, *Current Land Reform and Land Policy Processes in Kenya*, (from a Report for DFID Kenya) August 2003, http://www.oxfam.org.uk/resources/learning/landrights/downloads/kenya_land_policy_process_%20concept_paper.rtf

throughout Kenya, which is being implemented jointly by the Ministry of Justice and Constitutional Affairs and MoLH. The Secretariat is in the Kenya School of Law.

RWANDA

The context for understanding the passing of the Land Policy and Law is that Rwanda has perhaps always been a very closed and authoritarian society which the present government is trying to democratise in a managed process. Critics are concerned that the present government is trying to maintain too much control over the process. Nonetheless, Rwanda has probably seen more reform of its policies and institutions over the past 10 years than ever before.³⁰

Rwanda's Land Policy was approved by Cabinet in February 2004 and the Land Law is presently being considered by parliament. After a very long phase of consultation,³¹ the finalisation of the Land Policy had to wait for the finalisation of the new Constitution and the country's first national elections since the genocide. Some critics feel that there has not been sufficient consultation on the Land Policy while other observers believe the Land Policy to have been one of the more widely debated amongst ordinary Rwandans. At a national level several NGOs through the LandNet coalition have contributed to the analysis of the Land Policy and have sometimes been able to bring about certain changes. For some observers the passing of the Land Law through parliament is considered a test-case for the development of accountable and participatory procedures in parliament, including the introduction of public hearings. It would appear that the Government of Rwanda (GoR) attitude is that neither the Land Policy or Land Law are cast in stone. A Policy is required immediately but it is expected that both the Policy and Law may be reviewed and revised regularly over the next few years once implementation gets underway.

Concerns raised during consultations and discussions on the Land Policy mainly revolved around the policy objectives for the strengthening of women's land rights, land consolidation and the registration of all land. Regarding women's land rights, the Government of Rwanda has included in the law dealing with inheritance an article that allows women to inherit land. The main challenge is to inform women of their rights. Early indications are that at least in certain areas women are aware of the change in the inheritance law and are claiming the inheritance in the family, sometimes resulting in increased land disputes. Furthermore the Constitution and Land Law state that there will be no discrimination in the right to own land and the Land Law stipulates that both spouses must be registered as co-owners of land and that land may not be

³⁰ See Minitere (Ministry of Lands, Resettlement and Environment) and DFID (Harold Liversage, Land Policy Specialist), *Overview of Rwanda's Land Policy and Land Law and Key Challenges for Implementation – Briefing Document* February 2003 <http://www.oxfam.org.uk/resources/learning/landrights/downloads/overview.rtf>

³¹ See LandNet Rwanda Chapter, *Report of a Workshop on Mainstreaming Grassroots Consultations into the National Land Policy and PRSP*, November 2001

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/lrwams.rtf> ;

Robin Palmer, *A Review for LandNet Rwanda of the Draft National Land Policy – and beyond*, November 2001

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/nlpview.rtf> ;

Lisa Jones, *Summary of and Comments on Draft Policy for National Land Reform*, April 2001

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/jonessum.rtf> ;

Robin Palmer, *Report and Reflections on the Rwandan Draft National Land Policy Workshop*, November 2000 <http://www.oxfam.org.uk/resources/learning/landrights/downloads/rwanlp.rtf>

disposed of without the consent of all family members (including minors and mentally incompetent individuals. The latter provision is a consequence of the very large number of children-headed households and an attempt to secure their land rights. But the actual administration of this clause is going to require careful consideration and is probably going to mean a heavy reliance on a local-level land registration system (see below).

Land consolidation, linked to the promotion of villagisation and urbanisation, is a sensitive policy objective. The GoR's argument is that Rwanda is the most densely populated country in Africa with one of the lowest levels of urbanisation and a very high level of land fragmentation. Under the previous regime urbanisation was discouraged and it is felt that present land ownership and land use patterns have become unsustainable. Hence the GoR wishes to promote villagisation³² and urbanisation as a means to stopping land fragmentation and over time as a means to consolidation of ownership and land use. While it would appear that the rationale behind the promotion of villagisation, urbanisation and consolidation appears to be widely accepted, the main concern relates to the way in which this is to occur and the potential threat of a large proportion of the population losing access to land in a relatively short space of time without being properly compensated for their land rights and without adequate provision of alternative employment or access at least to properly serviced residential land. As a result of these concerns, the GoR has emphasised that land consolidation, villagisation and urbanisation should be voluntary and attractive processes. Consolidation of ownership should occur through the land market, possibly with more emphasis on the rental market. Villagisation and urbanisation should be stimulated by the promotion of off-farm employment and the provision of adequate infrastructure facilities and services. While it is expected that the consolidation of ownership will occur over time through the development of a land market, in the short to medium term government, as part of its agricultural development policy, will focus on promoting the consolidation of land use rather than ownership, through the formation of farmers associations and the establishment of larger production units. It is expected that this will mainly occur (as it already does) in valley bottoms where larger scale production units are more viable and where land is generally regarded as a shared resource. Even so, the establishment of larger production units requires a good analysis of existing land ownership and land-use patterns and good consultation with the beneficiaries.

The GoR's intention of promoting the registration of all land is driven by the desire to strengthen security of tenure of all Rwandans and to promote the development of a land market. Over the past few decades but particularly as a result of the civil war and genocide in the early 90s, many Rwandans have been displaced and lost at least some of their land rights. The GoR has made a political decision that land rights lost as a result of socio-political conflicts will not be restored but that the state has a responsibility for finding land for the landless. Land disputes are widespread, although presently not too serious. The GoR sees land registration as a means to promoting social stability and to resolving land disputes. Concerns have been raised regarding

³² See Rwanda Initiative for Sustainable Development (RISD), *Land Use and Villagisation in Rwanda*, September 1999 <http://www.oxfam.org.uk/resources/learning/landrights/downloads/risdpap.rtf>
Robin Palmer, *Report on the Workshop on Land Use and Villagisation in Rwanda*, September 1999
<http://www.oxfam.org.uk/resources/learning/landrights/downloads/kigali.rtf>. See also the report commissioned by Oxfam GB on villagisation experiences elsewhere, Christy Cannon Lorgen, *Report on the Experience of Villagisation: Lessons from Ethiopia, Mozambique, and Tanzania*, January 1999
<http://www.oxfam.org.uk/resources/learning/landrights/downloads/fullreport.rtf>

that ordinary Rwandans may not be able to afford costs of land registration, assuming they have to pay. Hence there is a danger that many people's land rights are weakened and that in particular the poor are dispossessed of their rights by the rich. Clearly the risks of promoting the registration of all land is high and it is not a foregone conclusion that land registration will contribute to improved security of tenure or even the stimulation of a land market. However, the Land Law stipulates that all land rights (be they registered, formal rights or unregistered customary) are equally protected. Furthermore, in developing an implementation strategy for land registration, the GoR has taken into account differing land needs.

Broadly, two differing sets of land registration needs have been identified:

1. *Commercial farmers, entrepreneurs and urban dwellers* who usually: want to invest significantly in land and/or access credit from commercial banks, require more detailed documentation and level of survey precision and are capable of paying the requisite registration fees and annual rentals. Presently this grouping makes up a small percentage of the population but it is expected that demand will grow.
2. *Subsistence farmers, peri-urban and informal urban dwellers* who usually: want to register land rights as a means to improving security of tenure and reducing disputes, do want improved access to credit but usually through micro-credit schemes and are less able to pay for land registration or annual land rentals.

In considering these differing needs, the GoR is proposing the development of a dual-level land registration system:

- a national-level system, which will be based on an improvement of the existing system of issuing land concessions and catering mainly for the former grouping and
- a local-level system, catering mainly for the latter grouping.

The local-level land registration system will be new to Rwanda and it is recognised that the system along with the development of local-level land use planning procedures (see below) will need to be piloted. The system will involve the establishment of District-level land registries which allow for local (Cell) level land registration. Cell boundaries will be mapped, using photomaps and GPS. Cell residents' land rights will be identified and recorded using participatory community mapping and photomaps. The information will be registered in District Registers with copies kept at Cell or Sector level. Regular updating of information will be required. Initially the State would meet the financial costs but people would contribute in kind (time and knowledge). Sketch maps, documentary evidence and certificates of ownership could be issued by the District land registry on demand and subject to the payment of a fee.

It is important that the dual-level system is well integrated and this is expected to occur at District level. Cell boundaries will be registered in the national cadastre. Districts and towns will be the centres for all land registration. District-level Land Registrars will be responsible for ensuring the integration of information on land holdings registered under both systems. Land rights would be equally secured whether registered in the national or the local system.

It is expected that the dual-level system will provide the basis for adjudicatory and land dispute resolution procedures. Adjudicatory procedures would need to be part of procedures for identifying land rights. Dispute resolution procedures will require the involvement of Sector-

level Mediation Committees (separately being established through the Ministry of Justice) as the first point of reference. District Land Commissions and possibly Provincial Land Commissions could also play a role in mediation of land disputes and the courts will be the final point of reference for arbitration.

Peri urban and informal urban areas have been identified as areas where people's land rights are under particular threat. It has been proposed that peri-urban and informal urban dwellers should have the option of registering their land under the local-level land registration system. It has been suggested that further research into land markets and land registration needs for peri-urban and informal urban dwellers should be done.

The development of a local-level land registration system will be closely linked to the development of local level land-use planning procedures, which falls under the auspices of the Land Policy and to the formulation of local level development planning procedures, which is being implemented through the Ministry of Local Government under its decentralisation programme.

Concerns have been raised regarding the potential costs for developing the country's land administration systems. The GoR is presently developing cost estimates and budgets. It hopes to keep institutional costs down by either relying on voluntary, (but statutory) local institutions or by integrating land administration into the functions of other local institutions being established under the decentralisation programme. It is expected that the development of a national-level system, while probably requiring a substantial initial capital outlay will become financially self-sustaining, with the costs covered by the fees and annual land rentals paid by land concession applicants. The development of a local land registration system will be financed by the GoR, possibly with some targeted donor support. The system will probably be established systematically but gradually. The payment of fees for the provision of documentation on request will be explored further.

By promoting the development of a dual-level system the GoR hopes to meet differing land registration and tenure security needs in a system that can gradually be implemented and evolve. Nonetheless, the concerns raised regarding the potential threat to land tenure security, in particular of the poor, women and children headed households are valid and several challenges for implementation remain. As the GoR develops its implementation strategies, the NGO and private sectors are likely to be important partners. Also the GoR recognises the need for a phased approach to implementation which will probably stretch over several decades. In the short term, once the Land Law has been passed, the need for a widespread public awareness campaign on the Policy and Law is required. This should include further consultation on the Policy and its implementation. It is expected that lessons learnt in implementation will feed back into a review and possible revision of the Policy, Law, regulations and procedures. In developing an appropriate Land Policy, the GoR (and the ordinary people) are between the rock and a hard place. The challenges are enormous. While policy options chosen may be controversial or sensitive, they are probably the correct ones for Rwanda. The main challenge though will be how they are implemented.

SOMALIA

As of mid-2004, Somalia remains a state with no recognised functional central government. However, in many urban areas of the country, civil society is beginning to assert itself. Within Somalia, the Puntland State of Somalia has now established a government which is beginning to grapple with land issues. Somaliland should be seen as a separate state, but as yet unrecognised by the international community.

In the absence of a recognised central government formal laws regarding land tenure and land reform have been replaced by informal patterns of property claims based on an admixture of customary tenure and armed occupation in the country's inter-riverine agricultural zones. In 1991, militias composed mainly of pastoral clans from arid central Somalia swept into the valuable irrigated riverine areas of Lower Shabelle and parts of the Jubba river valley, laying claim to state farms, private plantations, and in some instances village farmland. In the intervening years, those well-armed clans have solidified their claim to this farmland at the expense of weaker agricultural communities, and now some of the wealthiest and most powerful figures in Somalia possess irrigated plantations. Somali national peace talks held in Kenya in 2002-2004 were intended to include extended deliberation on conflict issues such as the status of stolen or occupied property, but Somali delegates found land disputes too sensitive to address. The fact that powerful militias and whole clans benefit from occupation of the most valuable riverine land in Somalia is a significant barrier to reconciliation in the country.

In less valuable, rainfed agricultural areas in southern Somalia, local farming communities continue to rely on customary land tenure, in which village elders have the authority to allocate plots of land to village households according to need, and households enjoy usufructory rights over land they have a history of farming. Land disputes within villages are less common today in part because of partial depopulation of rural areas due to displacement caused by war. Importantly, even where ownership of farmland is not in dispute, control over the harvests is not always on the hands of farmers, who are in some instances required to pay tribute to local militias and self-declared protection forces.

An important change in tenure has occurred with regard to propriety rights to mango trees which line Somalia's two rivers. In the pre-war era, these trees were the private property of specific households, but custom dictated that in times of food shortages mango fruits were temporarily available to all in need. That safety net has been shattered by war and occupation. Today, occupying militias claim the mango fruit, threatening villagers who attempt to harvest mangoes. In some cases militias are cutting down the mango trees for sale as charcoal to Gulf states.

The expansive pastoral rangeland of Somalia remains a commons area, where claims on pasture and wells are possessed by clans, not individuals. However, in some pastoral areas, private claims of land ownership are being made, principally via the rise of enclosures - especially valuable rangeland (often in a low-lying area with better grass) which is fenced off with thorn bushes. Enclosures are used by wealthier, more powerful pastoral households to reserve good grazing areas for the dry season, and also to harvest hay for sale to urban centers and ports where

fodder is needed for exported livestock. The rise of enclosures is technically illegal in Somalia, and tends to penalise poorer pastoralists by blocking access to good rangeland, but local authorities have been unable to stop this trend.

In northwest Somalia, the unrecognised state of Somaliland is the only polity in Somalia with the capacity to pass and enforce laws, and there important land tenure legislation has been made into law. Specifically, farmers have been granted full ownership of their agricultural plots, as opposed to 99 year leases which the previous Somalia government allowed. A very effective cadastral survey project funded by the UN Development Programme defines farm plots with precision and provides laminated deeds with full details of ownership, including a photo of the owner. This project has been completed in about a third of the agricultural zone of Somaliland (a stretch of land west of Hargeisa which receives adequate rainfall for farming), and is expected to provide deeds to the remaining agricultural communities within the next two years. The system has virtually eliminated land disputes in farming areas and is hoped will provide collateral to farmers wishing to borrow money. To date, very little land concentration has occurred in Somaliland's farming areas, with most plots between 7 to 10 hectares in size.

Urban land ownership throughout both south-central Somalia and Somaliland remains more contentious, however. A number of Somali towns and cities - such as Hargeisa, Bosaso, Galkayo, and Mogadishu - are experiencing real estate booms, fueled in large part by Somalia's one million diaspora members who send funds back to build homes for their relatives. In these towns, a land rush has occurred in valuable outlying areas of the cities. As the value of urban plots skyrockets, disputes have become endemic. Local municipalities are frequently accused of issuing multiple deeds to the same plot in exchange for bribes, with the most powerful claimant ultimately possessing the land. In Hargeisa, the law requires landowners to begin building a house within six months of taking possession of the property, but that law is widely disregarded. Instead, speculators are engaging in urban land-banking, hoping to profit from a continued rapid rise in property values.

SUDAN

Rural land relations in Sudan have long been contested and on the eve of a final agreement between the two main contestants, the 'North' and the 'South', are filled with hopes and fears. The geographical line between northern and southern Sudan is of long-standing, reflecting original British colonial intentions that southern Sudan become part of an East African state. The north embraces around 60 percent of the total land area but is largely desert and semi-desert. Most of the population (but not all) are Muslims of Arab descent. The south includes substantial fertile land, has high rainfall and is mainly populated by Africans, following traditional religions with some Christianity. War between the two areas began even before Independence in 1956 and lasted until the Addis Ababa Accord in 1972. Hostilities restarted in full in 1983, prompted by declaration of Shari'a law. The rich oil and gas fields of the centre-south (under concession to mainly Government of Sudan, Canadian, Malaysian, Qatar, French and Chinese interests) and the enormous land and mineral potential of the south in general, have been key factors in Government of Sudan ('Northern') resistance to secession.

The current Peace Talks between the Government of Sudan (GoS) and the Southern Peoples' Liberation Movement/Army (SPLM/A) began in Kenya in 2002 under the aegis of the regional Inter-Governmental Authority on Development (IGAD). Five Agreements have been reached so far:-

The Machakos Protocol, 20 July 2002 listed eleven principles agreed including acknowledgement of the right to self-determination by the people of South Sudan. The structure for semi autonomous government in the south for a six year period was provided (Interim Period). This will be preceded by a six month Pre-Interim Period within which a National Constitution for the six year period will be agreed. Before the end of the six years, southerners will vote in a referendum to determine whether they establish a fully independent country or remain within greater Sudan.

The Agreement on Wealth Sharing During the Pre-Interim and Interim Period, 7 January 2004 is largely focused on distribution of revenue from oil and gas exploitation. It set aside for later agreement the question of ownership of subterranean, land and above land natural resources (e.g. forests). It provides for two independent Land Commissions at National and Southern Sudan levels, to report to their respective Presidents. The Commissions have the same powers including the right to hear and resolve land claims. They are to reconcile their conclusions and where this can't be achieved may put the issue before a new Constitutional Court. Both may apply the law of the locality (e.g. customary law).

The Protocol on Power Sharing, 26 May 2004 provided for decentralised government with regard to the National, Southern Sudan, Regional State and Local levels (the exact form and locale of the last not yet specified). It provided for a Government of National Unity for the six-year Interim Period. The National Executive will comprise representatives from the National Congress Party (52% of seats), other northern political forces (14% of seats), the SPLM (28% of seats) and other southern political forces (6% of seats). The protocol also lays out sixteen human rights, including equal rights between men and women. Land is not mentioned but in the annexes on powers, control over all (unspecified) National Lands and national resources is vested in the national level.

The Protocol on The Resolution of Conflict in Southern Kordofan/Nuba Mountains and Blue Niles States, 26 May 2004 refer to two of three key contested areas which lie between the north and south. The front-line between the GoS military and SPLA runs through these areas and SPLA Governors fought hard to have their two States included in the South; this has failed. However, in recognition that these areas have borne the brunt of conflict since 1983 (and on an even greater scale than recently seen in Darfur - see separate section below) they have been awarded special status as Model Areas and will receive special funds for reconstruction and development. These two areas will also establish their own State Land Commissions and each of which will have the same powers laid out for the National and Southern Sudan Land Commissions. These areas contain important oil and gas enterprises run by foreign companies, with GoS often as partner. They also include many thousands of hectares of large-scale mechanised rainfed and irrigated farm schemes variously begun since the 1950s and largely under lease to northerners or agencies sponsored by the Government of Sudan. The Protocol specifically allows the two Commissions to review existing land leases and contracts and

examine the criteria for the present land allocations and to introduce changes (but without reference to the legal status of the land itself).

The Protocol on The Resolution of Abyei Conflict, 26 May 2004 refers to the third main contested area, now defined as Abyei County and comprising the nine Ngok Dinka chiefdoms. Residents of this area will be citizens of both north and south during the Interim Period and will cast a separate ballot simultaneously with the referendum for southern Sudan to decide if their county becomes part of Bahr el Ghazal which is in the South or retains special administrative status in the north.

A draft Legal and Constitutional Framework known as the Heidelberg Dialogue has also been prepared towards the Interim Constitution. Final agreement between the two parties is expected to take place before the end of 2004 (scheduled for August-September) following signing of the last Protocol on Security. The Pre-Interim Period will commence immediately the Final Peace Agreement is signed.

Key Issues

A host of land tenure issues confront poor around 30 million rural Sudanese. Among the most serious is long-practised land colonisation by Government and Government-supported agencies and which has its origins in the great farming schemes of British colonial times (the British-Egyptian Condominium 1899-1955). More recent conflicts occur mainly but not exclusively, as the present Darfur conflict demonstrates, in the transitional zone. This area is centred around the riverine system of Bahr El Arab (Kir), River Lol, Bahr El Gazal, Bahr El Jebel and the Sobat River.

The transition zone is a major contact zone between different protagonists for the following reasons:

- Resource access confrontation between northern and southern pastoralists
- Political confrontation between the GoS and the southern opposition parties
- Religious confrontation between Islam and Spiritualism/Christianity
- Confrontations over access to resources between two major southern ethnic groups, Dinka and Nuer
- Confrontation between the GoS and local communities over access to resources on land that has been expropriated for mechanised farming and oil fields
- Intra-tribal confrontation between different segments of the same ethnic groups (as well Dinka and Nuer sections)

While mobile livelihood systems such as pastoralism and shifting cultivation are, beyond any doubt, well adapted and sustainable under the fragile ecologic environment of the transition, the mobility itself and the opportunistic character of these systems is a major cause for dispute and conflict. Land and natural resources management is mainly dealt with in a customary way, and is closely interwoven with social organisation. Conflicts often fracture along these social, often tribal, lines.

Competition for access to and use of land and natural resources such as pastures and water were, are and will always constitute a major cause for dispute and eventually conflict. Over the last

decades, these intrinsic tensions and incidents are exacerbated by a range of events, such as: the drought of the 1980s and 1990s, the degradation of the natural resource base, the presence of arms and resort to ‘easy and fast’ military solutions, undermined customary authority, a lack of infrastructure (boreholes and watering places), administrative weakness and legal vacuum (e.g. the abolishment of the Native Administration Act, 1990). It must be emphasised that the GoS decision to consider all non registered land as government land (Unregistered Land Act, 1970 and the Civil Transaction Act, 1984) and consequently to operate as an ambiguous land manager with absolute powers for unilateral decision making, including eviction from land, has created animosity among and between legitimate customary land managers.

Race often colours these conflicts with northerners being predominantly Arab and southerners predominantly African. Religious differences and particularly Shari’a law exacerbate tensions, as has Government brutality against central-southern populations during the last 20 year war, more recently in Darfur.

A recent review of the North-South Protocols and the Heidelberg Dialogue³³ concluded that their content falls seriously short of helping the majority rural population in any part of the country to secure their customary land rights, resolve arable-pastoral differences or resist continuing land colonisation under the aegis of national land laws. Particular problems with the texts thus far were identified as –

- Failure to accord customary land rights explicit status as private property rights, rendering them still vulnerable to capture by stronger interests;
- Failure in particular to protect customary common properties which have been most vulnerable to appropriation in the past and especially with rising mineral and land mining interests, likely to continue to be vulnerable;
- Failure to remove or at least limit the effects of current law through which all unregistered lands are considered un-owned land and have been systematically designated as Public Lands and then some of which have been reallocated at will by central Government;
- Weakness in the agreement that land tenure, land use and the exercise of rights is a concurrent competency of each level of Government meaning in practice that any significant changes especially affecting standing national law, will require central Government of Sudan approval; and -
- By failing to lay down improved parameters for land rights in the draft constitutional agreement, weakening the ability of the Government of Southern Sudan or individual Regional States to secure changes through the Constitutional Court.

Many suggestions have been made which are under consideration by some of the negotiating parties. In addition, SPLM controlled areas of the conflict Regions of Nuba, Abyei and Blue Nile are launching early pilots to test a new approach to devolved land administration. This is founded upon identification, validation and registration of Community Areas. Once the boundaries of a Community Area are agreed with neighbouring communities, properties within the Community Area which are held by individuals, families, groups and the entire community will be identified and registered in

³³ *Land Issues and Constitutional Development for the Interim Period* Liz Alden Wily for USAID Sudan Task Force, 15 July 2004.

a provisional Community Land Register. Group and Community Properties will at the same time be made subject to agreed uses, access rules and sanctions. In pastoral areas, resources shared by several communities will also be subject to formalised community based regulation and administration as higher level Community Properties. A procedure for systematically addressing competing rights will also be agreed and tested. These usually concern conflicts between customary ownership and seasonal access rights by pastoralists or conflicts between common property owners and tenants of the Government of Sudan who have been allocated leases or contracts to use those areas.

The UNHCR, FAO and the Norwegian Refugee Council (NRC) recently initiated a programme for the development of practical and legally valid solutions to provide secure access to land, natural resources and housing before and/or upon the return of IDP and refugees. It also addresses property dispute resolution in urban and rural settings, as well as ways to promote resource sharing mechanisms between host communities and newcomers. This programme considers a number of return and settlement scenarios in urban and rural areas, both in northern and southern Sudan. Identification and registration of community lands, local participatory land use planning, grassroots conflict management are some of the cornerstones of the approach. A major challenge is the use of the present legal framework to formalise a number of customary embedded practices that are legitimate in the context of a return of IDP and refugees

Subsequently, UNHCR/FAO/NRC and others such as the South Sudan Law Society and Southern Sudan Ministry of Agriculture (SAAR), will engage in the consolidation of an enabling legal framework for restitution of or access to land and housing as well as monitoring of its implementation. UNHCR/FAO/NRC will participate in capacity-building of the administrative and judicial structures directly and through partnerships, targeting civil administration, judiciary, law enforcement, NGOs/civil society and customary mechanisms of arbitration.

Pilot experiences of both initiatives are expected to feed into evolutionary land policy planning and law development in especially contested and southern areas.

For the moment, many land rights are at great risk in all areas, including the south. Private investment plans are flourishing without a clear commitment to existing customary occupancy rights. Many divisions exist within the SPLM/A and some commanders and officials are alleged to be involved in corrupt extraction of resources for private gain. A major challenge for SPLM remains to concretise its slogan ‘Land belongs to the people of Sudan’ into a operational decentralised land and natural resource management system that, indeed, generates direct benefits for the people of Sudan. International donors are already exerting pressure as to their favoured version of reconstruction including land reforms. Investors are queuing up and through doors which do not always lead to consistent decision-making. Anticipated mass return of refugees and IDPs will complicate land access in ways not yet planned for by either the national or southern Sudan Governments. Implementation of even the better elements of agreed strategies is expected to be enormously difficult. Peace itself is fragile. The possibilities for yet another post-conflict failed state are high, goodwill on many sides notwithstanding. Failure to improve land relations as people have hoped could be a major trigger.

SUDAN – THE ROOTS OF THE DARFUR CRISIS

Although today's conflict in Darfur is now far more complex than an inter-tribal dispute over land and grazing rights between sedentary cultivators and pastoralists, this is the source of the conflict.³⁴ What we are witnessing is a land use conflict between neighbours, which has been allowed to fester. For some fifty sixty years, after the demise of the secessionist Fur Sultan, Ali Dinar, in 1917, the nomadic and sedentary people of Darfur had lived in relative harmony, thanks to a system of local government, albeit imposed by the Condominium of the Anglo-Egyptian Sudan, which was sensitive to the ecology and land use.

Even in the 1970s, it was apparent that action had to be taken to resolve potential land use conflicts between cultivators and pastoralists because migratory trails were being increasingly blocked by cultivation. As the nomads moved southwards along their traditional routes, flanked by fields of unharvested sorghum and bulrush millet, there were the inevitable skirmishes. But the hierarchy of traditional leaders - sheikhs, omdas and nazirs - normally succeeded in mediating these.

The critical difference between the period since the 1980s and the fifty years previous to that is that the mechanisms for dealing with tribal disputes - namely the tribal administration, police and the judiciary - have been neglected. Various governments have looked upon the issue as residual: something to be dealt with only when it forces itself on their attention as a result of major clashes. As has happened in neighbouring countries, national politicians have exploited local disputes over land and natural resources for their own political advantage.

In the 1970s, just as the oil crisis was beginning to bite, the positions of sheikhs and nazirs were formally abolished and 'people's councils' were set up to do the same job. But the Khartoum Governments failed to deliver the necessary funds and, by the early 1980s, local government in Darfur was bankrupt and the petrol pumps had run dry. A series of local conflicts erupted in Darfur in the wake of the drought and famine of 1984-85. In this struggle the pastoral groups were pitted against the farmers in what had become a bitter struggle for diminishing resources. The government couldn't intervene effectively, so people armed themselves to protect their herds and flocks and their crops.

Competition over land increased in 1994, when the government brought back the colonial system of administration and allocated territories to chiefs with the authority to allocate land. This immediately exacerbated the conflict.³⁵

The solution, if there is one, is to negotiate with the protagonists, with a view to persuading them to lay down their arms, to re-instate a police force and a system of local government, in which local people have confidence, including customary procedures for land dispute resolution.

TANZANIA

Key land reform milestones in Tanzania have been the development of the 1995 National Land Policy (NLP) and enactment of the Land Act No.4, 1999 and Village Land Act No.5, 1999.

³⁴ See also the excellent Alex de Waal, 'Counter-Insurgency on the Cheap: The Road to Darfur', *London Review of Books*, 5 August 2004, <http://www.lrb.co.uk/v26/n15/waal01.html>

³⁵ Oxfam GB, An analysis of food security in Darfur, Sudan, July 2004.

Although implementation has been very slow, village registers are now being set up in Mbeya and Manyara Regions. The Village Land Act requires that a community first register its common properties before registering individual properties. Many communities are doing this through establishing Community Forests, provided for by the Forest Act No.7, 2002. These now number more than 700 and embrace well over half a million hectares. Although both laws provide high protection for common properties and simple avenues for their registration, wider Government policy is clearly ambivalent. Some departments appear more interested in bringing millions of hectares of local common properties under Government control for investment purposes.

This objective is also clear in the recent amendment to the Land Act, made with a view to reviewing and regulating the land tenure and legal framework in relation to the mortgaging of land. The change will in practice alter the balance between the parties in favour of the lender banks at the lower end of the market but (rather surprisingly perhaps) in favour of the borrower at the upper end of the market. The changes will also increase the discretion of the courts to decide whether lenders can take possession and sell the property of a defaulting borrower by introducing law based on current English legal provisions which give courts considerable discretion in this matter as opposed to the former law which had tried to provide a more regulated discretion. The Land (Amendment) Act, 2003, which was passed by Parliament in January 2004, has now received Presidential assent and becomes operationally effective July 2004. The amendments to the 1999 Land Acts come at a time when their full implementation is yet to be realised; they only came into operation on 1 May 2001. They also come at the time when there is increased land related conflicts in both rural and urban Tanzania-Mainland and Zanzibar.

The Amendments come in the light of Tanzania Government's move to promote Foreign Direct Investment in the country,³⁶ which has witnessed the country embarking on interventions for the marketisation and privatisation of land, along with other natural resources, such as water, forests and minerals. This year's amendments, many believe, were inspired and pushed for by the IFIs and local banks and individual interests in the private sector. Amongst other things, it is also, and more importantly, meant to provide for the sale of undeveloped land including by the mortgagee. One of the objects and reasons of the amendments is stated as 'allowing for and regulation of sale of bare land.'³⁷

There has already been some reflection on the passed amendments. Some activists³⁸ have been concerned with the context within which the recent land law reforms are situated. There is the concern that the pace of political and economic changes in Tanzania today hardly gives room to assess and fully understand the implications of those changes to different segments of society - in particular small and rural producers. People of this persuasion have expressed worries and raised questions against the recent reforms arguing that at best they are leading to further erosion of their land rights and general welfare. The entire recent history of land reform in Tanzania has

³⁶ This is the spirit in all recent major government documents such the Tanzania Assistance Strategy (TAS), Vision 2015, Poverty Reduction Strategy, etc.

³⁷ United Republic of Tanzania (2004) The Land (Amendment) Act, 2003, Government Printer, p.31.

³⁸ Such as views in LARRRI (2004) ARDHI NI UHAI, HAKIARDHI Newsletter, Issue No. 1, June 2004.

deeply divided civil society,³⁹ with some, particularly a number of women's groups being prepared to work closely with government, while others, notably Professor Issa Shivji (Chair of the 1991 Presidential Land Commission) and colleagues in Hakiardhi, have adopted a position of non-cooperation with government.⁴⁰

The Government has shown full support and commitment over the 'neo-liberal' land reforms arguing that they are in line with the Poverty Reduction Strategy - the mainstream development intervention of the government, and supported by the private sector and the donor community. According to the Medium Term Plan and Budget (2004/5-2006/7),⁴¹ the Government will continue to implement projects geared towards Individualisation, Titling and Registration (ITR) of land in the form of a residential plots project currently being piloted in Dar es Salaam, the surveying and mapping of land pieces, and the sale of such land at cost recovery rates for sustainability and purposes of replication. However, it seems to many that the plight of the land rights of smallholder producers such as peasants, artisanal miners, and pastoralists remain marginalised.

Women's secure rights to land ownership and use is fundamental to economic growth in Tanzania. In this light, the NLP and the 1999 Land Acts did address some of the issues of concern for women. A number of Tanzanian laws secure the rights of women in several ways, including women's right to acquire title and registration of land, increasing the number of women's representation in decision making bodies, and addressing issues of customary land rights by upholding the principle of non-discrimination based on gender. For example, with regard to the registration of land under the customary right of occupancy or under the granted right of occupancy for the co-occupation and use of both spouses, or where there is more than one wife or spouses, there is a presumption stating that the spouse will hold the land as occupiers in common, and unless the presumption is rebutted the registrar shall register the spouses as occupiers in common. However, despite the enactment of these laws, women continue to be discriminated against in practice in issues of ownership and of land. Lack of implementation of these laws and the fact that they are not comprehensive in addressing all the issues related to ownership and control leave women and vulnerable groups insecure. The National Land Policy acknowledged that under customary land law women generally have inferior land rights relative to men and that their access to land is both indirect and insecure.

³⁹ See Robin Palmer, *The Tanzanian Land Acts, 1999: An Analysis of the Analyses*, March 1999
<http://www.oxfam.org.uk/resources/learning/landrights/downloads/tananaly.rtf>

⁴⁰ Shivji is Professor of Law at the University of Dar es Salaam. Some of his criticisms include:
The Land Acts 1999: A Cause for Celebration or a Celebration of a Cause? February 1999

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/taniscau.rtf>

Lift the Whip - Palaver: The Land Bills February 1999

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/tanispwip.rtf>

Protection of Peasant and Pastoral Rights in Land: a Brief Review of the Bills for the Land Act, 1998 and the Village Land Act, 1998 January 1999

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/tanispro.rtf>

Azimio La Uhai: Declaration of NGOs and Interested Persons on Land May 1997

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/tanazim.rtf>

⁴¹ United Republic of Tanzania (2004) Guidelines for the Preparation of Medium Term Plan and Budget Framework for 2004/5-2006/7 - Lands Section 69-72, pp.37-8.

The new land laws place much emphasis on the wider participation of women on issues relating to dispute settlement as well as review of policy and legal framework pertaining to land administration. The presence of women in the various decision-making bodies is a necessary step that helps in guaranteeing women's secure land rights. However, there are still several challenges that are yet to be overcome in the fight for secure land rights for women. For instance, there still is a lack of gender and human rights awareness among men and women alike. In addition, many women do not have information, confidence, experience and resources to obtain what they are legally entitled to. The NLP and the Land Acts are new to the Tanzanian society. There is therefore scarce and inadequate knowledge and awareness of the goals, objectives and contents of the Land Acts.

UGANDA

Since the commencement of the Poverty Eradication Action Plan (PEAP) revision process, something of a breath of new life is sweeping through the land sector in Uganda. A formidable sector wide plan backed by a sound investment plan lured the government and donors to increase the funding in a sector previously under looked or undermined for failure to attract public investment. Even the national budgeting process increased allocations for the land sub-sector from a mere 6 billion Uganda shillings (c.US\$ 350,000) in 2000/1 to US\$ 20 million in 2004/5; this is a sharp leap in resources, compared to previous year. However, given the tasks that have to be accomplished for land reform to be meaningful, many believe there is still need for steady and substantial resource input in the sector.

The draft PEAP 2004 identifies access to land and its sustainable use as critical issues for the eradication of poverty, since land is the basis for the livelihoods of most Ugandans and particularly the rural population, where the incidence of poverty is highest. Under the environment and natural resource sector, land is recognised as a key production resource that constitutes 50% of the assets held by an average household.⁴² This is a major shift from tackling land in development as part and parcel of the Agriculture Sector (though complimentary) in the Plan for the Modernization of Agriculture (PMA).

The National Land Policy making process commenced a year ago, an Issues Paper is complete⁴³ and recommends a number of major studies - including privatisation of land services, CPRs and customary tenure, land taxation, resettlement, landlessness and IDPs, derived and secondary rights and HIV/AIDS - to be conducted to fill identified gaps that need accurate and factual information for the drafting process to begin. On the other hand, the Land Use Policy commenced last year and has been concluded with regional consultations. The final policy is ready for presentation to Cabinet for approval.

⁴² *Draft PEAP 2004, presented at a Stakeholder Workshop, Ministry of Finance and Economic Development (MFED), 57*

⁴³ Associates for Development, *Issues Paper for the National Land Policy (Land Tenure Reform Project, Ministry of Water, Lands and Environment)* February 2004
http://www.oxfam.org.uk/resources/learning/landrights/downloads/issues_paper_for_nlp.pdf

The debate on women’s land rights,⁴⁴ involving the Uganda Land Alliance and other pressure groups,⁴⁵ has raged since the inception of reforms during the drafting of the Land Act (Cap. 227),⁴⁶ and has been dominated by co-ownership of land by spouses and consent to land transactions on family land by family members. This debate was brought to a close at the end of March, 2004, when the President assented to the Land (Amendment) Act, 2004 ushering in a completely new concept of ‘security of occupancy’, reinforcing the mandatory transaction sanction powers previously accorded to family members (specifically children and women) in section 40 of the Land Act 1998, firmly into the hands of spouses in the amended section 39.

Closer analysis reveals that although ‘security of occupancy’ does not constitute a property right for spouses, however, the ‘bundle of rights’ described therein almost amounts to ‘veiled co-ownership for spouses’. This implies that the absolute ideal of co-ownership⁴⁷ is not yet achieved as illustrated in the table below.

<i>Characteristics</i>	<i>Co-ownership (as proposed by Matembe)</i>	<i>Consent (as passed in the Land Act 1998)</i>	<i>Security of Occupancy (as amended in Land (Amendment) Act 2004)</i>
Beneficiaries	<ul style="list-style-type: none"> • Spouses 	<ul style="list-style-type: none"> • Spouses • Children • Orphans 	<ul style="list-style-type: none"> • Spouses
Rights and Powers guaranteed	<ul style="list-style-type: none"> • Ownership powers, privileges and rights 	<ul style="list-style-type: none"> • Power to give or withhold consent to transactions 	<ul style="list-style-type: none"> • Right to live on • Right to use • Right to access • Power to right to give consent or withhold consent to any transaction
Conditions	<ul style="list-style-type: none"> • Applicable to spouses at start, during and end of marriage 	<ul style="list-style-type: none"> • Applicable only when transactions on family land happen 	<ul style="list-style-type: none"> • Only applicable to subsisting marriages • Applicable when transaction happened on land defined below
Tenure/land	<ul style="list-style-type: none"> • Applicable to customary land only 	<ul style="list-style-type: none"> • Only invoked if both conditions of residential home and derivation sustenance apply to the land • Applicable to all land tenures (mailo, freehold, customary and leasehold) 	<ul style="list-style-type: none"> • Invoked for land that spouses occupies as residence, derives sustenance, or that recognised as family land based on norms, customs or culture

⁴⁴ See the excellent Margaret Rugadya and Harriet Busingye (eds.). 2002. *Gender Perspectives in the Land Reform Process in Uganda* (Kampala: Uganda Land Alliance). This reflects honestly on the successes and failures of the ULA and its allies and seeks to draw lessons for the future. It is summarised in Palmer, ‘Seeking to Secure’, pp.3-4 (internet version).

⁴⁵ See, among many others, *Uganda Land Alliance: Press Brief on Co-ownership* 12 December 2000

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/ulacoown.rtf>

Uganda Land Alliance, *Land Reform: the Ugandan Experience* September 1999

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/ugaexp.rtf>

⁴⁶ See Robin Palmer ‘Struggling to Secure and Defend the Land Rights of the Poor in Africa’, *Journal für Entwicklungspolitik* (Austrian Journal of Development Studies), XIX, 1, 2003, 6-21.

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/struglin.rtf>

⁴⁷ See Margaret Rugadya (Associates for Development), *Occupancy, Consent or Co-ownership: Policy and Legal Responses around the Matrimonial Home in Uganda* August 2003

http://www.oxfam.org.uk/resources/learning/landrights/downloads/consent_or_coownership.pdf

Conclusion	• Legal right to own land	• Legal right to give or withhold consent	• Legal right to occupy land (Can be equated to a tenancy)
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A new organisation, the Land and Equity Movement of Uganda (LEMU)⁴⁸ has recently conducted research on the impact of the implementation of the 1998 Land Act in Apac, Northern Uganda, an area characterised by customary land tenure regimes and by intense conflict. The Land Act was supposed to encourage the development of more ‘modern’ farming and poverty eradication, in line with the Plan for the Modernization of Agriculture. In fact, LEMU researchers found that in Apac it was leading to distress sales of land by the poor to local (always male) elites who were accumulating land for prestige and investment rather than production. Previously common family resources were being individualised, with men increasingly taking control. The consent clauses, theoretically offering some protection to women, were not being enforced. Knowledge of the law was low, even among leaders, and land was increasingly becoming a source of conflict and of impoverishment.

In these ways, recent experiences in Apac somehow crystallise and symbolise the dilemmas of current land reforms across the continent in an era of privatisation. Some are very clearly gaining at the expense of others.

CONCLUDING REMARKS

A key feature of many countries in Eastern Africa is the high political instability which inevitably has been at the centre of displacement of predominantly rural communities. The experiences of Somalia, Eritrea, Eastern DRC, Sudan, Rwanda and Ethiopia all reflect countries torn apart by conflict, most of which have ethnic dimensions. Sometimes, as in Darfur, conflicts which originated in disputes between farmers and pastoralists later acquired an ethnic dimension which subsequently became the key driver. Resolution of land problems in these countries can only be preceded by broader political settlements. In some situations, land itself is the structural cause of the conflict as was the case with settler economies of the colonial period. In the DRC, for instance, the Government of National Unity is, understandably, primarily concerned with political issues at the moment, along with the Mining Code and Forest Code, which are seen as means to generate economic growth. However, the land-related struggles of local people should not be forgotten: the DRC requires land reform, of a legislative and possibly also redistributive nature. Customary rights and responsibilities should be clearly defined, through a consultative process. However, inequalities around land, which have indirectly contributed to the genesis of violent conflict in Eastern Congo, cannot be solved purely through legislative reforms. The structures - political, economic, and social - through which land access is mediated must also be reformed. This is in addition to the improvements in regional relationships which must be achieved if land-related sources of conflict are to be effectively addressed.

Having secure land tenure rights still remains a priority in many countries, although the lack of human and financial resources continue to be a major handicap. Thus little has been achieved

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with, for instance, the land certificates of the Tigray and Amhara Regions of Ethiopia. At the same time, the two tier land registration system proposed in Rwanda is something that will be interesting to follow. Some countries have made important strides in promoting secure land tenure rights for women at the policy level, notable examples being Tanzania, Rwanda and Uganda. The major drawback has however been the weak implementation capacities. Further to this, more work is still required in making women aware of the land rights provided for in policy and legal frameworks, together with the support required to make women realise those rights.