



**African Centre for Technology Studies (ACTS)**

**REPORT OF THE CONFERENCE ON  
LAND TENURE AND CONFLICT IN AFRICA:  
PREVENTION, MITIGATION AND  
RECONSTRUCTION**

**9<sup>TH</sup> - 10<sup>TH</sup> DECEMBER 2004**



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**Burundian refugees returning to their country,  
March 2004**

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## 1.0 Introduction

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The Conference on *Land Tenure & Conflict in Africa: Prevention, Mitigation, and Reconstruction* was part of a series of activities by ACTS that seek to improve the state of knowledge on the links between natural resources and violent conflict in Africa. It was one of the concluding activities of a project coordinated by ACTS, *Preventing Conflict through Improved Policies on Land Tenure, Natural Resource Rights, and Migration in the Great Lakes Region*. In collaboration with researchers from the Institute for Security Studies (ISS) in Pretoria, national universities, NGOs and international experts, ACTS conducted research on land issues in three countries, namely Burundi, the Democratic Republic of Congo, and Rwanda. The project's primary goal is to examine how land tenure systems and policies can enhance stability in the region. The project was funded by the United States Agency for International Development's Regional Economic Development and Services Office (USAID/ REDSO).

### 1.1 Conference Aims

Firstly, the conference was an opportunity to present the findings of ACTS recent research, mainly in the form of presentations on the three countries which were our focus—Burundi, Rwanda, and the Democratic Republic of Congo (DRC). Policy briefs summarizing each study were distributed and are available on the ACTS website ([www.acts.or.ke](http://www.acts.or.ke)). Presenters from other organisations in each of these three countries were also invited in order to give their own views on the situation in their country, and to generate ideas through comparison with the ACTS studies.

The conference brought together a wide range of stakeholders—policy makers, civil servants, diplomats, civil society representatives, donors, academics, the media, and others, to reflect on the broad nature of the challenges in this field. In particular, several senior policy-makers attended, including the Director of Lands in Rwanda, Mr. Eugene Rurangwa, Mr Frédéric Bamvuginyumvira, the president of the *Commission Nationale de Réhabilitation des Sinistrés* (CNRS) in Burundi and the permanent secretary in the ministry of lands and housing, Kenya, Eng. Erastus Mwongera.

Secondly, the conference was designed to contribute to the body of knowledge in this field through comparisons between different countries. Presenters were requested to make reference to current events and processes, in order to ensure that our discussions are topical and analysis could be useful for advocacy approaches. Certainly, the situations in Darfur, Somalia, and Zimbabwe, which were discussed by

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presenters, demand urgent attention. In Kenya and several other countries, land policies are currently being formulated, providing important opportunities for advocacy.

Thirdly, participants were encouraged to generate substantial conference findings, in terms of technical recommendations on specific themes, and also identification of the way forward at international and national levels. In order to achieve substantial and useful results, group discussions were organized around several topics:

- (Customary) Land Tenure under Situations of Land Scarcity and Commodification
- Land Policy Reform in Post-Conflict Contexts
- Refugee Repatriation/IDP Return and Land Access
- Mechanisms for Management of Land-Related Disputes
- Migration, Citizenship and Land Access
- Off-farm Livelihoods and Technological Innovation.<sup>1</sup>

## **2.0 Welcoming Remarks, Keynote Address and Conference Overview**

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The conference opened with welcoming remarks by the Executive Director of the African Centre for Technology Studies (ACTS), Prof. Judi Wakhungu.

Prof. Wakhungu started by welcoming the participants to ACTS. She then noted that conflict management is increasingly being integrated into programmes and activities of all kinds, and that there is need to take a holistic and comprehensive view of the issues we will be discussing over the next two days. It was therefore, appropriate, she said, to have such an impressive group of participants from different fields of expertise. Prof. Wakhungu then provided some background on ACTS, including the programmes planned for the next four years at ACTS:

- Biodiversity and Environmental Governance
- Energy and Water Security
- Agriculture and Food Security and
- Human Health
- Science and Technology Literacy

ACTS' work on the environment and conflict falls under the programme on Biodiversity and Environmental Governance. The goal of this programme is to promote policies for sustainable management of biodiversity, environmental governance, domestication of multilateral environmental agreements and understanding of linkages between ecology, conflicts and peace-building. Specifically, ACTS aims to contribute to increased understanding of the linkages between biodiversity, livelihoods, resource rights, gender issues and conflicts; and promote the effective prevention and management of conflicts involving natural resources and the environment.

### **2.1 Keynote Address**

Following Prof. Wakhungu's address, the permanent secretary in the ministry of lands and housing, Eng. Mwongera, made the keynote address. Eng. Mwongera noted that in the last few years, Kenya has acted as host and mediator to neighbouring countries whose citizens have violently disagreed over the allocation of land and natural resources. Indeed, Kenya is not without its own land conflicts. Therefore, he emphasized, the importance of this meeting could not be underestimated.

The permanent secretary pointed out that in sub-Saharan Africa, land is central to economic and social development. In the 20<sup>th</sup> Century, most countries experienced



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rapid population growth, slow economic development and environmental degradation. In the process, many parts of Africa changed from being land abundant to land scarce. In many cases, customary land administration was weakened, but has not been replaced by satisfactory statutory arrangements. Unresolved conflicts over land and other natural resources increasingly undermine the capacity of the poor to produce food. The poor and vulnerable are rarely able to defend themselves against the more powerful.

However, in the last decade, the majority of countries of Eastern, Central and Southern Africa have reviewed their land policies, laws and arrangements for land administration and management. Land conflict resolution and alternative systems of dispute resolution have come under the spotlight. Of course the land question in Sub-Saharan Africa has dominated the political arena for over two centuries. Land and land resources were central to the imperial conquest, the colonial settlement and the extractive economy, administered in terms of imported legal frameworks which claimed to extinguish rights held under local customary law. Whether the purpose was agriculture, mining, administrative control or simply trade, land and property rights became the subject of fierce competition and conflict and, in most cases, were at the root of the freedom struggle. Under colonialism (and apartheid), indigenous agricultural systems and technologies were stultified and social structures, themselves dependent on control over land and natural resources, severely weakened by the purge or co-option of our traditional leaders.

For up to four decades after independence, issues of land and property rights have remained at the centre of contemporary politics in the region. Yet, with the exception of a few states, we have been reluctant to confront the land issue. The performance of inherited land administration institutions has not been distinguished by its excellence. Problems have included:

- Dysfunctional legal and institutional frameworks;
- The neglect of arrangements for land dispute resolution;
- Arbitrary land acquisition and eviction of the holders of customary rights for infrastructure, urban development and for commercial farms (resulting in the overcrowding of so-called 'African reserves' or 'trust lands' and disputes spilling over among small farmers);
- And the demise of systems of common property and resource management-vital to rural livelihoods.

Where large areas of productive land had been alienated by colonial settlers (as in Kenya, Zimbabwe, Namibia, South Africa), the main drivers of land policy development have been essentially political. Economic drivers entered the arena with donor

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agencies who argue that, if agricultural and urban developments are to be sustainable, fundamental changes in land policy and land law are necessary. In several other countries in the region (Botswana, Namibia, Mozambique, Ghana and most recently in South Africa), social and cultural drivers have pressed for the preservation and/or the reconstitution of traditional leadership structures to support land administration in rural areas.

Processes adopted for land policy development have ranged from the bureaucratic to the widely consultative, the latter involving civil society groups and private sector stakeholders. Kenya, according to the permanent secretary, has chosen the latter inclusive course, and is currently engaged in a comprehensive and interactive enquiry into its land problems, constraints and appropriate solutions with a view to coming up with a National Land Policy in 2005. However, given the complexity and political sensitivity of the task, it can be expected that the process of land policy development never stops. In fact it is a continuous process which is understandable because Africa does not stand still. Our people change the ways in which they use land as their needs change.

The contemporary struggle for land is not confined to peasants. The social base and leadership of the 'land hungry' include the landless, farm workers, retrenched mineworkers, industrial and urban-based workers, and the middle classes. It is a struggle in which poor people are being sidelined. Nowhere is this more evident than in peri-urban areas. In 2000, the level of urbanization in Africa was estimated at 40 per cent with some 300 million people living in towns and cities. The projections for 2030 are 55 per cent and 765 million. It is projected that without remedial actions perennial conflicts over natural resources in our rural areas are sure to spill over into our towns and cities, if indeed they have not already done so.

Eng. Mwongera emphasized that he appreciated the role of the NGOs that has grown in the last two decades. This has been made possible by the development partners, who shifted financial support to NGOs as a means of advocacy and influencing policy change. This was in order in the previous regime. However, he said, things have changed and the NGOs role should be more as partners in development with the government rather than the continued attitude of being an alternative means of fostering development. Eng. Mwongera, therefore, suggested that the workshop should generate working solutions to problems of land in Africa, based on partnership, and suggest the way forward for implementation.

With these remarks, Eng. Mwongera declared the Regional Conference on Land Tenure and Conflict in Africa: Prevention, Mitigation, and Reconstruction, officially open.

### **3. Summary of Presentations**

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There were four kinds of presentation made at the conference. In the first category were the ACTS case studies (for Rwanda, DRC, and Burundi) which are summarized below. In the second category were the commissioned papers on specific country experiences, and several of these are summarized in this report.

In the third category were presentations on current processes within the UN system and related issues. These included presentations by **Silvia Giada**, on behalf of **Steve Lonergan**, representing UNEP's Division of Early Warning and Early Response (DEWA). Ms Giada outlined UNEP's role in ensuring that environmental issues are fully incorporated into the UN/AU Conference on the Great Lakes, and suggested that the process represented an opportunity to put land issues on the political agenda in several countries of the region. Ms Giada also provided an overview of UNEP-DEWA's work in the area of environment, peace and security, which includes stocktaking of current actors and processes, the preparation of several background papers, and case studies of particular issues and country experiences, particularly in the Great Lakes Region.

**Mr. Dan Lewis**, Chief of UN-Habitat's Disaster, Post-Conflict and Safety Unit, made a presentation on "Land administration in post-conflict environments". He started by asking whether housing, land and property rights (HLP) were indeed sources of conflict, and noted that this question had to some extent been answered in some of the other presentations. He reiterated that HLP could be sources of conflict because of the effects of a) displacement and return of populations, b) perceptions of "victors and victims" and the changed access to HLP that result, c) human rights issues, and d) tangential issues which surround this highly complex cluster of problems. He identified the important concept of 'secondary conflict', which arises as an indirect result of the impacts of the primary conflict. Factors which typically exacerbate secondary conflict, according to Mr. Lewis, include:

- Lack of a land policy
- A dysfunctional land administration system
- Land grabbing/invasions
- General breakdown in law and order (including land use planning)
- Overlapping rights and claims to HLP
- Destruction of houses
- Ambiguous laws.

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Mr. Lewis suggested that ongoing conflict over HLP can be prevented by, for example, thinking ahead and preparing for problems in advance (e.g. when the 'primary' conflict is still ongoing), planning strategically, integrating short-term measures into long-term objectives in order to demonstrate immediate impact, and identifying the true dimensions of activities needed and the appropriate resources for the task. Based on his own experience in Kosovo and elsewhere, he identified the following lessons learnt:

1. Need for an integrated approach
2. Coordination with national and international partners
3. Early intervention in order to make the link between relief and development
4. Placing HLP on the peacekeeping agenda.

It is clear that there is no formulaic 'solution' to HLP problems. However, according to Mr. Lewis, certain next steps can be identified, including:

- Putting HLP on the peacekeeping agenda
- Establishing coordination and implementation programming mechanisms
- Initiate ongoing training within and throughout the UN system
- Developing tools and resources for practitioners
- Putting all these ideas to work as soon as possible.

**Dr. Clarissa Augustinus**, Chief of UN-Habitat's Land and Tenure Section, made a presentation outlining some of the important issues which, in her view, were sometimes missed from debates on land policy in Africa. The first issue relates to the negative and possibly destabilizing impacts of urbanization, which is especially important as Africa is the fastest-urbanizing continent in the world. The second is the need for a proper combination of skills in order to ensure that ideas and policies are actually implemented. Dr. Augustinus provided the example of policy analysts, who are good at critical thinking but not always effective in proposing concrete recommendations; and policy-writers and policy tool-makers, who are practical but not always critical and wide-ranging enough in their outlook. Partnership is therefore important. Finally, she mentioned that UN-Habitat is currently developing a global network of land tools developers, and it is important that African perspectives are included in this effort.

The fourth category of presentations related to those by government civil servants. Mr. **Frédéric Bamvunginyumira**, President of the CNRS in Burundi, presented a pilot scheme for the resettlement of IDPs, returning refugees, and landless people in Burundi. The scheme involves the construction of villages (rather than the customary

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dispersed housing) and has several components including construction of houses, provision of social centers and services, and training in vocational skills. The plan is for the settlements to become self-sufficient after some time through income generation. There were several questions from the floor regarding the sustainability of the exercise, the origins of the idea, and the dissemination of information about the scheme to the general public. Mr. Bamvunginyumira argued that training would enable residents to become self-sufficient; explained that the NGO he previously headed had developed the idea, and that the scheme was donor-funded; and explained that he had appeared on Burundian television to explain the programme, but would continue in his information dissemination efforts.

### **3.1 Summary paper presentations**

#### **3.1.1 Land Tenure and the Return of Refugees after Conflict: The Case of Burundi**

*P. M. Kamungi, J. S. Oketch and C. Huggins<sup>2</sup>*

*African Centre for Technology Studies (ACTS)*

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#### **Introduction**

Africa's Great Lakes Region has in recent years experienced political strife, armed conflict and population displacements with severe humanitarian consequences. While these events have clearly revolved around political struggles for the control of the state, recent research has pointed to the significance of environmental variables as structural causes and sustaining factors in struggles for power in the region. Contested rights to land and natural resources are significant, particularly in light of land scarcity in many areas and the frequency of population movements. For this reason, with funding from the United States Agency for International Development (USAID), ACTS is conducting research on these issues in Rwanda, Burundi and DRC. This Policy Brief summarizes a longer report to be published jointly by the African Centre for Technology Studies (ACTS) and the Institute for Security Studies (ISS) in December 2004. Based on fieldwork in Burundi and interviews in Nairobi, Kenya, as well as extensive review of secondary literature, this analysis includes a number of recommendations for the Government of Burundi, the international community, and civil society actors, for both short-term and the long-term horizons.

#### **Overview of the issues**

Burundi is a small land-locked country bordering Rwanda, Tanzania and the Democratic Republic of Congo. Since gaining independence from Belgium in 1962, it has been wracked by civil war and undermined by poor governance. Despite the popular conception of the conflict as a Hutu-Tutsi struggle, most scholars agree that the protracted conflict is structural in nature, though articulated in ethnic terms. The roots of the conflict lie in unequal distribution of economic resources and political power.<sup>3</sup> Governance practices by successive regimes galvanized political power and state control in the hands of a small elite group within the Tutsi community from particular parts of the country, who have since sustained their hold on power through repressive policies. Efforts by the Tutsi elite to retain political control and associated

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patronage networks, and violent counter-strategies of the Hutu political and armed groups have precipitated ethnic massacres and retaliatory radicalism marked by acts of genocide.<sup>4</sup>

The effects of HIV/AIDS – with a prevalence rate estimated at around 8.3 per cent translates into several negative effects on the land-use patterns of affected households, including a reduction in area of cultivation, a switch to less labour-intensive crops, lower levels of production, hence lower incomes.<sup>5</sup> Access to land and land uses are also altered, as households with HIV positive members rent or lease out land, enter into sharecropping, or lend land to others. HIV-affected households are also more likely to lose land, either through formal or informal sale to meet the cost of caring for AIDS patients, abandonment of land, or having land forcibly taken from them.<sup>6</sup>

Following the August 2000 signing of a peace agreement in Arusha, Tanzania, and the enhanced regional stability brought about by the peace process in neighbouring DRC, there is now an opportunity for peace and development.<sup>7</sup> This has precipitated the return of thousands of refugees, primarily from neighbouring Tanzania, currently host to *circa* 730,000 Burundian refugees.<sup>8</sup> The United Nations High Commission for Refugees (UNHCR) estimates that 150,000 will repatriate during 2004 and a similar number in 2005, up to a final total of 400,000. The return of the refugees, and situation of internally displaced people (IDPs), will hinge on the way that land scarcity and land ownership disputes are managed.<sup>9</sup> During a survey in 1999, 28.6 percent of refugee respondents indicated that land shortage was a “crucial” obstacle to return, while 50.9 per cent felt that it was “not crucial but important”.<sup>10</sup> Article IV of the Arusha Accords provides that all returning refugees will be able to access their property, including their land, or receive adequate compensation, and recognizes the need for the equitable apportionment and redistribution of national resources throughout the country.<sup>11</sup> In order to facilitate the return of the refugees and IDPs, and address land-related issues, the Accords provided for the creation of the Commission Nationale de Réhabilitation des Sinistrés, (CNRS). The total number of *sinistrés* or ‘war victims’ (returnees, *regroupés*, internally displaced and dispersed people) represents about one sixth of the total population.<sup>12</sup>

The current situation of mass refugee return is not without historical precedent. In 1993, land disputes related to the return of refugees significantly contributed to the deterioration of the political situation that culminated in a *coup d'état* and the assassination of the President.<sup>13</sup>

Previous work by ACTS concluded that inequitable access to land is one of several structural causes of conflict in Burundi, contributing to poverty and grievances against the government and elite groups. In a country where 93 per cent of the population is

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rural and dependent on agriculture for subsistence, access to arable land is a priority for almost every household. Due to high population density, over 80 per cent of rural households have less than 1.5 hectares of land.<sup>14</sup> Landlessness stands at about 15 per cent nationally, and the figure is 53 per cent for the Twa, a marginalized minority group.<sup>15</sup>

Multiple waves of displacement due to conflict have made land ownership issues complex and politically sensitive. Illegal appropriation of land is also significant. Many land-owners are absentee landlords or maintain properties purely for speculation and access to bank loans.

The fragile peace currently being enjoyed in Burundi can easily be undermined by inadequate preparation to receive returning refugees, or ineffective and weak institutions for addressing land disputes, in the context of manipulation of grievances for political purposes.

### **The characteristics of population displacement**

Insecurity-induced displacement has been part of Burundians' life for years. In July 2002, there were 443,750 IDPs living in 230 displacement 'sites' across the country.<sup>16</sup> Since then, many have returned home due to improved security: as of April 2004, there were 140,000 IDPs living in 182 camps.<sup>17</sup> Research by the UN found that 58 per cent of IDPs residing in camps express a willingness to return, sooner or later, to their places of origin.<sup>18</sup> Interviews with IDPs reveal that some, especially women, anticipate problems in claiming their land rights.

The Twa people have also been affected. They constitute less than one per cent of the population and have traditionally been marginalized from socio-economic and political life in Burundi. It is envisaged that some Twa found to be war victims will be allocated 'unoccupied' land like other war-affected persons. This, however, excludes many Twa who have not been displaced but are nevertheless landless.<sup>19</sup>

In Burundi, more than 44 per cent of households in the displacement camps are female-headed, due to widowhood, single parenthood, often as a result of rape, or separation and divorce as families fail to cope with the challenges of life in displacement. Women and widows are easily dispossessed, as male relatives demand that the women give up land upon the husband's death. Upon death or separation, many households now suffer reduced access to land, because identifying potential lands for cultivation and negotiating is traditionally a male role.<sup>20</sup> Women in camps have reduced access to land compared to the access they enjoyed before displacement.



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### **Land access for refugees**

Burundi is rife with land disputes. Some 90 per cent of these are intra-family disputes.<sup>21</sup> Nevertheless, even at this level, non-state intervention is often necessary: since 2001, some NGOs have initiated mobile legal clinics for this reason.<sup>22</sup>

Those who have been away from their lands for long periods have greater difficulty in gaining access to land, especially those who fled the country in 1972.<sup>23</sup> Their land, especially that located in the fertile Imbo plains, was confiscated 'virtually systematically' by the government.<sup>24</sup> The new owners have a legitimate claim to it since they were issued with title deeds – in some cases, land may have changed hands several times. The 1986 Land Code states that if somebody occupies land for more than 30 years and there are no claims within 2-3 years of this period passing, then the government should reallocate the land to them.<sup>25</sup>

Research in nine provinces by a local NGO, Ligue ITEKA, indicates that of all returnees who have sought outside assistance in disputes, over half have approached the *Bashingantahe*, a customary dispute resolution institution. Almost half have approached the local administration, while 28 per cent applied to the Tribunaux de Residence (the local court system).<sup>26</sup> Instances of corruption have been reported in all these processes. In particular, the formal state justice system requires that plaintiffs have financial resources, and often lacks local credibility. Research by local NGOs indicates that 90 per cent of problems experienced by refugees (as reported in interviews) are land-related. Another effect of the returns, in some areas, is an increase in land prices. In Ruyigi, for example, agronomists reported in April 2004 that the price had increased by 50 per cent in a matter of a few months, forcing some people to cultivate marginal areas as they were unable to access fertile land.<sup>27</sup> Those renting land are likely to be especially affected.

In January 2002, to address these challenges, the government conducted a study to identify land which was unoccupied. This study found that there were 141,266 hectares of available land in the country. However, some stakeholders believe that some this is in fact under customary use, or has since then been allocated through state institutions, due to insufficient co-ordination between government departments.<sup>28</sup> In addition, there is unlikely to be sufficient land to give refugees the size of plot they possessed before they left.<sup>29</sup> Most importantly, the government must ensure that the process involved is characterized by consultation, even-handedness and transparency.<sup>30</sup>

As mentioned above, the CNRS was established in February 2003. Its institutional structure is a result of a compromise between the dominant political parties, FRODEBU

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(with a overwhelmingly Hutu constituency) and the G10 parties who are associated with Tutsi interests. In spite of its broad mandate, its activities since its inception have been limited to providing short-term assistance to IDPs.<sup>31</sup> It suffers from a loss of autonomy, as its financial and administrative capacity was placed under the Ministry of Resettlement and Reinsertion of IDPs and Repatriates (MRRDR), and internal relationships within CNRS are also problematic. This problem is aggravated by lack of a detailed plan of action and constrained co-ordination between CNRS and other entities involved in the repatriation and resettlement. Priorities, budgets and work schedules were missing from the Global Plan of Action presented by CNRS in October 2003. Many stakeholders also feel that CNRS is not communicative enough, both in terms of disseminating its plans to other stakeholders (such as NGOs and CBOs) and in raising awareness amongst returning refugees and IDPs about their rights and the procedures for securing those rights.

### Legal and policy frameworks for land access

Land access in pre-colonial Burundi was based on the concept of absolute ownership by a 'divine' king (*Mwami*) and the 'feudal' institution of the *Ubugererwa*. Through the client-patron dependency relationship, those who did not own land could be allowed to use another person's property in exchange for gifts in kind or labour.<sup>32</sup> The system had distinct characteristics from province to province, and depending on circumstances, constituted a source of injustice and frustration among the Hutu, Tutsi, and Twa.<sup>33</sup> Levels of injustice were increased by divisive colonial and post-colonial policies that preferentially empowered the Tutsi over the Hutu and Twa, and polarized and politicized society. *Ubugererwa* continued throughout the colonial period and into the postcolonial state. With state control of land, those in power took over the *Mwami's* source of patronage, and abused it.

President Bagaza outlawed *Ubugererwa* in 1977, which significantly improved the rights of many. However, most aspects of the legal frameworks have not been properly implemented. For instance, the 1986 Land Tenure Code acknowledges the legitimacy of customary claims but requires all land, and all land transactions, to be registered with the state. However, less than five per cent of the land is registered, and oral traditions about its ownership predominate. Endemic corruption in the Ministry of Lands has undermined the legitimacy of title deeds. While the land code stipulates that all land belongs to the government and no transactions may occur, land sales do take place and renting of land is also significant, with up to one fifth of households accessing some land through renting.

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The Burundi constitution allows the state to expropriate land in public interest. However, expropriated land is often allocated to influential political and military figures without adequate compensation to those from whom it has been taken.

The land administration system in Burundi has been negatively affected by the conflict. The loss of human resources through out-migration is one issue; coordination between different government departments is also a big problem. Often, Provincial Governors will allocate state-owned land which is under the mandate of the Ministry of Environment, for example, without any communication between the two.<sup>34</sup> Commissions appointed to look into land availability for the resettlement of refugees have at times appropriated the land for themselves or their wives.

Double-registration of plots is another problem. The land reserve, intended for allocation to the landless is manipulated, resulting in some people waiting for years while others, who are not actually landless, receive plots rapidly due to favoritism or bribery.

Under customary law, women cannot own or inherit land; they can only enjoy limited access bestowed through affiliation to the male legatees.<sup>35</sup> Currently, women's access is further compromised by repeated displacement. Article 17 of the Constitutional Act of Transition establishes the equality of men and women before the law, and the 1993 amendment of the code of the Person and the Family includes the right to joint management of family property if the husband is absent. However, in practice, most men tend to delegate land matters to their male relatives. Matrimonial arrangements, succession, legacies and gifts are all governed by customary law, which does not sufficiently recognize women's land rights.<sup>36</sup>

Over time, a situation of poor consultation, minimal consensus-building during policy-making and limited dissemination in relation to land policy has resulted in a confused land tenure situation on the ground, which is subject to great variations at local level. Generally, local authorities make decisions based on a combination of statutory and customary law, and the interpretations of both custom and statute vary widely from province to province. Contradictions and disconnects in the current land tenure systems continue to create loopholes that are exploited through irregular allocation of state land to individuals in positions of influence in government, military and the civil service.

Traditionally, land tenure conflicts are mediated by the local council of Hutu and Tutsi elders, the *Bashingantahe*. However, during the colonial period, this institution was weakened when individuals without the requisite qualities were appointed by the authorities.<sup>37</sup> Recent efforts to support the institution have been criticized in some quarters, as some *Bashingantahe* included in donor-funded support projects have

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been civil servants or political figures, which is not allowed under custom.<sup>38</sup> Nevertheless, the Arusha Agreement emphasizes their role in reconciliation, at the level of the *colline*.<sup>39</sup>

### Proposed revisions to the Land Code

The *Arusha Agreement on Peace and Reconciliation in Burundi* calls for the revision of the Land Code, in order to address various (unspecified) land management problems.<sup>40</sup> The Agreement also provides that environmental sustainability should be a factor in the policies of distribution and allocation of land: protection of forests, in order to maintain hydrological regimes, is given emphasis.<sup>41</sup> While stating that; “all refugees and/or *sinistrés* must be able to recover their property, especially their land”; or else receive compensation, the Agreement also acknowledges the need for political awareness in the process of resolving land claims, as, “the objective is not only restoration of their property to returnees, but also reconciliation between the groups as well as peace in the country.”<sup>42</sup>

The Land Code is in the process of being revised. By May 2004, a draft was almost ready for presentation to parliament for debate.<sup>43</sup> The Code seems to be broadly in line with the concepts of land tenure security and the need for land markets, as championed by the World Bank, the FAO and other institutions in a number of countries. Customary aspects are to be ‘replaced’ with a modern system, through universal land registration. Land redistribution is not being considered – instead, it is envisaged that land markets will redress some imbalances.

Many of the proposals are positive, particularly the revisions on how much land may be allocated by different authorities; and the establishment of national and commune-level land commissions: as long as these are designed to allow full local participation of a cross-section of local stakeholders. The draft code specifies that the national commission shall be made up of representatives of the ministries concerned with land; provincial and commune-level associations of agriculturalists and pastoralists; NGOs involved in agriculture, sylviculture, or pastoralism; as well as people chosen for their particular competence.<sup>44</sup> However, the text is silent on how these people will be selected. The land commissions at the commune level, which will come under the authority of the communal authorities, will be composed of technical personnel associated with land issues, representatives of the population, and people chosen for their particular skills. Norms for selection of members are unspecified. The commissions have many responsibilities for many important aspects of land administration, including registration of land rights, expropriation of land, and the establishment of zones of intensive agriculture; as well as the establishment of local land management plans.<sup>45</sup> No more than half of the members may be state employees.

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The recognition of the currently informal *Certificate de Possession* (issued at commune level) will bring increased security of tenure at local level – experience from Rwanda suggests that farmers do not necessarily require full title (like the type required to use land as collateral) but rather require protection from expropriation by the state or competing land claims by neighbours and family-members.<sup>46</sup>

Other aspects could be perceived as disappointing. Improving women's access to land should be a priority, not necessarily only through equal inheritance rights but perhaps by other means, such as strengthening their access to legal information and representation. The move towards formalization of land documentation will require a well-designed policy which will facilitate formalization but will not result in those without papers being dispossessed by those able to take advantage of money, literacy, and connections. 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. For this reason, a more realistic evaluation of the likely continued role of customary law would be useful. The Code will seek to prevent the subdivision of plots of 0.5 ha or smaller. However, policy-makers are aware that this will be almost impossible to implement.<sup>47</sup> In the absence of a realistic strategy for implementation, it is conceivable that this provision will be implemented in unhelpful ways by local administrators.

Currently, an individual occupying land as a 'squatter' for thirty years can apply to gain legal recognition of ownership; the new draft proposes to change this minimal 'prescription' period to fifteen years. This is likely to be extremely controversial, and if the 15-year proposal is accepted by parliament, thousands of people who were displaced in 1988 will have difficulty in reclaiming lands. Those who were displaced in 1993 will also be under extra pressure to return and formalize their land claims.

Finally, it is notable that the proposals do not envisage any kind of land redistribution exercise. The ripple-effects of the war, as well as decades of skewed development, will continue to distort the land market, making it unlikely that it will function efficiently. Due to historical reasons and the devastating effects of violence, a small urban elite is in a position to 'buy' out the rural poor, many of whom struggle to survive on the equivalent of US\$1 per week and may sell land to pay for medical fees or other emergency expenses. Even the Catholic Church, which is already a major land-owner in the country, has been purchasing land from displaced people.<sup>48</sup> A maximum land ceiling would be one simple way of making at least a preliminary move towards greater equality.

## **Conclusions**

Resolving land disputes, especially those related to the return of refugees, will be an essential part of peace-building in Burundi. But the issues are not just short-term,

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and do not just involve displaced populations: land scarcity and generalized land disputes also pose major problems. Stakeholders must therefore lobby the government of Burundi to institute comprehensive land tenure reforms that will not only address inequitable land distribution, streamline land management and administration, and shift control of land resources to an independent body subject to external scrutiny, but also assure tenure security for the rural poor.

### **Short-term recommendations**

#### **1. Build the capacity of institutions handling refugee repatriation and integration**

It is recommended that enough funds be allocated to CNRS to carry out its mandate, while it should be given greater autonomy of operation. Its technical capacity should be improved by the appointment of competent civil servants with the requisite knowledge of repatriation and related matters, as well as effective devolution of some responsibilities to the relevant civil society organisations or international institutions.

#### **2. Strengthen dispute resolution mechanisms**

The institution of the *Ubushingantahe* should be revamped and strengthened, with membership decided through participatory local elections, in order to restore the institution's esteem and steer it away from political interference and corruption. In addition, legal clinics for land-related disputes should be supported.

#### **3. Increase levels of participation**

Increase access to information, consultation and participation in decision-making on land-related issues, especially for IDPs and refugees.

#### **4. Implement education and advocacy around land tenure issues**

Civil society organizations should lobby the government to keep land access issues on the political agenda. They should particularly advocate against discriminative attitudes and practices with regard to land ownership by the *Batwa*, women, the long-term displaced and others. Civil society organisations should also be supported to provide human rights and legal education to promote tolerance and co-existence, and to disseminate the provisions of the Land Code, when it is finalized.

### **Long-term recommendations**

#### **1. Institute comprehensive land policy reform**

The operation of land markets is unlikely to benefit the poor due to the distorting effects of war and displacement and the massive disparities in income in the country.

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The operation of land markets should be carefully monitored in order to identify trends, and means to mitigate some of the negative effects. A policy, or a clause in the Land Code, should be formulated to limit the size of land holdings per individual in order to help redistribute land resources. The current law should be amended to include a provision allowing for equal access to land and property for women.

### **2. Encourage decentralization of resources and power**

The government should encourage the development of the private sector to de-concentrate the responsibilities and resources of the government. Rigorous checks need to be put in place to ensure that this process does not become dominated by a small politically-connected group. In addition, infrastructural and market development should be balanced to avoid regional disparities.

### **3. Support off-farm livelihood alternatives**

Efforts should be made to develop the private and informal sectors through vocational training and promotion of micro-finance enterprises to provide self-employment in non-agricultural domains. Particular attention should be paid to demobilized soldiers and ex-rebels. These efforts should be seen within the long-term development of a regional labour market.

### **4. Revive regional economic cooperation**

It is important that the regional and international community facilitate the free movement of labour in order for Burundi to overcome its problem of land scarcity. Whilst remaining cognisant that there are serious political obstacles to this, with continued negotiations and the support of the international community, mutually beneficial terms could be identified.

### **5. *Further research and information dissemination***

There remain lacunae in information about such factors as the impact of long term displacement on society, the effects of HIV/AIDS on land rights, long term solutions to the problem of land scarcity, and other issues that have a direct bearing on sustainable peace. Research should be conducted in order to help policy makers to be sensitive to the highly varied and fluid nature of land-related issues in post-conflict Burundi, particularly in the context of refugee returns. There are no easy or uniform answers.

### **3.1.2 Land, migration and conflict in Eastern DR Congo**

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#### **Executive Summary**

This article is a summary of a full-length case study, funded by the United States Agency for International Development (USAID), to be published in December 2004 by the African Centre for Technology Studies (ACTS) and the Institute for Security Studies (ISS). It examines the role of land access in the conflicts which have affected Eastern Congo, especially since 1993. Based on fieldwork in Ituri Territory and Goma as well as extensive review of secondary literature, it includes a number of recommendations for the Government of the DRC, the international community, and civil society actors, for both short-term and the long-term horizons. It concludes that land shortage or exclusion has provided a conducive environment for local, national and regional actors to strengthen their control over territory, social mobility and natural resources. Since the start of the Congolese war, land has turned from a 'source' of conflict into a 'resource' of conflict. Land is a key element for the development and consolidation of new systems of power, profit and control.<sup>49</sup> Rebel leaders have mobilised existing patterns of 'unfree labour' and have turned land into an asset to be distributed among its members.<sup>50</sup> Because of the links between control over land and conflict, the study recommends that a commission on land ownership should be established and charged with the responsibility to analyze the dynamics of land access nationwide, with a focus on areas where land access issues have been related to conflicts, and deliver a report within a limited timeframe. The commission should conduct extensive consultations, involving real community input from rural areas. Their recommendations should be approved by consensus amongst the concerned parties.

The findings of the commission would be brought to parliament for enactment of a new policy on land distribution, allocation and distribution. The policy would seek to define 'customary land rights' in order to provide the majority of Congo's people with secure access to land. On the basis of this experience, a new land law should be formulated.

#### **Introduction**

Violent conflict has engulfed parts of the Democratic Republic of Congo (DRC), principally the East, for much of the last decade, during which some 3.3 million people



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have died, making it the world's most deadly conflict since World War II. With the signing of the Lusaka Ceasefire Agreement, the Sun City Accords, and the subsequent establishment of a Transitional Government, there is optimism for the future. But areas such as North and South Kivu Provinces and Ituri Territory remain volatile, as was seen in June 2004, when opposing army factions battled in Bukavu, or in July 2004, when new clashes broke out between militia groups near Bunia.

It may be asked why this study chooses to focus on access to agricultural and pastoral land, when other factors are more commonly identified as sources of conflicts in the DRC. These include the military and economic strategies of neighbouring countries and Western powers; the nature of the state in DRC (a classic case of the 'failed state'); the historical relationships between ethnic groups; and natural resources of great value and 'lootable' character, such as diamonds, gold, cobalt, cassiterite, and coltan.

Nonetheless, land remains important for several reasons. Firstly, insecure or insufficient access to land is a significant factor in the impoverishment of thousands of rural people, and is therefore a 'structural' cause of conflict. Marginalisation as a result of land alienation has given an important stimulus to militia formation in many parts of eastern DRC. Secondly, in the case of Ituri Territory, contested purchase and expansion of agricultural and ranching concessions have been identified as one of the proximate causes of violence; the same may be true in Masisi. Thirdly, the present conflict has radically changed land access patterns, through a number of mechanisms including forced displacement; shifts in the level of authority enjoyed by different customary and administrative leaders. 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.<sup>51</sup> This is especially the case because land was turned from a source into a resource for the perpetuation of conflict.

### **The local political economy of land-access**

In many parts of the eastern provinces of the DRC, land has been a source of conflict for many years. Changes introduced during the colonial period tended to politicise and exacerbate conflicts over disputed access to land. On the one hand, colonialism institutionalised the link between ethnic identity and land access within the political structures of the state. On the other hand, it intensified local competition for land with the promotion of migration of labour forces from neighbouring Rwanda. Before the colonial conquest, large parts of eastern Congo were characterised by markedly stratified patriarchal social structures. Access to land was regulated by a hierarchical administration based on communal territorial ownership.

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The Belgian colonial power took notice of the existence of these indigenous systems and pushed them into a new regime of customary law, which, consequently 'containerised' the local population.<sup>52</sup> The process of 'containerisation' involved a 'rigidification' and in some cases a re-definition of ethnic identities and a codification of customs. A second characteristic of the land tenure system was the introduction of a double system of property rights. Next to 'custom' existed a 'modern' system for the white settlers enabling them to establish their plantations, through application to the central state. All vacant land was declared to be the property of the colonial state. Land was expropriated for settler-owned concessions, and compensation was paid to the customary leaders (*mwami*), rather than to the people. The dual nature of the system allowed for 'forum shopping' in order to gain access to land, which eventually undermined the legitimacy of both the customary and statutory systems.

### **The issue of border identities**

Long before the creation of the "Independent State of Congo" in 1885, significant numbers of Kinyarwanda speaking people were living in the highlands of Kivu. In what is now called North Kivu, there were important settlements of Banyarwanda, while in the southern parts of the Kivu highlands there was a presence of a group of Banyarwanda that were mainly of Tutsi-origin and later would be better known as Banyamulenge.

After the First World War, the Belgian colonial administration strongly promoted the migration of significant numbers of Rwandan farmers in an attempt to counteract a strong demographic pressure in Rwanda and to provide the necessary labour for the newly created agricultural plantations and mining centres. The colonial administration never succeeded in finding a sustainable resolution to the identity problem. The so-called 'social revolution' of 1959 in neighbouring Rwanda — partly the result of colonial policies of ethnic favouritism — was responsible for the arrival of additional Rwandan refugees.

In 1910, Belgium, Germany and the United Kingdom signed the Convention of Brussels in order to redraw the boundaries of the Independent State of Congo.<sup>53</sup> From then on, the Kinyarwanda speaking population in North Kivu and the Kirundi-speaking population in South Kivu were considered as indigenous and were attributed their own customary authority, which was immediately disputed by the other ethnic groups living in these regions.<sup>54</sup> The Tutsi-minority of Rwandan descent living in Rwanda (the Banyamulenge) in South Kivu, however, were not entitled to the same rights.

Competition for land would always remain an important source of tension between the local population and the Banyarwanda immigrants. When denied free access to

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land through custom after independence, the Banyarwanda finally started purchasing land. The Banyarwanda succeeded in acquiring most of the land in Masisi by simply buying it. The Hunde chiefs, for their part, were still expecting tribute from these Banyarwanda for the use of land that they still supposedly held under their customary powers. This explains the first major conflict: the '*Guerre des Kinyarwanda*', which lasted for two years, was the first rebellion against abuse of the chiefs' powers, and the first step of a spiral of unending local violence.

The confusion brought about by the co-existence of 'customary' and 'modern' land access systems increased after the introduction of a land law, which was based on individual ownership, in 1973 by the independent Zairian state.<sup>55</sup> This legislation discarded customary law, so that land occupied under customary rules no longer had any legal status. The law was to be supplemented by a Presidential Decree designed to offer some security to customary land users, but the Decree was never issued. This diffusion forced most peasants into a position of general uncertainty about their legal access to land. What was meant as a measure of national integration, giving every Zairian citizen equal access to land, in its application proved to be a perfect instrument for those already holding a position of political or economic power to appropriate any land not yet titled. The traditional authorities became the privileged intermediaries for the sale of land.

### Text box: Side-stepping the land law in Ituri

Land-related conflicts are partially a result of systemic failings of the land tenure legislation and the administration and justice system. In Ituri, local perceptions of community rights mean that market-based systems cannot operate as provided for in the legislation. In response, some members of the local elite short-circuited the land administrative system through corruption. In areas where the concessions were bordered by villages and farmland, officials were sometimes bribed to ignore various stages of the titling process, including surveying and consultation with local people.<sup>56</sup> In some cases, the local chief may have been paid to accept the expansion of the concession, while in other cases he may have been ignored. The landowner would then receive a title document, sometimes bypassing the district and province level altogether and going direct to higher authorities in Kinshasa. Many of the landowners would then do nothing to expand the concession for a period of at least two years. After this time, the inhabitants lose the right to appeal against the claim of the landowner. When this was exacerbated by the use of force and administrative changes implemented by the UPDF, the result was violent conflict of an 'ethnic' character. The situation in Ituri reflects a wider national challenge to land administration and local governance. Many apparently consider the violence in Ituri to be separate from the patterns of conflict in the Kivu Provinces, with its own 'historical dynamics'.<sup>57</sup> While each portion of the vast country that is DRC has its own particular characteristics, the political economy of land ownership is a national-level issue.

In Masisi, the Hunde-chiefs played a crucial role in the selling of large tracts of land. Since the introduction of modern land rights and the new legislation on property, it

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was impossible to buy land without their permission; and they would generally benefit from land sales. This opened the road to clientelistic relations but at the same time reduced the power of the chiefs, including a loss of their local legitimacy.

Rewarded with ministerial posts and armed with the 1972 law on Zairian nationality (which granted them Zairian citizenship), the Banyarwanda were able to concentrate a large number of former colonial estates in their hands. In Ituri, similar developments could be observed. Here, it was members of the Hema that profited from their easy access to education and to employment opportunities within the local colonial administration, the mines and plantations.

Regions such as Bushi, Rutshuru and Masisi, were faced with unrelenting population growth. By the end of the eighties, 49 per cent of the population in Kivu lived in areas with a density higher than 100 inhabitants per square kilometre, whereas this number was only 13.4 per cent in Zaire as a whole.<sup>58</sup> A survey in Mulungu (Kabare) in 1985 demonstrated that, even with intensive cultivation, the land holdings of nearly 90 per cent of the population were insufficient to support a family. More than two thirds of all households worked plots of less than one hectare. One third of all families had less than 0.3 hectare.<sup>59</sup> In areas with a large presence of immigrants, competition for land was easily manipulated to transform the struggle over land into ethnically motivated conflicts. This was especially the case for the zone of Masisi (North Kivu) where, as Tsongo described, 512 families (of which 503 were of Rwandan descent) occupied more than half of the land.<sup>60</sup>

This dynamic has put the resources of poor peasant households under growing pressure, leading to a) a shift in the economic use of the available space which resulted in land dispossession and alienation, producing a large agricultural labour surplus; b) young men opting for a strategy of temporal migration, causing shifts in local mobility patterns; and c) intensified competition for wealth accumulation through land which led to a hardening of social boundaries on an ethnic basis.

With a peasant population under growing stress, one might have expected more (or earlier) protest or regular outbursts of violence by these farmers against their rulers. To understand why this did not happen, the traditional authorities need to be the focal point of analysis. In order to guard their position, and avoid blame for land sales, ethnic discourse proved to be a perfect instrument. This significantly raised ethnic tensions. These conflicts, however, were not limited to areas where immigrants had settled. Ethnic tension increased between the indigenous communities of Babembe and Babuyu in the southern parts of South Kivu when the "*indigenous*" community of Babuyu rejected the land rights of the "exogenous" community of Babembe on the premise that historically, they were the sole owners of the land.

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It was only after the announcement of the democratisation process, in April 1990, that local competition for land turned into the material basis of intensified political competition and, eventually, violent conflict. Mobutu's announcement of a democratisation process, in April 1990, could be best described as yet another strategy to ensure his power. He knew precisely how he could manipulate the process of democratisation. Local politicians were forced to build themselves a strong power base, from which to exploit popular sentiments. Mobutu encouraged exit-strategies based on ethnic criteria. The introduction of the notion of "*géopolitique*" in the early phase of the democratisation process, was the first element to intensify local ethnic competition. In North Kivu, a wave of inter-ethnic violence erupted for the first time in March 1993. Poor Hutu farmers from Masisi had lost their land because the local customary chiefs had sold it to rural capitalists of Banyarwanda origin. These farmers settled further west in Walikale where they hoped to get access to land under the control of the local Nyanga chiefs. Fearing a growing influence of these newly arrived Hutu-Banyarwanda, the local population and their chiefs supported the formation of local militias. Secondly, a coalition of local Nande and Hunde politicians, afraid of losing their political power if the Banyarwanda were registered as Zairian nationals and participated in the coming elections, had started an exclusion campaign to prevent the Banyarwanda from political participation. Also, the local Hutu-Banyarwanda association Magrivi (*Mutuelle des Agriculteurs de Virunga*) encouraged its members to refuse paying tribute to the autochthonous chiefs and to no longer recognise their authority. Fourthly, the Rwandan presidency also encouraged local tensions to cut the support lines between the local Tutsi population and the RPF. The result was a bloody confrontation that lasted for more than six months and killed between 6,000 and 10,000 people, while displacing more than 250,000 people.

The fragile settlement between the different communities in North Kivu, which was eventually forged at the end of 1993, lasted until the arrival of more than one million Hutu refugees from Rwanda and the settling of the ex-Armed Forces of Rwanda (ex-Far) and Interahamwe militia in camps in Masisi and the Ruzizi Plain. Local antagonism between autochthonous and Banyarwanda communities was now altered by a new coalition of local Hutu-Banyarwanda, the refugee-leadership and militias, creating the concept of 'Hutu-land' and hunting down the local Tutsi population.

In the southern parts of South Kivu, the unresolved question of land rights and the quest of the Banyamulenge to have their own "*territoire*" was linked to the national debate on political representation. In addition, the Banyamulenge were held responsible for the growing insecurity since the arrival of the Burundian Hutu-refugees after the assassination of the Burundian President Ndadaye, in October 1993, and the Rwandan Hutu-refugees in 1994. Local political and economic competition was directly linked to regional dynamics of conflict. All Tutsi in the area (including the

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Banyamulenge) were characterised by politicians as “recent refugees” and “foreigners”.

By September 1996, the Kivu provinces had become a toxic brew of local and regional antagonisms that risked escalating at any time. These local and regional elements explain the dynamics behind the formation and the start of the military campaign, in October 1996, of the *Alliance des Forces Démocratiques pour la Libération du Congo/Zaire* (AFDL). This alliance of local and regional forces easily defeated the remnants of the Mobutu regime and, in May 1997, arrived in Kinshasa. While the regional allies were expecting some remuneration for their war efforts, the AFDL leadership felt a growing need to distance itself from them if it was to build for itself a domestic political power base. The dilemma of the new Congolese authorities turned out to be the *raison d'être* of a second rebel movement, the *Rassemblement Congolais pour la Démocratie* (RCD). Yet, what was expected to be a simple imitation of the 1996 rebellion soon proved to be the beginning of a conflict that set in motion new strategies of political and economic control.

### Land and conflict in Masisi after 1998

The Kivu Provinces, along with Ituri Territory, have been the main arena of conflict between armed actors (often acting as proxies for signatories of the Lusaka Agreement) since the cease-fire was signed in 1999. For this reason, the Kivu Provinces have been identified by some experts as the key area in the Great Lakes conflict system.<sup>61</sup>

The region is one of the most densely populated in the country. 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 per cent of these concessions covered 71.2 per cent of the cultivable area.<sup>62</sup> In addition to farms and ranches, a large proportion of the area is also devoted to conservation, in the form of the Virunga National Park.

The area was depopulated during the late 1990s due to conflict. From 1999 until 2002/2003, many returnees from Rwanda and other parts of the DRC were able to cultivate as 'squatters' on ranch land. When original land owners returned, along with livestock, some squatters who would not or could not pay were forcibly evicted by the landowners. However, others used force if necessary to be able to stay: these occupations are reportedly enforced by armed elements.<sup>63</sup> Some believe these armed people – who are reportedly rarely in uniform - are part of the Local Defence Forces

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(LDF), under the command of the Governor of North Kivu. It is also believed that some ex-RCD troops have effectively become a private security force for wealthy and politically connected land-owners.<sup>64</sup>

Due to the importance of the customary authorities in land issues, their role has been politicized. A number of customary chiefs have been prevented from taking their posts, especially through political interference in the process of succession. Frequently, leaders seen as anti-RCD have been accused of being sympathetic to the Mayi-Mayi, or of neglecting their duties.<sup>65</sup> Those who oppose the RCD often claim that violence has been used or threatened against legitimate chiefs who oppose them.

This situation is partly due to the failure of the national legislation to defend customary land rights of the peasants, but is also a failure to implement the law properly. For example, unlike most parts of the DRC, some 75 per cent of land in Masisi is under title. However, these titles are often simply not respected. Lack of information about the land law is one element which enables inequities to continue.

The interference of the provincial authorities in the activities of customary authorities has served to exacerbate local land tenure insecurity. If leadership changes in controversial circumstances, local communities tend to become divided over the issue. In a situation where customary land tenure arrangements for subsistence production (including sharecropping and other rental agreements) are secured through verbal contracts and testimony through neighbours and customary leaders, and titles generally do not exist, anything that tends to undermine local social cohesion has negative effects on land tenure security.<sup>66</sup>

Though systematic data on the current status of land claims is difficult to obtain, the characteristics of governance in North Kivu suggest that the land claims and interests of one community may be given pre-eminence above others. Generalized insecurity is likely to continue for some time, until a genuinely unified Congolese army is able to impose order in rural areas. A greater threat, however, is posed by a possible collapse of the transition process.

The UN Panel of Experts has warned that the use of force and administrative coercion to pursue land claims, against the backdrop of ethnic violence that has plagued the region, particularly over the last ten years, "could rekindle long-standing conflicts with other ethnic communities over land."

## **Conclusions**

Our analysis has pointed out that the political manipulation of the land issue is part of a larger, historical process. Local elites have tried to consolidate their power position

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or escape from state control and gain some economic autonomy by control over land. In return, Mobutu turned land into a reward to be distributed among the members of his own patronage system. Both processes have led to large-scale poverty and food insecurity.

Second, in eastern DRC, the relationship between land and conflict is complex and multidimensional. While land shortage or exclusion did not necessarily lead to conflict, these structural elements have provided a conducive environment for local, national and regional actors to strengthen their control over territory, social mobility and natural resources. Land, in this sense, has become an objective of armed struggle while at the same time land insecurity could be manipulated to mobilise rural populations.

Third, since the start of the Congolese war, land has turned from a 'source' of conflict into a 'resource' of conflict. Land is a key element for the development and consolidation of new systems of power, profit and control. Rebel leaders have mobilised existing patterns of 'unfree labour' and have turned land into an asset to be distributed among its members. These practices are both based on inclusion and exclusion: those belonging to the ethnic network in control are granted free access to land; those not belonging to it become the main victims.

### **Recommendations for Short-Term Action**

- Foreign governments, particularly neighbouring countries, should desist from any military support to military or other actors in the DRC. If neighbouring governments are found to be engaging in destructive, destabilizing politics, the international community should condemn their actions and reduce or freeze foreign assistance accordingly.
- Despite their historical role in the alienation of land, the customary chiefs retain some legitimacy, particularly in areas where many local people see the ex-rebel authorities as illegitimate. They must therefore be involved in the mitigation and ultimately the resolution of land conflicts, but only through a process of open discussion about the role of various parties in the land access crisis.
- This should be part of a wider process of network-building between local, national and international institutions in order to build a constituency for peace and justice. The process should involve a long-term but low-profile programme of engagement by donors, informed by close grassroots involvement and research.
- Evidence from Ituri and other areas suggests that local markets are the practical focus for local peace-making agreements. These spontaneous agreements should be supported, not just by NGO efforts to reconstruct market facilities and roads,



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but also by United Nations Organisation Mission in the Democratic Republic of Congo (MONUC) in terms of security arrangements.

- The judiciary should be strengthened in order to become more effective, and the Transitional Government should take steps to ensure that they are able to operate without political interference. Strengthening of judicial institutions should aim to improve access to justice, particularly for the rural peasant population. In relation to land, this should eventually involve awareness-raising of the legal frameworks to land ownership.

### **Recommendations for Longer-Term Action**

- A commission on land ownership should be established and charged with the responsibility to analyze the dynamics of land access nationwide, with a focus on areas where land access issues have been related to conflicts, and deliver a report within a limited timeframe. The commission should conduct extensive consultations, involving real community input from rural areas. Their recommendations should be approved by consensus amongst the concerned parties.
- The findings of the commission would be brought to parliament for enactment of a new policy on land distribution, allocation and distribution. The policy would seek to define 'customary land rights' in order to provide the majority of Congo's people with secure access to land. On the basis of this experience, a new law should be formulated within a year of the policy being finalized.

### **3.1.3 Land reform, land scarcity and post-conflict reconstruction: A case study of Rwanda**

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#### **Executive Summary**

This policy brief provides an analysis of Rwanda's draft land policy, in the context of the structural constraints facing the country, including acute land scarcity. It concludes that while the land policy offers several opportunities for economic development and improved rural livelihoods, its implementation will involve a number of challenges and risks. Therefore, it should be piloted in limited areas, and the results monitored, before being applied more widely. Also, implementation of the policy should not be based on compulsion, and the government should ensure that it does not lead to increased landlessness. Civil society organisations should be involved in policy implementation. Further research into the effects of HIV/AIDS on land rights should be conducted, and the results used to guide amendments to the policy. The composition of the land commissions, who will be responsible for much decision-making over land, should include representatives of sections of society which are most easily marginalized. There is a need to redefine the issue of landlessness, to include those who have lost land through processes of impoverishment. There is an urgent need to evolve a workable strategy to promote non-farm activities which should involve regional as well as national solutions. Overall, a more transparent dialogue within the country on governance and post conflict reconstruction is important. Effective implementation of a fundamental and sensitive issue such as land will not be possible without transparency.

#### **Introduction**

Africa's Great Lakes Region has in recent years experienced political strife, armed conflict and population displacements with severe humanitarian consequences. While these events have clearly revolved around political struggles for the control of the state, recent research has pointed to the significance of environmental variables as structural causes and sustaining factors in struggles for power in the region. Contested rights to land and natural resources are significant, particularly in light of land scarcity in many areas and the frequency of population movements. For this reason, the African Centre for Technology Studies (ACTS) is conducting research on these issues in Rwanda, Burundi and the Democratic Republic of Congo (DRC).

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The current study builds on work published by ACTS and the Institute for security Studies (ISS) in 2002, which concluded that the political economy of land in Rwanda contributed to socio-political tensions, conflict and genocide, due to the effects of resource capture by elite groups and landlessness in the economic collapse prior to 1994, in the context of structural land scarcity.<sup>67</sup> The average land holding at the household level has dropped from 2 hectares in 1960, to just 0.7 ha in the early 1990s.<sup>68</sup> In 2001, almost 60 per cent of households had less than 0.5 ha.

The Government of Rwanda has recently completed a long process of developing a National land policy, which is currently being considered by a parliamentary standing committee. The policy emphasizes land consolidation, grouped settlements, and specialization and commercialization of agriculture. Based on interviews in Rwanda and review of secondary literature, this case study examines the draft policy from a perspective of conflict prevention.<sup>69</sup> This article summarizes a longer report to be published by ACTS and the Institute for Security Studies (ISS) in December 2004.

### **The background: conflict in Rwanda**

Inequality and social tensions have existed in Rwanda for many years. The pre-colonial and colonial-era political dynamic led to the political dominance of an elite group within the Tutsi community. On the eve of independence, the Belgian colonial power switched support to those advocating 'Hutu majority rule'. The 'social revolution' of 1959 led to most Tutsi in positions of power being forced or voted out, and widespread ethnic pogroms against Tutsi across the country. Post-independence governance came to be characterized by exclusionary, racist state policies and political networks, which functioned through patron-client relations between factions of the state elite, and contributed to poverty and grievances amongst the rural poor. There were sporadic but unsuccessful incursions by exiled Tutsi fighters, and periodic mobilization of Hutu militia against Tutsi in the country.

Rwandans in exile formed the Rwandan Patriotic Front (RPF) and invaded the country from Uganda on 1st October 1990. As the war continued, anti-Tutsi propaganda was widespread, and militia forces carried out violent attacks against Tutsi civilians with impunity. A peace agreement was concluded, but within hours of the assassination of President Habyarimana in April 1994, officials in the government, armed forces, police, and the civil authorities put into action their plans for the genocide of the Tutsi. Over 800,000 people, the vast majority Tutsi, were murdered in the space of three months before the RPF took control of the country.<sup>70</sup> The failure of the international community, including the UN, to prevent or stop the genocide, and the alleged complicity of some

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Western countries, continues to affect relations between Rwanda and the outside world.<sup>71</sup>

Most Rwandans have undergone an experience of internal displacement or exile. Those who left due to violence and repression from 1959 onwards entered Rwanda in large numbers in late 1994. They are generally known as the 'old caseload', are almost all Tutsi, and number about a million. Most of those who had fled in the immediate aftermath of the war and genocide – almost entirely Hutu and referred to as the 'new caseload' – returned in late 1996 or early 1997. These influxes resulting in multiple claims of ownership for farmlands, buildings, and agricultural and forest products. Government policy, guided to some extent by the Arusha Peace Accords of 1993, has directed people to share land resources, or has opened up public lands (such as Akagera National Park) for resettlement. The government also extended an 'emergency' policy of constructing villages, known in Kinyarwanda as *imudugudu*, into a more widespread settlement policy. Despite people's general willingness to share land and natural resources, there are many land disputes at the local (intra- and inter-household) level. At least 80 per cent of disputes reported to district administrators are centred on land.<sup>72</sup>

### Background to the development of the draft land policy

There were three systems regulating access to land immediately prior to the colonial period. In the central, eastern and southern areas controlled by the central Kingdom, the *igikingi* system governed pastoral lands. The *mwami*, the head of state, was the holder of all land rights and granted usufruct rights to land through local representatives, in return for fees, payments and labour requirements.<sup>73</sup>

In the northwest and the 'Hutu' Kingdoms of Bukunzi and Busozo, the *ubukonde* system was dominant. Under this system, the lineage-group of the person who first cleared a plot of land controlled access to that land.<sup>74</sup> The rights of exploitation of the land could be granted to others in exchange for obligations and fees, which only rarely included provision of labour.

In agricultural areas under Tutsi control, the *isambu* system replaced the *ubukonde* system. Instead of the lineage-group, the *Mwami* became the ultimate owner of the land, which he distributed in return for produce and provision of unpaid labour. This labour requirement was a major difference between the two systems, and it increased the extractive power of the state at the expense of the peasants, which was unpopular. However, in the late 19<sup>th</sup> century, grievances over land were not articulated in ethnic terms, but rather in terms of a regional, centre/periphery struggle.<sup>75</sup>

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The Belgians made ethnic distinctions much more rigid, through racist policies and the imposition of compulsory identification cards which stated whether the bearer was Hutu or Tutsi. In terms of land tenure, the Belgian administration sought to enhance the rights of individual land-users, by abolishing the *isambu* and *igikingi*, imposing constraints on the *ubukonde* and proposing exclusive individual rights. This contributed to a situation in which users of *igikingi* grazing land who had a number of cows tried to obtain 'private' rights to what had, until then, been a kind of commons resource.<sup>76</sup> This in turn altered the client-patron contracts governing access to land and labour relations, causing much resentment.<sup>77</sup> Violent conflicts erupted between land users (clients) on the one hand, and the land 'owners' (political authorities under the *mwami*, the lineage heads, and the church) on the other hand.

Through the 1959 'Social Revolution', the post-colonial government claimed to have dismantled feudal structures and created a more equitable system of land ownership, but the new state elite lost no time in misusing their power to access land and cheap agricultural labour.

Land ownership was radically disturbed by political violence following the 'social revolution' of 1959 and the flight of many Tutsi, whose land was then allocated to others. A process began of accumulation of land by an elite, accompanied by the rise of a landless population. By 1984, approximately 15 per cent of the land-owners owned half of the land.<sup>78</sup> Those buying land tended to be in commerce, government, or the aid industry, rather than full-time agriculture.<sup>79</sup>

Legislation was passed in 1960 and 1961 to further move customary systems towards western notions of property rights, through the formal registration of customary rights.

Customary systems, which rely on unoccupied land to provide social 'safety nets', have become undermined through land scarcity and have evolved, becoming more individualized and monetarized. However, there is a dearth of information regarding their current relevance across the country.

The statutory order no 09/76 of March 1976, which remains the land law currently in operation in Rwanda, sought to avoid the development of a land market. Like subsequent efforts at legislated land reform in 1978 and 1991, many aspects of the law were largely unimplemented. In fact, regulations tended to bring more confusion, rather than clarity, as they were provisional, or were ignored in practice. This seems to be a combination of lack of stakeholder involvement; the sheer technical difficulty of the task, as most people simply did not register sales; and the self-interest of the bureaucrats, themselves part of the class that was most active in acquiring land.<sup>80</sup>

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In the post-genocide reconstruction period, the idea of development of a new land law began in 1996 and a first concrete study on land reform, funded by the Food and Agriculture Organization of the United Nations (FAO), was conducted in 1997. This recommended that plots should become legally indivisible in order to safeguard plot-sizes, supported the *imidugudu* programme, and commercialisation of agriculture. In 1998, preliminary consultative meetings were organized throughout the country and recommended that 'full ownership' of land be given to all landowners. At this time, a draft land bill was completed, but it was decided that a policy should be put in place before the bill was tabled.

In 2000, the Ministry of Lands, Environment, Forestry, Water and Natural Resources (MINITERE) began to develop a national land policy, involving national consultations, and consultative meetings in all provinces, largely involving administrators at the District level.<sup>81</sup>

The draft land policy was almost complete by 2001, and was disseminated to a number of civil society organisations. Their comments were incorporated to varying degrees. In the words of one analyst: "the government has declared its intention to consult with the population as widely as possible and to modify the Policy on the basis of their views. However, the government is very clear on the direction it wishes to take."<sup>82</sup>

Also in 2001, the Poverty Reduction Strategy Paper (PRSP) was drafted. This includes several important elements concerning land, including provisions that a) households should consolidate plots to ensure that each holding is not less than 1 hectare; b) there should be a ceiling of 50 ha on land ownership; c) all land should be registered to improve tenure security; d) land titles will be tradable, but not in a way that fragments plots below 1 ha; and e) communities will be involved in the process of allocating title.

The Vision 2020 document, which sets out Rwanda's vision for development, also forms a framework for development of the land policy. It aims to achieve 'recapitalization' and transformation of the rural agricultural landscape into a commercialized sector.

### **The context: land scarcity and distribution**

Population density is today well above 350 people per square km.<sup>83</sup> The effects of this can be summarized as follows; firstly, farm holdings have become smaller due to constraints on land availability and holdings are more fragmented. Secondly, cultivation has pushed into valley-bottom lands and fragile, marginal lands on steep slopes previously used for pasture and/or wood lots. Thirdly, many households now

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rent land, particularly households owning little land or those with large families; and finally, fallow periods have become shorter and cultivation periods have grown longer, leading to a decline in soil fertility.<sup>84</sup>

There is considerable inequality in land access. The gini co-efficient (a measure of inequality) of land distribution has been steadily increasing, and is currently 0.594.<sup>85</sup> As stated in the draft land policy, a significant share of land is in the hands of a rich elite mainly from urban areas.<sup>86</sup> There is little recent data available but interviews and published reports suggest that large plots of over 50 ha are not unusual, and that even land under cultivation by peasants has been allocated to individuals and consortiums for ranching and cash cropping.<sup>87</sup>

Several sources have indicated growing landlessness over the last two decades. In 1990, according to some estimates, about a quarter of the rural population was landless, and in some districts that figure was 50 per cent.<sup>88</sup>

HIV/AIDS is also an important factor in land use and access patterns. The national sero-prevalence rate is about 11 per cent.<sup>89</sup> A number of studies in Africa have identified general patterns in rural economies affected by high rates of HIV/AIDS infection.<sup>90</sup> Death and impoverishment within households due to HIV/AIDS tends to undermine the land rights of the nuclear family, particularly those of women and children. The most pressing issue is that of inheritance after the death of a male head-of-household, with women and children often being dispossessed of land by relatives. Conflicts over land are also associated with HIV/AIDS-related land use changes.<sup>91</sup>

In Rwanda, there are associations of people living with HIV/AIDS, which are overwhelmingly female in membership.<sup>92</sup> These associations could be important in the struggle to defend the land rights of people living with HIV/AIDS and their relatives. Some policies that the Government of Rwanda is pursuing – for very good reasons – may in the long-run increase the risk of infection for many people. For example, policies likely to increase rural-urban migration and create pools of rural labour in agro-industry (associated with internal migration and separation of families) are likely to create conditions that hasten the spread of HIV/AIDS in rural areas, unless mitigation measures are put in place.<sup>93</sup>

### **Aims and modalities of the Draft Land Policy**

The recent endorsement of the land policy by the cabinet is an important landmark in the history of Rwanda. It will be effective if it safeguards the livelihoods of the rural poor, reduces poverty, and mitigates conflict. Given the historical challenges to

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implementation, it is therefore important to identify possible constraints and limitations to the effective implementation of the current draft policy, while of course recognizing its strengths and the opportunities which it presents.

In terms of rural agriculture, the most important aspects of the policy include: re-organization of habitat in rural areas through grouped settlements (*imidugudu*); establishment of a general master plan of land use and land development; guided land consolidation; specialization of marshland users, and establishment of clear regulations for use.

Capacity for land administration will be augmented by 1) establishment of a Land Centre to provide technical and administrative support to the National Land Commission, as a central land data bank of all land information in the country; and 2) establishment of national, provincial, and district land commissions. There will be a land office in each district with the main role of surveying land parcels and registering land titles. This will be done under the supervision of the District and Sector land commissions.

We look at several aspects of the land policy that we consider to be particularly significant for long-term stability and prevention of conflict in Rwanda. They are: 1) Consolidation of land, 2) Access to Land for the Landless, 3) Land Registration, 4) Addressing Inequalities in land ownership, 5) Grouped settlements, and 6) Land use and environmental protection. These are by no means the only important issues, and other sources provide information on other aspects of the policy.<sup>94</sup>

### **Consolidation of land**

Consolidation is intended to address land fragmentation. It is estimated that the average Rwandan household possesses 5 plots, though in some areas, such as Ruhengeri the average is about 10.<sup>95</sup>

There remains a lack of clarity about the mechanisms to be employed to ensure that consolidation occurs — the PRSP states that households will be ‘encouraged’; and the policy simply states that, “one needs to carry out the regrouping of plots”. MINITERE personnel suggest that land consolidation will be focused on encouraging formation of adjacent plots with similar crops. However, by linking the process to grouped settlements, the policy suggests that it may be a more comprehensive type of process. MINITERE has yet to state how consolidation will bring significant improvements. Possible ways include various forms of economies of scale and mechanization. However, none of these will bring a miraculous increase in returns:



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indeed, researchers have argued that, “land consolidation policies are unlikely to increase land productivity significantly.”<sup>96</sup> Further research is needed.

The policy suggests that consolidation will result in some people losing their lands: “not every one will own a registered plot...however, those who miss out will be compensated.” Assuming that compensation is calculated appropriately and paid on time, there remains the question of what alternatives are open to those made landless. Many peasant households will find a move towards non-farm livelihoods challenging, and markets for non-agricultural goods and services are likely to become quickly saturated if landlessness increases.

Monocropping on consolidated fields may lead to increased rates of soil erosion when compared to the inter-cropped fields commonly seen today.<sup>97</sup> Also, Rwanda has historically suffered from periods of severe and widespread food insecurity.<sup>98</sup> If farmers are encouraged to introduce monocropping of cash crops, to the detriment of more drought-resistant crops, there may be a negative effect on food security.

### **Access to land for the landless**

Many people have become landless through distress sales of land, or sheer land scarcity within a family, resulting in some sons being unable to inherit land.<sup>99</sup> The policy says that landless people will benefit from a land reserve; however, it defines the landless specifically as ‘old case’ refugees who have returned: Rwandans who fled the country in 1959 or later and stayed outside the country for more than 10 years.<sup>100</sup> No other type of landless person is mentioned.

It is true that this group has been severely affected by the land problem in Rwanda. However, the issue of landlessness is much wider than this, and will continue to expand as relative land scarcity increases. No information on the number of—‘old case’ refugees, landless or not, is provided in the policy. The policy is also silent on how, and by who, the land reserve will be allocated: firm criteria need to be set in place and a balance needs to be struck between centralized authority over the process and local authority, for example, through the district land commissions.

The policy also states that in addition to the ‘old case’ refugees, land from the reserve will be given to, “those who place an application for it, having a consistent plan of development.” This may provide an in-road for other landless people to apply: but this will depend on the definition of “a consistent plan of development.” If this is interpreted as a business-plan for cash-crop production, for example, then those

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with economic means are likely to be given priority to access the land reserve over those who are most in need.

Overall, there is a need to redefine the issue of landlessness. A fuller exploration of the phenomenon would inform a holistic and comprehensive policy on landlessness, with an accountable system and clear criteria for allocation, that will not lead to social tensions and would hence mitigate a latent source of future conflict.

### **Land registration: different meanings of tenure security**

Registration of land across the country, and the creation of a modernized land cadastre will be a major feature of the new land policy. Although land will continue to be owned by the state, land tenure security will be achieved through the acquisition of leases, of between 3 and 99 years duration.<sup>101</sup> In line with many institutions – particularly the World Bank, for example – MINITERE originally perceived ‘land tenure security’ as means for farmers to access to credit, through formal title. However, it remains to be seen whether small rural parcels of land of less than 1 ha will actually be viewed by financial institutions as viable forms of collateral, or whether farmers will be willing to ‘risk’ their lands as collateral. Also, land tenure security cannot be measured objectively but, as a production of social and psychological processes, exists in the minds of the farmers. Experience demonstrates that what most farmers want is security from land disputes – which typically involve members of the family, neighbouring households, or agents of the state.<sup>102</sup> This need not necessarily be a formal title deed; the main requirement is a symbol of mutual agreement, between the claimant, the surrounding community, and the state, that the rights to a particular plot will be respected.

The government of Rwanda has re-conceptualized its notion of registration in pragmatic ways. As it is practically impossible for all households to have plots surveyed and registered in the near future, a dual system will be established. The ‘formal’ or ‘national’ system will be based on full cost-recovery, will utilize accurate surveying equipment, and will cater to those wishing to gain bank loans or invest significant capital in the plot. The ‘informal’ or ‘local’ system will use less expensive mapping methods, and will be affordable.

### **Addressing inequalities in land ownership**

A ‘ceiling’ on land holding by an individual could address inequalities in the size of plots held by different landowners. In an earlier draft version of the land policy, this

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maximum was set at 30 ha. However, in the latest version of the policy, it has been dropped altogether. This is problematic, in light of the fact that some politically connected individuals have acquired, over the last few years, land holdings of 50 ha or more for coffee and cattle production.<sup>103</sup>

Gender inequality is another important problem. In order to address gender inequities in access to land, legislation was passed in 1999 which states that male and female children have equal rights to inherit their parent's property, both prior to, and after, the death of a parent.<sup>104</sup> However, there remain a number of obstacles to effective implementation of the law. Firstly, the law only applies to married women: those in long-term unmarried relationships are not covered. Many couples do not get legally married because of the expense, while polygamous households are not legally recognised.<sup>105</sup> Secondly, the land law stipulates that women can inherit land as guided by the inheritance law; while the inheritance law (Article 90) states that the land law will further spell how women can inherit land. This does not clarify the position.

Interviews with local administrators in rural areas suggest that with the extra pressure on the land represented by the entry of women as legitimate inheritors of family land, the ban on sub-division of plots smaller than two hectares will be difficult to enforce.<sup>106</sup> Clearly, gender-based inequalities cannot merely be 'legislated away'. Monitoring of the implementation of the law, by researchers who have experience in gender issues and are aware of the effects of the war and genocide on gender relations, will be essential in order for it to have a positive impact.

### **Grouped settlements**

In accordance with Vision 20/20, the draft land policy clearly states that, 'villagization is the one and only method allowing for utilization and proper management of land considering the scarcity of land'. Currently around a quarter of the total population lives in villages.

There are two important questions: first, whether grouped settlements will increase productivity; and second, whether they it will be implementable: the overall financial cost of such a radical programme needs to be estimated.

It is argued that the proximity of houses in *imidugudu* will facilitate cooperation and improve agricultural productivity. However, there exists little firm evidence to suggest that this is the case. Senior agricultural specialists at the University of Rwanda believe that in general, it seems that productivity in *imidugudu* is actually less than in non-villagized areas.

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Land commissions are charged by the policy to oversee the grouped settlement policy. In order to do this properly, the composition of the land commissions should include members of those

'voiceless' sections of society who are most easily marginalized as well as those with greater technical and planning abilities. The draft Land Law specifies that MINITERE will set the mission, programme, and membership for the provincial and district land commissions.

### **Land use and environmental protection**

The policy cites lack of agricultural 'specialization' as an obstacle to effective land management, with reference to the appropriate choice of crops relative to soil type, altitude, and regional location. The policy argues that, "proper management of national land resources should be based on master plans". It is true that transformation of the rural sector is indeed crucial. However, the predominance of master plans, in the absence of robust multi-sectoral systems for popular consultation and participation in decision making, could undermine the livelihood strategies which have allowed Rwandan peasants to make a living on their small plots. These include strategies to improve soil fertility, reduce the risk of total crop failure by cultivation of a variety of crops, and to reduce the impacts of fluctuating cash crop prices, by simultaneous cultivation of food crops. The rational nature of these diversified cropping patterns should not be ignored by policy-makers.

The management of marshlands is a vital issue. By the late 1990s, the marshes had come to provide about a fifth of the national food production.<sup>107</sup> According to interviews, the poorest households are often allowed to cultivate for free.<sup>108</sup> The draft Land Policy says that the state will impose the cultivation of particular crops, depending on the location of the region. Large-scale commercial activities are likely to be prioritized. If so, issues such as working conditions on farms and transparency of land allocation will be important.

### **Conclusions and Recommendations**

The draft land policy offers many opportunities for Rwanda. However, a great deal remains to be clarified prior to implementation. There are no easy solutions. Therefore, the trade-offs and risks involved in land tenure reform should be spelled out in order

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to enable discussion and true consensus building. Implementation of policy should be informed by constant monitoring.

### **Short-term recommendations:**

1. The land policy should be piloted in limited areas, and the results monitored, before being applied more widely. Based on the pilot experiences, the government should be ready to amend the land policy.
2. Implementation of the land policy should not be based on compulsion, and the government should ensure that implementation of the policy does not lead to increased landlessness.
3. Systems should be put in place for effective consultation with various line ministries, the provincial and district administration, and which will be instrumental in drawing up the more detailed regulations, which will guide policy implementation.
4. Civil society organisations should be involved in policy implementation, especially awareness raising and dissemination of the key aspects of policy; capacity building; and monitoring of the socio-economic and gender impacts of land consolidation and villagisation.
5. Further research into the effects of HIV/AIDS on land rights, particularly for women and children, should be conducted, and the results used to guide amendments to the policy.
6. The composition of the land commissions should include representatives of those 'voiceless' sections of society who are most easily marginalized as well as those with greater technical and planning abilities.
7. Overall, there is a need to redefine the issue of landlessness, to include those who have lost land through processes of impoverishment. An accountable system for allocation of land to the landless should be established, with clear criteria for allocation.
8. A more transparent dialogue within the country on governance and post conflict reconstruction is important, particularly in light of the increasing economic and political dominance of a small elite.<sup>109</sup> Effective implementation of a fundamental and sensitive issue such as land will not be possible without transparency.
9. There are large gaps in capacity between a) urban-based NGOs and rural organisations, and b) national and international organisations. It is important to build the capacity of local NGO networks to advocate for the land rights of the poor.

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10. There is an urgent need to evolve a workable strategy to promote non-farm activities, based on realistic projections, rather than an overly optimistic model, because of the large number of people who may become landless in the near future. This should involve regional as well as national solutions, and the EAC, COMESA, AU and other organisations should be directly involved.

### **3.1.4 Land-related conflicts in Kenya: policy and legal implications**

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#### **Overview: background on historical, political, social, economic and geographical factors**

The manner in which individuals or groups in Kenya hold, use, occupy, possess or have access to land since colonial rule to the present is a history of how land lies at the heart of many potential and violent conflicts. This assertion is based on the fact that the word conflict as used in this paper is very fluid: referring to debate, contest, disagreement, argument, dispute or quarrel; a struggle, battle or confrontation; a state of unrest, turmoil or chaos over land. Going by this definition I submit that land-related conflicts in Kenya are a common, everyday occurrence. Indeed, land-related conflicts in Kenya stem from colonialism, which not only imposed alien land tenure relations in Kenya, but also introduced conceptual, legal and sociological confusion in the traditional tenure systems then prevailing in traditional Kenyan society before the advent of colonialism.

The colonial regime in Kenya proceeded from a land-related conflict assumption that customary land tenure systems were inimical to modern imperatives of agricultural development or indeed to the then colonial settler economy. Henceforth, colonialism embarked on three events i.e. expropriation of land through a process of alienating large tracts of land and dispossessing indigenous people of their land, imposition of English common property law and transformation of customary land law and tenure. These three processes are the beginning of the land-related conflicts that Kenya has experienced to date. Precisely, the land-related conflicts became prominent when Kenyans of African origin were crammed into native reserves from 1926 and were exacerbated when the process of individualization of tenure in the reserves in the mid-1950s started with a deliberate aim to completely transform African communal tenure relations into individualized land holdings. When the colonial regime realized that individualization alone could not solve the land-related conflicts, it enacted the Registered Lands Act, whose purpose was to provide the legal framework for the extinction of claims to individualized land based on African customary land law.

The land-related conflicts in Kenya continue to be pronounced because both the economic and legal frameworks upon which the relegation or intended extinction of customary land rights was based have failed the test of time. Land relations in many parts of the country are still actualized on the basis of customary law, even where

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such land is registered under Registered Land Act. Communal tenure systems are still very much part and parcel of the social and economic fabric between and within ethnic societies in Kenya. Thus, the land-related conflicts are prevalent due to the fact that the instrumentality of English/Common law has failed to socially engineer an irreversible movement from communal tenure to individual tenure. Neither has the jurisprudence developed by the courts of law succeeded in extinguishing customary land rights.

The bottom line, therefore, is that land-related conflicts in Kenya are a persistent issue that must be comprehensively addressed by the ongoing National Land Policy Formulation Process. For there are many problematic aspects to it that require clear discussion from a policy point of view. The land policy will, however need to address practical aspects of the nature and effects of land-related conflicts as opposed to purely theoretical or academic perspectives. The land policy shall have to clarify the many legal questions that have gone begging in this regard. And in so doing the wide structural inequities between the 'land-haves' and the 'land-have-nots' as a major cause of land-related conflicts shall have to be addressed. This aspect is paramount as long as agriculture remains Kenya's economic mainstay. Especially remembering that, of the total land area of 587,900 square kilometres that comprise Kenya's landmass, 17.2 per cent is of high and medium potential while the remaining over 80 per cent is arid and semi-arid. About 80 per cent of the population live in the 17.2 per cent land category where the natural/indigenous forests, which form the catchment, are also located. This means that there is a lot of pressure on land, and this results in conflict in land-use. The bulk of land, which falls within the arid and semi-arid areas supports only 20 per cent of the population, but with proper land use management, the carrying capacity of these areas can be enhanced.

### **Land and conflict: actors and processes involved**

The land developments discussed above were to have far-reaching implications for the African natives in Kenya. Land being at the centre of Africans' survival and a major force of production to white colonial settler economy, it sparked off sharp social, economic and political inequalities, which in turn led to numerous land-related conflicts, of which the Mau Mau independence struggle was the main one. Many Kenyan communities starting with the Giriama at the Coast, the Maasai in the sprawling savanna land of Kenya, the Kikuyu in the Central highlands, the Nandi in the Nandi escarpment and the Luhya and Pokot in the western highlands reacted violently to the colonial land dispossessions. Underlying alienation of land was a policy of exploitation and oppression against the colonized communities who were 'herded' in reserves to create room for intensification of agriculture by the settlers using forced



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native labour. These policies generated land-related conflicts that have an indelible mark on the future of Kenya.

The result of 'herding' African communities in the reserves was massive landlessness, especially in those parts of the country that were in settler agricultural and other allied economic activities. Landlessness, quite understandably, led to poverty, discontent and eventually open land-related conflict. That is how organized political dissent by Africans against whites and white rule started to loom. The essence of this dissension was the deterioration of life due to mounting land pressure, overstocking and soil degradation in the reserves, which spurred the whole country into the liberation struggle (the land and freedom struggle).

At independence, the government was faced with the land-related conflict of how to settle the landless and displaced people. Obviously, people wanted the land for which they fought; yet the government was faced with the need to sustain the economic development then, which was a predominantly settler economy. The conflict situation was exacerbated by the fact that the government did not abrogate the colonial legacy but instead retained policies and laws inherited from the colonial regime with regard to land ownership and use. The land settlement schemes further generated land-related conflicts in Kenya because most communities did not get back their land, given that in granting independence, the British government made sure that the rights and interests of the settlers who opted to stay in Kenya were safeguarded. Secondly, even the lands that were availed for redistribution to the landless Africans were at the market place under the policy of "willing buyer, willing seller." This arrangement only aggravated land-related conflicts because those communities who lost their land under the then communal/customary tenure further witnessed their customary land at independence being individualized to those who could afford it at the market place. This was a further entrenchment of land-related conflicts which forty years after independence still manifest in the form of land clashes of 1990s and the current simmering land-related conflicts in form of historical land claims throughout the country. In Box 1 below is the detail of land-related conflicts in Kenya popularly known as 'land clashes' that occurred in the 1990s.

Resettling the landless through settlement schemes or process has further generated land-related conflicts because since the 1970s the government reverted to a system of Settlement Fund Trustees, which due to corruption and mismanagement has generated further conflicts in settlement schemes where the squatter problem has been used to settle the politically correct individuals leaving squatters conflicting over the very lands that was meant for their settlement. Since the settlement schemes were not sufficiently addressing the landless problem the government encouraged

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purchase of land through the land-buying companies and farming cooperatives by the landless pooling resources together. The land-buying companies and farming cooperatives have increasingly contributed to land-related conflicts because they have been badly abused by politicians as a means of swindling land-hungry peasants. This process was supposed to facilitate the subdivision of the purchased land among the members in accordance with their respective shares. But more often than not the contributors towards the intended purchase have been cheated out of their money, hence massive land-related conflicts. The government intervention to cause subdivision of land among members and the issuance of title deeds has dragged on, leading to further land conflicts.

The land-related conflicts have involved all manner of actors at different times, at around independence and immediately after independence in the 1960s the land issues activated the ethno-regional conflicts that saw the polarization of politics between Kenya African National Union (KANU) and Kenya African Democratic Union (KADU) and later Kenya Peoples Union (KPU). These land-related conflicts re-emerged in the early 1990s as Kenyans pushed for multi-partyism and continue to simmer during the constitutional debate. Indeed land-related conflicts and the stalemate over concluding the constitutional review process is a conspicuous feature of the country's failure to address the land question, which lingers on in the executive and devolution provisions in the new draft constitution.

The other important link to land-related conflicts is the mortgage institution and how it relates to rights of access to land. In Kenya individualization of land was and is meant to enable the registered proprietor to offer his title to a financial institution in return for credit. Thus, lenders stretching from banks, finance houses, and building societies have been forced into land-related conflicts with defaulters in the effort of realizing their security upon default. The rural people are engaged in protracted land-related conflicts with financial institutions resisting being disinherited because they argue that the policy of the mortgage institutions was ill-conceived from the very outset in that the peasants whose land was offered as security did not have any entrepreneurial skills or experience in credit management to guarantee the possibility of the mortgage institution realizing their security upon default. So serious is the land-related conflicts out of the land mortgages that the state has been forced to intervene to stem the obvious effects on social order, but up to now the state legislative and administrative actions have failed to resolve the problem.

The other land-related conflicts in Kenya manifest themselves through what is commonly known as the human-wildlife conflicts. Kenya adopted an ambitious wildlife management and conservation arrangement through gazettelement of large tracts of

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community lands as national parks, national game reserves and conservancy sanctuaries. In the process, communities are excluded from such lands, which are managed as public trust lands under the Kenya Wildlife Service (KWS). But given that most of these lands have eaten into grazing rangelands of pastoralist communities and agricultural lands of crop agricultural communities, permanent and potential land-related conflicts occur between communities contingent to wildlife areas and the KWS as an agent and directly between human beings and wildlife.

The use of ecologically sensitive areas such as forests and riparian reserves is emerging as another major cause of land-related conflicts between conservationists and beneficiaries of illegal and irregular allocation of such lands for political patronage. Right now in the Likia forest of Mau forest complex in the areas of Mauche and Mau Narok the country is experiencing land-related conflicts occasioned by contradictory policy over the use and entitlement of what is purely a forestland. Equally, the communities around Lake Naivasha, Ramsar riparian site of international importance are in land-related conflicts over the access and use of water and shores of the Lake Naivasha. This problem is countrywide and along the Indian Ocean, and our major rivers and threatens to get out of hand as we tend towards privatization of water resources and wetlands.

The other land-related conflicts arise and concern the extraction and mining of mineral resources in varied areas of the country the major ones being experienced are from the coast - the salt mining, titanium mining, ruby mining and further inland the gold mining, sapphire mining, fluorspar mining, and limestone mining up in the hinterland. The conflicts are mainly because the government has excluded legislatively mineral resources from land rights of communities contingent to mining areas. This deplorable scenario does not answer the concerns of sharing of benefits from mining and mineral resources.

Away from natural resource utilization and benefit sharing land-related conflicts there are also numerous land-related conflicts arising from land dispute resolution mechanisms. In Kenya our courts are clogged by land conflict related cases, which have held back development endeavours. Land Dispute Tribunals are also clogged up with land-related conflicts, which are waiting arbitration.

The latest land-related conflicts arise from the Presidential Commission of Inquiry into Illegal and Irregular Allocation of Public Land ('Ndung'u Commission'). The commission in question was set up to inquire into corruption surrounding public land dealings from 1962 as a cut-off date selected by the Commission up to December 31, 2002 when the appointing NARC government came to power. The Commission, which took nine months to investigate into the scams, inquired into protected lands for

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environmental, conservancy and security reasons i.e. covering forestlands, national parks, national game reserves, sanctuaries, wetlands, marine parks, protect security lands for police, prison, military and state houses and lodges; public lands for settlement schemes; public lands in townships, municipalities and cities; and public lands held and set aside for use and carrying out the mandates of State Statutory Bodies (Parastatals) ranging from provision of all manner of infrastructure, research and development public purposes. The land-related conflicts arising from the exercise of this Commission are first and foremost the government's belated release of the Commission report under suspicion of an effort to doctor the report. Second, there are conflicts occasioned by recommendations of restoration and restitution, lustration and revocation and rectification of illegal and irregular acquired titles. Thirdly, the government repeated effort to reassure the political correct individual grabbers that they do not stand to loose their illegal and irregular allocations, when the mood of the nation is that impunity won't be tolerated or else citizen's repossession is resorted to as a last measure to counter the government to shield grabbers. This definitely has potential for violet conflicts.

The most evident conflict so far witnessed was the limited repossession of the Nairobi By-pass public lands from the illegal and irregular allottees. The act of pulling down a number of structures on the By-pass land created a lot of hue and cry. The other land-related conflicts arose from the recommendation to regularize the electricity way leaves upon which a number of structures are built. The Commission inquiry has generated much heat amounting to land-related conflicts because most of the illegal and irregular beneficiaries are people in the state three arms of the government i.e. the Executive, Legislature and Judiciary.

In a nutshell the actors in the land-related conflicts in Kenya are the public sector, private sector, civil society and the community sector. Thus in a number of highlighted land-related conflicts all interface as victims and perpetrators. In terms of processes they range from legal, policy and institutional frameworks put in place for economic, political and social development, which appear to have failed the test of time.

The conclusion flowing from this discussion of land and conflicts in Kenya are that:

- The land tenure regimes inherited from colonial rule are still a major source of land-related conflicts which need to be revisited in order to address cases of historical injustices that manifest themselves in the form of squatters, absentee landlordism, land clashes and all manner of lingering land claims.
- Building capitalism on the basis of disputed land rights in Kenya is a major drawback because while we have succeeded in integrating 10% of Kenya economic and political elites into western type of ownership of property we have failed to

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address the plight of the majority Kenyans who live below poverty in an assumed pool of labour, both actual and reserve labour. The Kenyan example of going through land conflicts occasioned by individualization of land ownership is a pointer to other African countries that individualization of tenure *per se* does not produce miracles to development and eradication of poverty. So much reflection is required to overcome this quandary of spurring economic growth and development.

- Vesting land rights through the law does not resolve land-related conflicts or historical injustices and obstacles to development simply because the law is in place to protect what was unfairly and illegally taken away from Africans by colonialists and even fellow Africans at independence.
- Customary land rights cannot be transformed into individual land rights successfully by simple adjudication of land rights as a legal and political process without appraisal of ecological and traditional land use system in varied areas of the country.
- New land dispute resolution mechanisms need to be thought-out to address too many land disputes to ameliorate future land-related conflicts, without resorting to multiplicity of land law systems that are in themselves an obstacle to development.

### **INSTITUTIONAL, LEGAL AND POLICY RECOMMENDATIONS/ CHANGES ON LAND TENURE**

The institutional, legal and changes on land tenure proffered herein are not clinical prescriptions to land-related conflicts problem, which is no doubt of complex proportion. Rather, the suggestions flow from the foregoing discussion. They are not specific stipulations, rather they are general and corrective measures, which I believe if undertaken could alleviate the adverse effects of an imperfect system.

1. The government in consultation with all actors in land-related conflicts should embark upon an all-inclusive, comprehensive, realistic programme of resolving historical injustices on a long-term and permanent basis. In so doing, the government shall pay due regard to the rights of other communities which have been acquired over years. The main objective being to devise mechanisms of responding to the historical wrongs through well-established forms of redress.
2. The government shall ensure that the position of customary tenure and land rights deriving there from within Kenya's legal system are clearly stated in the new constitution. In addition appropriate amendments to existing laws clarifying the nature of customary land rights should be enacted. The proposed legal framework shall put at par the applicability of customary land law vis- a- vis inherited English

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land law. And should emphasize the suitability of customary tenure as the institutional framework for community land relations.

3. There is need to review and consolidated the registration law and systems in Kenya to remove grounds for land-related conflicts caused by the wrong premise upon which land registration was conceived in Kenya by the colonial state and many problems caused by the multiplicity of statutes governing dealings in land. The apparent sanctity of first registration should be challengeable if the registration is discovered to have been illegal, irregular or fraudulent. An urgent programme should be put in place to enhance accuracy of boundaries of registered land. Successful implementation of such a programme has to be attended by administrative alertness and efficiency, co-ordination of institutional framework accompanied by massive public awareness and education. On a countrywide basis due to numerous land-related conflicts as experienced in the group ranches system and settlement schemes, there is a need to re-think the entire policy of land registration.
4. There is reason to undertake a comprehensive audit of the resettlement programme, which has been actualized through settlement schemes with a view to determining, and redressing land-related conflicts attended to it. Other than settling for agricultural production purposes only, new innovative ways of utilizing land by the landless should be designed.
5. The government shall identify land uses that are inextricably dependent on communal or customary tenure in the country. In so doing the government shall cater properly for pastoralism as an economic activity and way of life. Therefore the potential for conflict between pastoralists and other communal groups should be addressed in an inclusive and participatory manner. Thus, mechanisms for protecting the rights of communities while ensuring harmonious and non-conflictual uses of land resources shall be devised as a matter of urgency to avoid exacerbation of conflict between communities.
6. To avoid impunity and escalation of land-related conflicts the government should embark upon the process of resettling all people who were displaced from their lands due to the land clashes. National civic education programme on peaceful co-existence shall be mounted so as to heal the wounds inflicted during land clashes and restore confidence in inter and intra-ethnic ownership of land in the settlement areas. This should be accompanied by a broad-based land claims mechanism for mediating any future land-related disputes.

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7. The government shall enact laws that recognize and protect rights of communities contingent to natural resources such water, forests, wildlife, minerals, fisheries and rangelands. Such rights should not be defeated by claims of private ownership derived from the acquisition of title. The government shall enact laws to protect the intellectual property rights of indigenous people over the genetic resources found in their habitat in accordance with the provisions of the Convention of Biological Diversity. Any wealth generated from natural resources will be equitably shared so that actual benefits trickle down to minority communities and disadvantaged poor.
8. There is every reason for nurturing good governance in land administration and management. Therefore colonial inherited institutions, laws and procedures and norms, which do not allow Kenyans to express their concerns and fight for their interests within a predictable and relatively equitable context, are a form of bad governance that has exacerbated land conflicts that must be repealed. In this realm the report of the Presidential Commission of Inquiry into Illegal and Irregular Allocation of Public Land report ('Ndung'u Commission') should be released and implemented to address the inefficient and corrupt administration of public land as a sure means of ending the fuelling of land-related conflicts such as those recently witnessed in Likia forest of Mau Forest Complex in areas of Mauche and Mau-Narok in Molo, Nakuru District.
9. There is need to establish appropriate institutions for dispute resolutions and access to justice within communities and between communities and all other land users.
10. All land tenure regimes as outlined in the draft new constitution should be accorded equal treatment and recognition in Kenyan law system. And even an innovative tenure regime introducing some highbred tenure system whereby individual tenurial regime to co-exist with community tenure as determined by ecological and economic reasons within says the Group Ranches should be promoted. Government should enact new laws and policy framework to facilitate the growth of a vibrant mortgage institution not only based on individual tenure but all tenures and whose realization is hinged on entrepreneurial skills or experience in credit management other than only on security of tenure conferred simply by the proprietor's land title.

Whereas the above institutional, legal and policy recommendations/changes on land tenure are proffered for Kenya and while many of our neighbours are more likely to borrow leave I would urge land reform processes in Rwanda, Burundi and Sudan to contextualize their reforms on property and land rights to substantively deal with

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actual experience of their countries. The land tenure and conflicts prevention, mitigation and reconstruction in different African countries need to place and interpret the land issues within a specific and particular historical and social context and moment. This would help us sort out the land-related conflicts without applying or copying generic land reform solutions to intricate land problems. For instance the Rwanda and Burundi land-related conflicts are different from Kenyan land-related conflicts and therefore despite isolated similarities, the two countries if they copied the Kenya scenario, are likely to multiply their problems.

### **Conclusion**

Land is a basic means of production and enhancement of livelihoods in Kenya and any policies or laws that lead to exacerbation of land-related conflicts are intrinsically flawed and inherently dangerous. From the foregoing analysis of this paper there is every evidence that Kenya since Colonialism to the present has followed some such policies and laws and it is now high time that the abnormal situation is addressed once and for all within the context of the new constitution, the national land policy formulation process and the ongoing reform agenda. Land tenure reform in the direction of guaranteeing more universal access to land is advisable and called for now.

It is Kenya Land Alliance (KLA) advocacy position that Kenya should avoid generalized global neo-liberal land policy development process which assumes that land concerns and issues the world over are the same. For that matter, we have lobbied for a national land policy formulation process that is all-inclusive and participatory to avoid the political and economic elites taking advantage of those whose livelihoods mainly depend on land. Thus, no land reform and property rights debates should take place in a vacuum. For instance, we have a history of land dispossession leading to numerous land-related conflicts, hence our choices of policy cannot be arbitrary or be driven by expediency, whether of greed or benevolence.

Aware that we are undertaking our national land policy formulation after Tanzania, Uganda, Rwanda, South Africa, Botswana, Lesotho, Ghana and Malawi, to mention but a few African countries, KLA is out to ensure that our policy choices must be driven and given meaning by our real historical forces of change which all stakeholders in the process need to understand to be relevant and focused. For that matter, KLA informed input through publication of a number of Issues Papers and eventually Policy Briefs, is to ensure that positive change results to ameliorate and stop the unnecessary land-related conflicts. Our contribution to the process is strong and beneficial and



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puts brakes to rushed land reforms, that, if left unchecked, may only lead to increased land-related conflicts and poverty of our nation and people.

In the overall context of this paper and the overall theme of the discourse on land tenure and conflicts in Africa, I do strongly propose that we re-think our imposed notion of property and its implications for enjoyment of land rights. We need to urgently examine individual, communal or collective land rights that appear to be overlapping and mutually reinforcing.

### **3.1.5 Land tenure and inter-ethnic conflict in Darfur**

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#### **Introduction**

Conflict over natural resources, of which land is the most important asset, seems to be an almost universal phenomenon. In many places a delicate balance regarding land utilization is carefully sustained through different cultural, institutional and legal means. Land has always been an important aspect in defining and reshaping relationships between human beings, be they individuals or groups. Anthropologists studying small-scale societies in Africa in the first half of the 20<sup>th</sup> century considered the occupation of a specified territory as the most important criterion for defining a political system (Fortes and Evans-Pritchard, 1940). As such, the value attached to land does not correspond only to its function of supporting livelihoods but also to its symbolic value for group identification. For this reason, land tenure in most pre-colonial African societies was based on communal ownership of land which was congruent with the prevailing subsistence economy and a political system centred round the tribe.

As time goes by, there is growing demand for more productivity in order to feed an ever-increasing population. One of the problems facing many present-day African societies is that the communal form of land tenure they still cherish does not render itself easily for development. As one author puts it, "land-use planning, farm planning and the introduction of better farming systems are rendered difficult by this form of land tenure" (Webster and Wilson, 1980: 101). Keeping the delicate balance regarding land use becomes more difficult because customary land tenure systems have less elasticity to enable them cope with changing conditions. On the other hand, new changes can play an important role in turning an otherwise peaceful coexistence between groups into a hostile confrontation or even a full-scale war. For that matter, some researchers tend to consider ecology as an important factor that explains many conflicts in Africa today (chiefly Suliman, 1999). When there is change in the environment the capacity of land to sustain people's livelihoods shrinks; but when that is combined with population increase, a recipe for conflict is already underway.

Drought is one common feature of environmental change that has been associated with conflicts in many African countries. The severe drought of the early 1970s that

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hit African Sahel countries instigated a series of changes that affected seriously the lives of millions of people in that belt. The effects of that drought can be felt even today. The western part of the Republic of Sudan was among those areas deeply affected by that drought that culminated in the infamous 1984 famine. The Darfur Region (which has been subsequently divided into three administrative units: Northern, Western and Southern), was the worst affected area in the country. Almost exactly two decades after the infamous famine, Darfur hit the news again as the worst humanitarian crisis in the world today. This time the crisis resulted from the on-going civil war that has polarized Darfurian people into two non-distinctive ethnic groups: Africans and Arabs. Since most African Darfurians are settled cultivators and most Arab Darfurians are nomadic pastoralists, a legitimate question arises in this case regarding the extent to which the current conflict is somehow related to competition over natural resources; notably land. This paper is an attempt to answer that question.

### **Darfur: location and ecological zones**

Darfur region (comprising three states) occupies the north-western corner of Sudan, bordering Libya from the north, Chad from the west, and Central Africa from south-west. It lays roughly between latitudes 10 - 20 north and longitudes 22 - 27 east. The total area of Darfur is approximately 500,000 square kilometres, which amounts to one fifth of Sudan's total area. Its intermediary location made Darfur a transitional zone that bridges North Africa with Sub-Saharan Africa and the Nile Basin with West Africa. These linkages adversely affected population dynamics of the region and had serious repercussions on its economy and polity.

Ecologically, Darfur reflects diverse features ranging from a typical desert environment in the north to rich savannah marshland in the south. Environmental experts have not agreed on a unified classification of ecological zones in Darfur. However, for the purpose of appreciating the type of natural resources and associated land utilization patterns, Darfur could be divided into six ecological zones as follows:

- 1- The desert zone covers the northern part of the region and makes about 28 per cent of its area. It consists mainly of sandy stretches and dunes with very little vegetative cover, extreme heat and very low precipitation (0-100mm). The only economic activity performed in this zone is the raising of camels and sheep. Even though, animals can be kept here only for a part of the year. For this reason nomadic pastoralism prevails here.
- 2- The semi-desert zone lies south of the desert and is constituted of sandy stretches that are covered by low grass and bushes of small trees. It receives an average annual rainfall of 100-225 mm. Although the main economic activity in this zone is livestock breeding, there is limited cultivation of millet in years of good rain,

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especially along *wadis* (water courses) where the soil is mixed with clay, hence more fertile. Some of the large *wadis* provide chances for practicing irrigated horticulture through digging surface wells of about 5-10 meters deep (like in Kutum and Malleit). Other *wadis* are amenable for the use of water spreading techniques to cultivate crops (like in Al-Kuo).

- 3- The Jebel Marra plateau occupies the centre of Darfur with a volcanic mountain on its top that reaches about 10,000 feet above sea level. Most of the watercourses that provide Darfur with water originate from this zone. It represents a great watershed between the Nile basin and Chari basin (in the Chadian-Nigerian borders). Because of the better soil quality and the plentiful and more stable rainfall (up to 1000 mm per annum in some places), this zone witnesses some of the most intensive agricultural activity in Darfur. In addition to staple crops of durra and millet, various types of vegetables and fruits are also grown. Citrus fruits (mainly oranges and grapefruits) and potatoes grown in Jebel Marra are marketed in large urban centres as far away as Khartoum.
- 4- The central goz extends east of Jebel Marra into the neighbouring region of Kordofan. It consists mainly of sandy plains (steppes) covered with bushes and short grass reflecting the rainfall that it enjoys (225-400 mm per annum). This marginally allows cultivation of millet, which is best suited for growing on sandy soil. Since the 1970s this area witnessed increased activity of oil seed cultivation (peanuts, sesame and water melon) as cash crops. Conditions are also suitable for sheep rearing in this zone.
- 5- The western alluvial plains with clay soil are the most fertile and suitable part of Darfur for diverse economic activities. Falling to the west of Jebel Marra, it receives adequate rainfall (400-600 mm per annum) that supports staple agriculture. Furthermore, large *wadis* originating from Jebel Marra ( Baare, Azoom, Kaja, and Aribu) pass through different parts of this zone, enabling its population to practice perennial horticulture in addition to rainfed cultivation. Because of the extensive agriculture that leaves enough fodder and the presence of stretches of green trees along *wadi*beds. this zone is visited by camel nomads from the north during the dry season.
- 6- The southern plains consist of stretches of sand intermingling with clay soil, otherwise termed "Baggara repeating pattern" by ecologists. Most of Southern Darfur State falls within this zone. Rainfall is plentiful (600-750 mm per annum) here and soil is suitable for large-scale agricultural activities. But due to lack of roads and other infrastructural inputs, only limited mechanized commercial agriculture has been introduced. Expansion of oil seeds cultivation has been going on for the last two decades. Nevertheless this zone is part of the famous cattle

rearing zone in the Sudan which is termed the “Baggara Belt” in recognition of its rich savannah pastures preferred by Arab cattle nomads roaming central Sudan.

Map of Darfur Showing the Distribution of Major Tribes



P.S. some tribes are not shown on the map either because they are smaller in size or not strongly associated with a customarily recognized homeland “dar”.

## **History, society and economy**

The history of human settlement in Darfur in prehistoric times is very much under-researched. According to tradition, the region's first rulers were the Daju. By the 13th Century, however, the region had fallen under the domination of the powerful Islamic empire of Kanem-Bornu to the west, and the Tunjur replaced the Daju as the ruling elite of the region.

The sultanate of Darfur first entered historical records in the mid-17th Century, under Sulayman. Sulayman belonged to the Keira Dynasty, which claimed Arab descent and which removed the Tunjur from power. Except for an interval during the 19th Century, this dynasty ruled Darfur until 1916. Gradually, the Keira merged with the Fur, the agricultural people over whom they ruled. The state's name, Dar Fur, means "homeland of the Fur" in Arabic.

In 1821, however, Egyptian forces conquered the Funj Sultanate and regained Kordofan from Darfur. Turkish-Egyptian forces under Al-Zubayr Rahma conquered Darfur in 1874 and overthrew the Keira sultan. In 1885 a Sudanese rebellion under a religious leader called the Mahdi overthrew the Egyptian state, which had come under increasing British influence. In 1898, British forces defeated the Mahdist state and placed it under Anglo-Egyptian administration. The Anglo-Egyptian government subsequently invaded Darfur, killed Ali Dinar, ended the sultanate, and incorporated Darfur into present-day Sudan.

Darfur is inhabited by an ethnically diverse population. Ethnic distinctions in Darfur, as is the case for Sudan in general, are not that clear-cut. Following the two main sub-divisions, the population in Darfur can be broadly divided into those of Arab descent, and the local, non-Arab indigenous inhabitants of the region. It is important to note, however, that the word "Arab" represents a cultural rather than a racial identity. The name Arab, therefore, stands for those Arabic-speaking people, who, through a long historical process, have mixed with the indigenous non-Arab Sudanese. Physically, they bear more similarities with Africans than with the people of the Arabian Peninsula.

The indigenous Darfurian tribes consist mainly of settled farmers and small-scale traditional cultivators of whom the Fur is the largest tribe. They were the founders of the Fur Sultanate and the traditional rulers of the region. The other non-Arab tribes are the Zaghawa nomads, Tunjur, Meidob, Masalit, Berti, Tama, Mararit, Mima, Daju, and Birgid and Fallata (cattle herders). The Arab tribes include the Rezeigat, Habbaniya, Bani-Halba, Taisha, Maaliya, Salamaat plus some smaller groups, all of whom are cattle nomads living in southern Darfur. In northern Darfur live the Bani-

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Husain cattle nomads in addition to Zaiyadiya and northern Rezeigat (a collective name for Mahameed, Mahriya, Eraigat, Etaifat, and Awlad-Rashid) who are camel nomads.

As already stated, Darfur is one of the regions adversely affected by the unequal pattern of regional development in the Sudan, a situation created by the biased attention of the elite ruling class towards the relatively rich central region, which over the years has received the lion's share of public and private investment resources at the expense of the rest of the country. The local economy of Darfur has, therefore, all the features of a sub-exploited region, that is, of a region that is suffering the double predicament of underdevelopment within an underdeveloped country.

The production base of Darfur's economy evolves mainly around traditional rain-fed agriculture and livestock, the latter having the greater market share. These activities are intermixed with more minor, traditional small-scale crafts and cottage industries. The other sectors of the region's economy are of negligible magnitude. The service sector in the region is also of limited economic impact and includes only the very basic services of government administration. The inadequacy of the transport sector and other infrastructures is particularly responsible for the current state of economic fragility of Darfur.

The agricultural sector can be divided into the small-scale subsistence, household-based farming activities, which dominate the rural communities and produce mainly for household consumption; and the medium to large-scale mechanised farming schemes, which are market oriented. The latter produce food grains, tobacco, fruits, vegetables and groundnuts. Across both sectors a shrinking gum-Arabic production also contributes small additional incomes, especially to subsistence farmers.

The main contribution of Darfur to the national economy is its livestock sector. It is in this sector that the elite merchant class, mainly from central riverian areas (and commonly known as 'Jellaba') act as middlemen for the internal market and the international livestock trade. Between the years 1978-1984, this livestock trade accounted for 50 per cent of the Sudanese balance of payments, and for 20 per cent of the entire GDP. The share of Darfur in the national livestock trade is 30 per cent, and the region hosts around 25 per cent of the country's livestock population.

Consistent with this bias towards animal husbandry is the dismal record of public sector investment in the region. The few, and only agricultural development projects attempted are the Jebel Marra Integrated Rural Development Project; the Western Savannah Agricultural Project; the Western Sudan Agricultural Research Project; the Sag El-Naam Agricultural Project. With the exception of the Jebel Marra Project, the

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other three projects were complete economic failures and are textbook examples of how ill-designed rural development projects can be (Suliman, 1999).

### 4. Customary land tenure

With the exception of urban and very limited cases in the rural areas, almost all land in Darfur is utilised according to customary tenure systems that give individuals and groups usufructuary rights on land under their possession. It is believed that before the control of the Darfur sultanate by the Keira dynasty, land was communally owned in a manner similar to many African communities. Each individual or family had the right to get access to land for settlement, cultivation, grazing, hunting and to get wood for building or fuel by virtue of community membership. Once a person has occupied a piece of land on which to build a house or cultivate, that land continues to be recognized as his property as long as he does not give up its occupation for a significant period of time (there is variation between communities as to the limits of such period which could be anything between three to seven years). Since there was no scarcity of land, the system operated smoothly. Even strangers were able to obtain usufructuary rights on land through occupancy and observance of good neighbourly relations with members of the indigenous clan in the area.

According to Shuqayr (quoted by O'Fahey, 1980) Sultan Musa Ibn Sulyman who was the second ruler in the Keira dynasty (1680–1700) is said to have introduced a new system of granting land titles i.e. estates, called "*hakura*" (Arabic, plural "*hawakir*"), even though the earliest found documents date to the time of Sultan Ahmad Bukr, the third sultan in the Keira dynasty. The granting of *hawakir* by sultans was initially associated with the encouragement of *fugara* (religious teachers) to settle in Darfur and preach Islam. Merchants from the Nile Valley were also given estates in recognition for their valuable service to the state, which was mainly related to promotion of trade with Egypt and Riverian Sudan. Despite its connection with the process of the Islamization of Darfur, in later stages the *hakura* system developed into a powerful tool for the consolidation of state power.

The *hakura* (estate) granted by Keira sultans were of two types; an administrative *hakura* which gives limited rights of taxation over people occupying a certain territory, and a more exclusive *hakura* of privilege that gives the title holder all rights for taxes and religious dues. The first type was usually granted to tribal leaders and later came to be known as "*dars*" (literally meaning homeland). Effectively, administrative *hakura* confirmed communal ownership of land for a given group of people who usually make up a tribe or a division of it under a recognised leader. On the other hand, the *hakura* of privilege (which was relatively smaller), rewarded individuals for services and had



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limited administrative implications. Both types of estates were managed through stewards acting on behalf of the title-holder.

Some sources tend to consider the difference between the two types of estates as one of scale: "The distinction between the two forms of grants was primarily one of scale. To the *fuqura*, merchants and members of the royal clan, the sultans granted exemptions from taxation over a defined area of land or a named community; to the title-holders, much larger estates were granted which in turn often encompassed privileged communities or land" (O'Fahey, 1980-51). Sultans were able to ensure the loyalty and support of tribal leaders by issuing seal bearing charters (written in Arabic), confirming the authority of a chief over his people and his rights to manage the land that fall within the territory of the tribe. Usually, such charters also describe the boundaries of the estate being granted. Army leaders and state officials were also granted land titles from the return of which they had to meet their expenses, since no regular salary system was in existence.

Thus, while much of the land in Darfur was communally held, the development of the *hakura* system shows some parallels with the feudal system. Later land charters used the expression "*iqta al-tamlīk*" or concession of property rights, which makes the *hakura* similar to a freehold. Title holders were able to extract customary dues (*ushu*), equal to one tenth of farm yield from those who cultivated their land through a steward/manager called "*sid-al-fas*" (master of the axe). The latter would manage the state by allocating pieces of land for settlement or cultivation. Customary dues collected from land were shared by various officials in the administrative hierarchy, which makes a *hakura* less than a freehold. Moreover, there was no unitary system for land management as such in Darfur. Practice tended to vary according to time and place; in western Dar Fur the onus of the collection of *zakat* and *fitr* (both are religious dues) fell on the estate stewards. For example, in Zami Baya *shartaya* (an administrative unit), the stewards collected fines, *zakat* and *fitr*, taking a proportion each year to the *shartay* (tribal administrator) from whom in turn the sultan's emissaries collected a part for their master. Nearer to the capital, the canonical taxes were collected directly by the *jabbayyin* or tax collectors (see O'Fahey, 1980-55).

It seems that Keira sultans succeeded to a great extent to make land tenure a part of the administrative setup of the sultanate. Since not all land was granted as estates, it meant that the older system of communal tenure continued to exist side by side with the *hakura* system in various places around Darfur. As far as tribal groups are concerned, the land they occupied effectively became synonymous with an administrative *hakura*. Tribal homelands were named after the tribe e.g. Dar Zaghawa (land of the Zaghawa people) and Dar Rezeigat (land of the Rezeigat people). This

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development introduced a new function to the land other than its economic potential; it became a symbol of group identity. Since the region is open to hosting immigrants from neighbouring areas, it follows that newcomers have to access land through transactions with indigenous land-holding tribal groups only. That is exactly what nomadic camel pastoralist groups have been for the last two hundred years or so.

Because nomadic land-use rights were less individual specific, it remained closer to the early forms of communal rights. An individual nomad does not need to manage his own particular piece of grazing land because he does not stay in one place anyway. Moreover, the nomadic mode of life requires that pastoralists be given passing rights through special corridors in the tribal lands of sedentary groups. This was done through special arrangements between the traditional leaders of each party and according to which the customary rights of each side were observed. Such relationships even developed into a form of interdependence between the two communities. Until the outbreak of the current inter-ethnic civil war, many nomads used to keep animals for their sedentary friends. Their friends on the other hand, would reciprocate through gifts and giving access to the remains of agricultural produce which makes good fodder. It is worth mentioning here that while cattle-herding Arab groups occupying most of southern Darfur estate (Rezeigat, Habbania, Taisha, Beni Halba) traditionally have their own *dars*, the Arab camel nomads of northern Darfur do not have *dars* of their own.

When Darfur was finally annexed to Sudan in 1916, the colonial authorities introduced little changes to the then existing system of administration. Under their policy of indirect rule, they confirmed tribal leaders as part of a native administration system and custodians of land belonging to their tribes. Tribal homelands (*dars*) came to be recognised by the government on the basis of expediency, since it helped in controlling the rural population more efficiently. One can therefore classify Darfurian tribes into land-holding and non-land-holding groups. The first category includes all the sedentary groups plus cattle-herding tribes of southern Darfur. The second one includes the Arab camel nomads of the north, plus new-comers from neighbouring Chad who were driven by drought or political instability or both, to seek permanent residence in Darfur. The implications of this pattern of relationships with land on the current civil war cannot be overemphasised.

To add yet another layer of complexity to the already complicated system of land tenure in Darfur, the government of Jafar Numeiri abolished native administration and enacted a law in 1970 called the Unregistered Land Act (ULA), according to which all land in all parts of the Sudan that is not officially registered is to be considered government-owned land, hence accessible to all citizens. Although the government did not have any means to either map or directly manage all unregistered land, the

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law paved the way for later developments to take place regarding land tenure in Darfur. Most importantly, migrants from northern Darfur who settled in other places (notably the goz and the southern plains zones) were ready to claim rights for establishing their own native administration structures in their new homes since the land they occupy belongs to the government. Such claims would have been unthinkable in the past when newcomers were expected to remain as “guests” of the host tribe and abide by its customary rules regarding land tenure and native administration. The many conflicts that the resettled Zaghawa in the eastern goz were part of in the areas south of El-Fasher in the mid-1980s attest to the negative effects of the 1970 Act (see Abdul-Jalil, 1988). Despite all the developments that added more complexity to the system, customary land tenure continued to function because it was flexible enough to adapt to new situations, but up to a point. The following statement summarizes the situation very clearly:

“At present, the forms of tenure practiced during the colonial period are to a greater degree still practised with some modifications. Within the customary tenure, individuals exercise different rights according to established norms and customs. According to tradition, four scales of ownership exist:

- 1- At the communal scale, each tribe has a given land as a *dar*;
- 2- Within the tribal *dar*, there is the clan ownership with a known boundary;
- 3- At the village level, there is the village land where each villager practices his private ownership respected by all;
- 4- Unclaimed land, used as rangeland or allotted to “strangers” (migrants) by the village head” (Mohamed, 2004:4)

One may add here that the 1970 ULA affects mainly the fourth scale since the government can only redistribute unclaimed land. As a partial recognition for the time-tested customary acquisition of land, the government issued a civil transactions act (CTA) in 1984 which states that local communities have usufructuary rights over land they occupy although legal ownership still remains with the government. The result is that different land tenure systems coexist in the same area. Nonetheless, many factors have affected land-use patterns in Darfur for the last three decades which in turn affected customary land tenure itself and put its adaptive capabilities to a serious test.

### **Factors affecting land use patterns**

Although it is possible to enumerate all the many factors that could have reasonably influenced land-use in Darfur, it is more fruitful for the sake of answering the main

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question posed in this paper to concentrate on the more important ones. In this regard six main factors could be identified:

### **1- Drought**

Since early 1970s, the amount of rainfall started to dwindle and the drought devastated the African Sahelian belt creating widespread famine in Darfur. Conditions in the north were exceptionally dire, where the decline in annual mean rainfall reached 52.2 per cent, leading to crop failure and very poor pastures.

### **2- Increased human population**

The natural population increase has meant that each year, new farmland has to be secured for new families. Darfur's population has multiplied nearly five times since 1973 (from 1,350,000 to 6,480,000). This has resulted in decreased wasteland and disregard for the practise of fallowing. Not only that, but even some nomad migratory routes and rest places have also been turned into farmland. Out of eleven migratory routes in the 1950s, only three are functioning today, in addition to a few newly found ones.

### **3- Increased animal population**

Animal population has likewise increased drastically in the same period for different reasons. Because Sudan started exporting meat and live animals to Arab Gulf countries, livestock breeders invested more in animal healthcare. Sedentary farmers were also lured to increase their stocks, since farming can no longer satisfy their growing needs.

### **4- Population migration (internal and external)**

Darfur witnessed two types of migration trends that directly affected land-use patterns. A decade of mostly dry years (mid-1970s to mid -1980s) triggered internal migration from northern Darfur. The displaced sought refuge in the eastern goz to the south of El-Fasher as well as in the southern zone. These places sooner began to show signs of saturation. As mentioned earlier pastoralists from Chad were tempted to cross the borders and seek permanent settlement in Darfur. The fact that many tribes have extensions across the borders made such migrations difficult to monitor by Sudanese authorities.

### **5- Increased commercialized farming**

With the spread of education and urbanisation people in the rural areas became acquainted with new consumption patterns. As their need for cash increased their strategies in agriculture gradually became market-oriented. Oil seeds production

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(peanuts, sesame and water melon seeds) on the eastern goz has been greatly expanded to meet a growing export market. Vegetables and fruits cultivation is increasingly practiced where conditions permit. Small urban centres provided excellent marketing opportunities for such ventures.

### **6- Increased market-oriented livestock breeding**

Because the expanding Sudanese livestock export market favours sheep razing, many nomadic pastoralists in northern Darfur started changing the structure of their herds by concentrating more on sheep and less on camels. Accordingly, migratory routes and patterns have been altered as an adaptive mechanism to the new trend. Moreover, sedentary farmers also took to sheep rearing to the extent of actually competing with pastoralists. Some of them have even become pastoral transhumants. Accurate figures have yet to be produced by reliable authorities in order to substantiate such observations.

### **Consequences on land use patterns**

The factors reviewed above did not operate in a uniform manner or produced the same effects throughout. Although some factors have direct implications on certain aspects of land use and others affected directly yet other aspects, it is more sensible to consider all factors as having jointly affected traditional land use patterns in general. Thus a summary of consequent changes that have taken place regarding land use in Darfur is given below:

#### 1- Expansion of millet cultivation beyond the agronomic dry-boundary

Millet is the staple food crop in Darfur. Farmers are obliged to put more land under cultivation for two main reasons. The first one relates to decreased productivity which means that a farmer cannot expect the same amount of grain from the same area. The second one relates to the increased number of new families that need to have their own farms, hence new land has to be cleared even if it is marginal and unproductive. Extended families cannot secure the needs of their members from the same plots as before.

2- Decreased use of land rotation for fallow became unavoidable since more land is being put under permanent cultivation. Farmers no longer give up any piece of their land because according to customary practice unused land reverts back to communal ownership and will be subject for redistribution through established customary channels. At the level of farm administration itself, decreased practice of fallowing has been observed.

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3- Expansion of fruit and vegetable (also tobacco) cultivation in clay and alluvial soils around wadi beds (watercourses). This can take one of three forms of irrigation; flood, water harvesting or well-digging. Many farmers took to cultivation of fruits and vegetables where possible drawing water from shallow wells dug around dry watercourses either by using buckets made of goat skin (*dalo*) or operating a diesel operated pump in the case of well to do peasants. Essentially such activities grow out of the need to adapt to new conditions. Drought and consumer markets provide the most important incentives for such adaptations.

4- Blocking of animal migration routes (*marahil*) became more frequent. Many researchers have pointed to the fact that nomads often complain about such practice which is against customary land tenure arrangements (Salih and Fadul, 2004). On the other hand, the better areas around watercourses have been utilised by farmers to grow millet and vegetables. Blocking of routes has become a permanent item in the agenda of tribal reconciliation conferences convened for the last two decades to solve inter-ethnic disputes in Darfur. It is one of the common causes of grass-root conflicts.

5- Decreased access to water sources for animals as a result of expansion of agricultural land. Nomads usually require that land near water sources remain uncultivated, otherwise animals may damage crops and their owners will be fined for trespass. This is another usual cause of grass-root conflicts. Many water sources have dried up because of drought or have become inaccessible because of decreased pasture quality around them.

6- Land degradation and desertification

Combined with drought the human factor (in the form of tree-felling, excessive cultivation and overgrazing) contributed greatly in speeding up the desertification process to the extent that vast areas lost capacity to sustain traditional livelihoods for its inhabitants. Some experts assert that millet cultivation in the semi-arid zone has dangerous implications for the environment and have advocated the prohibition of millet cultivation beyond certain boundaries (see Ibrahim, 1988)

7- Overgrazing and deterioration of rangeland resulted from the fact that much of the land in the semi-desert and goz zones lost its capacity to grow grazing grasses forage, and trees. For example the carrying capacity of pasture in the 1970s was 40-50 animal units per square kilometre in the eastern sandy soils. A survey conducted by Range and Pasture Department in 2002 determined the carrying capacity for the same area to be only 9 animals units per square kilometre (Fadul, 2004).

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### Consequences on land tenure

Successive changes have created new and variable conditions that made it difficult for customary tenure system to continue operation without significant adjustments. It is no longer possible to talk about either a single or homogeneous land tenure system in the whole of Darfur. The actual tenure arrangements in a given ecological zone (or locality for that matter) depend very much on the economic, environmental, political and social conditions that reflect the dynamic aspects for the allocation of land resources. On a different scale, such arrangements also reflect the relationship between various stakeholders regarding land as an important natural resource. Taking the above statements into consideration a few observations could be made about the transformed state of land tenure in Darfur.

The southern zone was subjected to less cultivation in the past because most of its inhabitants practiced cattle raising as a preferred economic activity. As result less land was put to permanent cultivation as family plots on basis of customary tenure. When the Sahelian drought caused large numbers of people to migrate from northern Darfur, many were easily settled in southern Darfur on previously unclaimed land. The 1970 ULA was particularly constructive in this case because it facilitated the absorption of the new settlers in the existing local administrative structures without major hurdles. The few large-scale mechanised agricultural projects which require large tracts of land with modern ownership arrangements were also introduced in southern Darfur (mainly in Um Ajaj) using the 1970 ULA. The government was able to distribute large plots of farmland to urban merchant elites most of whom come from outside Darfur (mainly central or Riverian Sudan).

Elsewhere, the tendency towards commercialised agriculture has left its impact on tenure arrangements. As mentioned earlier, the expansion of vegetable and fruit cultivation along wadi beds (using wells or water spreading techniques) has meant that considerable pieces of land have been put out of traditional use. One of the implications is that grazing rights after harvest can no longer be applied to such land. This has undermined the flexibility which characterised customary tenure and enabled it to survive for so long.

Another noticeable feature of change affecting customary land tenure system is the increase in the cases of land selling and leasing. This is a new phenomenon which did not exist prior to the 1970s except in very limited occasions that typically involved merchants or government officials with no access to customary rights who wanted to establish gardens on land near small towns that provided good marketing outlets for fruits and vegetables. Such people were actually the first pioneers who introduced innovative agricultural practices which local Darfurians imitated later. The increasing

importance of cash for families to have access to food and consumer goods has turned some land into a commodity even though the legal status of such land is not clear. Those who are not able to cultivate their land all year-around and do not want to sell can lease it on cash or share cropping basis.

This section can best be ended with a quotation that shows the implication of changing tenure arrangements on the relationship between various stakeholders regarding competition over land both as an asset and a resource: "With various recently emerging post drought forms of land tenure that deviate from the customary rules, land tenure in Darfur is at present becoming more complex than ever; creating real and potential sources of conflict both at the inter and intra-communal levels" (El Amin, 1999:82).

### **The confrontation between nomadic pastoralists and settled cultivators**

Competition over natural resources by groups and individuals is a normal phenomenon that has been going on in Darfur since ancient times. Although such competition can result in permanent changes, the process is however less dramatic. Conflict on the other hand attracts the attention of observers because of the drama and scale of events it entails especially when arms are used. The underlying causes of conflict have already been alluded to. The following quotation reflects the situation vividly:

"With the pressure of the drought and in their quest for pasture and water, pastoralists violated customary arrangements that organize access to pasture and their passage during seasonal movements. While peasant and commercial farming expansion (both Goz and Wadi cultivation) encroached on pastoralist and transhumant grazing rights, pastoralists also have tended to deviate from defined and agreed upon seasonal movements routes, grazed on farms and damaged crops. Competition over resources created conflict among pastoralists on the one hand and between farming communities and pastoralists on the other, with negative implications for the environment and social peace within and between communities" (Al Amin, 1999:82).

Armed conflicts among the various ethnic groups in Darfur have experienced three major phases in their development: (a) the low intensity, sporadic 'tribal' fights and skirmishes which characterised the disputes from the 1950s to the 1970s, (b) the high intensity, persistent and large-scale armed conflicts, that have been fought since the mid-1980s to the beginning of 2003 and (c) the current civil war which is characterized by a confrontation between armed political movements and the central government in Khartoum. Whereas the early pre-1980s confrontations were easily contained and resolved through customary methods of mediation and adjudication,



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more recent conflicts have proven too unwieldy to manage through customary, time-tested methods of conflict management.

Conflicts prior to the mid-1980s were of low intensity in nature, highly localised in area, and infrequent. Rarely were more than two groups involved. Examples of such conflicts include the Zaghawa versus the Mahriya in 1968; Maaliya versus Rezeigat in 1968; Rezeigat versus Misseria from 1972-1974; Beni Halba versus Mahriya from 1975-1977. Since the mid-1980s the occasional minor skirmishes over water and grazing land have gradually expanded in intensity and frequency and have developed into fully-fledged warfare. In the current civil war, thousands of human lives have been lost in an unprecedented bloodshed; whole villages have been wiped out and burnt, property looted and plundered. The beginnings of the current full-scale civil war in Darfur date back to mid-1980s at the height of the drought that ravaged the region. This war has been fought in two rounds. The first was between the Zaghawa and the camel pastoralists of the upper northern semi-desert zone (comprised of Mahriya, Mahameed, Eraigat, Etaifat and Awlad-Rashid), against the settled Fur farmers around Kabkabiya and the northwestern reaches of Jebel Marra; the second involved the farming Fur communities of the Jebel Marra area against a broad coalition of virtually all Arab nomads. Since then, and despite the efforts of four different governments, the war has continued unabated.

Contrary to the earlier, localised skirmishes over water and grazing land, the post-1985 conflict has shown a systematic drive by the nomads to occupy land in the central Jebel Marra massif. Whereas the previous disputes were spontaneous, unmediated and lacked both intensity and persistence, this new conflict is one of continuous high intensity. The nomadic scramble from the impoverished Dars into the rich agricultural central heartland is the cause of the continuing conflict; it is the contest of the drought stricken for the green oasis. Whatever the perception of the conflict, it is one, which is being fought primarily over the control of a thriving resource base in the middle of a zone of scarcity. It is a classical ecological conflict. However, it is important to make a few observations regarding the significant shift in the composition of stakeholders involved the current conflict/civil war. Firstly, the Zaghawa who are pastoralists allied with the Fur this time. Secondly, many of the Arab militiamen actually came from Chad. Thirdly, the rebel groups (with majority of fighters belonging to non-Arab groups although they include Arab members as well) fight against the central government. Fourthly, the central government has completely allied with Arab militiamen (known as Janjaweed) on the basis that they help it win its war against the rebel groups, forgetting or not bothering that these militiamen have their own agenda and not merely responding to a call for defending national security as government authorities suggest.

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Despite the seemingly wide ethnic polarization associated with the current conflict situation, it is important to notice two points regarding the involvement of Arab groups. It is noticeable that camel pastoralists of northern Darfur are more actively involved in the Janjaweed phenomenon together with a few smaller semi-pastoralist Arabs living in the Jebel Marra area. Moreover, almost none of the Arab groups which are directly involved in the current war have dars of their own, acquired according to the customary land tenure system (the Zaiyadiya who live around Al-Koma and Melleit are an exception). This would suggest a clear association between scarcity, lack of access to land, and heightened conflict. At the same time, the fact that the central government is heavily involved as a stakeholder in the war makes it difficult to conclude that the current civil war in Darfur is only driven by competition over resources. Nevertheless, some researchers have actually ventured and classified the Darfur war as an ecological conflict:

“In an attempt to understand the impact of ecological change in northern Darfur on the state of war and peace in the contemporary history of this region, we made the striking observation that settled farmers and pastoralist nomads are ‘causally’ interlocked in a complex solidarity/strife relationship with each other. They exercise mutual solidarity in times of normal hardship, but in times of severe hardship, when bodily survival is literally at stake, they engage in mortal combat. The armed conflict that has been raging since the mid-1980s in the Jebel Marra massif in Darfur is a typical ecological conflict along distinctive ecological borders. In this case it is the border of the semi-arid planes roamed by ‘Arab’ pastoralist nomads and those of the ‘wet oasis’ of Jebel Marra of the settled Fur farmers” (Suliman, 1999).

Although Suliman’s argument is supported by factual evidence, one finds it difficult to classify the current war in Darfur solely in ecological terms. What would have been a clear inter-ethnic competition over natural resources has turned into a complex multi-tier conflict that is heavily influenced by national politics at the centre. Different conflict management strategies were followed by the different governments of the day, but their efforts proved ineffectual, and, on several occasions, the central government has been accused of actively supporting one group against another. It is clear that variations do exist between ordinary land-using folk (be they farmers or pastoralists) and political elites who invest in ethnic polarization to further their own interest in the power game at regional and national levels. As the local-level conflict has escalated it involves new stakeholders in the process, thus transforming it into a complex problem that defies simple classification or diagnosis. If the current crises should to be explained in terms of resource competition only, the Janjaweed phenomenon would not be easily understood.

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Some researchers have suggested that the way out for resolving the conflict between pastoral nomads and settled cultivators is to help the former give up nomadic pastoralism and practice animal husbandry through ranch farming and using supplementary cultivated fodder. Mohammed notices that the 'darless' camel herders of northern Darfur actually want to become sedentary, but there were problems with this option. "Their attempt to become sedentary in their traditional "dammars" has been resisted by the Zaghawa ethnic group who regard themselves as dar owners. On the other hand, their seasonal mobility has been curtailed by dar owners elsewhere. Their attempt to have access to water and pasture in the Fur and Masalit homelands by the use of force has brought on them and on the government of the Sudan an international condemnation," (Mohammed, 2005).

### **Concluding Remarks**

In conclusion, a couple of points should be addressed regarding the relationship between land tenure and conflict in Darfur:

Firstly, customary land tenure in the region has developed over the years to the extent that talking about a single land tenure system in the region is no longer intelligible. Land-use practices have been affected by environmental constraints, changes in economic conditions and governmental legislation; leading in turn to adaptive changes in customary land tenure arrangements.

Secondly, to explain the current conflict in the region, it is important to notice that conflict over land is part of a complex matrix of factors which can be classified into: (a) root causes that are mainly expressed by lack of development, and lack of democracy, (b) direct causes which include natural resource competition, competition by local and educated elite over political office, armed robbery, government treatment of people on tribal basis, the politicisation and restructuring of native administration, (c) catalytic factors include population increase both for people and animals, drought and desertification, market orientation, the Libyan-Chadian conflict, the Chadian civil war, international immigration, and the spread of fire arms.

### **Recommendations**

The following recommendations are made as a contribution of this paper for the development of a practical approach to deal with the current problem:

- 1- A comprehensive survey of the current land-use patterns and the actual existing tenure arrangements should be conducted for the various ecological zones and local communities of the region.

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- 2- Establishment of a land commission to plan for land use based on the survey and devise means for land registration.
- 3- Planning and execution of projects that constitute essential infrastructure for development (roads, water, electricity etc).
- 4- Encouragement of vertical expansion for agriculture through the introduction of intermediate/appropriate technology packages, better water management methods and agricultural extension services.
- 5- Encouragement of settlement of nomads coupled with development of ranch farming and improved livestock-breeding in the desert and semi-desert zones by utilizing the plentiful existing underground water.
- 6- Management of external immigration of nomadic groups from neighbouring countries. This would require establishing a civil record for Sudanese citizens which does not exist at the moment.
- 7- Encouragement of new means and practices for maintaining livelihoods outside the agricultural and pastoral sectors. Such activities could be either supplementary or complementary to the existing activities.
- 8- Rehabilitation of political culture through democracy and good governance that encourages people's participation (through both their traditional institutions and modern civil society organisations) in making decisions that affect their lives whether in the area of development or conflict resolution.

### **3.1.6 Land tenure and conflict in Somalia: issues from the Somali Peace Process**

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#### **Introduction**

Somalia is one of the worst cases of state collapse and state failure in post-Colonial Africa. Since the early 1991 when civil war broke out in the country, the Somali people have struggled to survive without a central government. There is no provision of basic social services by any type of a government in the capital city, less alone the rest of the country. Somalia remains a state with no recognized functional central government. The newly-elected Transitional Federal Government (TFG) seems to be a government in exile as it is unable to move into the country due to security problems. However, in many urban areas of the country, civil society is beginning to assert itself although it remains nascent and less powerful. Within Somalia, the

“Puntland State of Somalia” has established itself in the northeastern regions as a self-autonomous regional government in a future federal Somalia and the breakaway “Republic of Somaliland” in the northwest sees itself as a separate entity outside Somalia. The Kismayu-based Juba Valley Alliance (JVA) is working on the formation of a “Jubaland State of Somalia” in an attempt to benefit from a future federal system of governance in Somalia. While the JVA is no more than an organized faction, both Somaliland and Puntland are beginning to grapple with land issues.

This paper will show that *deegaan* — land and its resource base — is significant to understand the conflict in Somalia as the conflict involves many clans and sub-clans with shifting alliances to gain leverage in the conflict and to stake stronger claims over particular areas. It will provide a historical background and an overview of the current status of Somalia’s conflict and environment. It will synthesize the previous scarcity study on Somalia and at the same time examine the Mbagathi peace process and the deliberations of land and property issues. The paper will finally come up with recommendations for future peace negotiations in Africa.

The Somali National Reconciliation Conference held in Kenya from October 15, 2002 to October 14, 2004 was intended to include deliberations on key areas of contention including disarmament, demobilization and re-integration, economic recovery, national reconciliation, regional and international relations, the drafting of a federal constitution, and most important of all, land and property disputes. One of the core conflict issues

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such as the status of stolen and/or occupied land and property did not get the attention it deserved. Instead it was politicized. This is because the conference delegates found land and property disputes too sensitive to address. The fact that the issue of *Deegaan* — land and its resource base, which is a very core and highly valued commodity — was too sensitive for conference participants to address; shows that it does remain a significant barrier to reconciliation in the country.<sup>110</sup>

### **Historical Background**

Somalia occupies a strategic position in the Horn of Africa.<sup>111</sup> It borders with the Gulf of Aden and the Indian Ocean. It has close religious and historical ties with the Arab and Islamic world in addition to other African countries, notably Djibouti, Ethiopia and Kenya. The people of Somalia [in the Horn of Africa] also have an ancient history. The Medieval Arabs called them Berberi and archeological evidence indicates that they had occupied the area known as the Horn of Africa by 1900 years ago or possibly earlier. Historically, Somalis have shown a fierce independence, an unwillingness to submit to authority, a strong clan consciousness, and conflict among clans and sub-clans despite their sharing a common language, religion, and pastoral customs.<sup>112</sup> Clans and clanism are integral to Somali life and clan politics dictates the order of the day even in contemporary Somalia. Clan consciousness has been described as centering on the struggle for recognition in all its forms— social, political, economic, and cultural rights and status. The issue of land and property is no exception in this.

Most of Somalia consists of dry savannah plains with streams flowing only after it rains. Much of the country is not arable except 33 per cent in the Haud Plateau. Forested areas are found along the Shabelle and Juba rivers. Between these two rivers lies the richest land in the country. For most of the year, the climate is very hot and humid and with two yearly dry seasons, each with its irregular rainfall hot and humid, droughts are common. The Somali economy derives from its semi-arid climate and an environment featuring frequent drought and highly localized rainfall. Camels, cattle, goats, and sheep are all herded and despite competition over scarce resources — for example water and grazing — there is greater unity among the Somalis which can be traced back to their herding lifestyles and traditions. Most of the economic production in Somalia is based upon the traditional practice of pastoral nomadism except in the southern part of the country where higher rainfall; and river water permit both pastoralism and agro-pastoralism. This makes only a little more than 3 per cent of the land in Somalia is arable can be irrigated and cultivated while the rest is good for grazing. Livestock and livestock products make up the majority of the country's exports although bananas were in the past the primary source of foreign exchange.

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Along with the European Union, the Arab countries were the largest importers of Somali products.<sup>113</sup>

After the country's independence in 1960, economic growth failed to keep pace with the rise in population caused by the influx of refugees. As a result the gross national product (GNP) in 1990 was \$946 million US or \$150 per capita and during 1980-1990, the GNP grew at an annual rate of 1.1 per cent, while per capita GNP decreased by 1.8 per cent per year.<sup>114</sup> This was a result of the country's heavy dependence upon poorly-invested agriculture and pastoralism which were affected by drought from time to time. Except for tin, the country's minerals are not developed despite some oil exploration by various international companies. During the 1980s, devastating droughts, the Ogaden War with Ethiopia, and the civil war that followed threw the failing economy into ruins. By the 1990s, Somalia was rated to be the least developed country by the UN with an external debt of \$1.9 billion and with estimated repayments of 120 to 130 per cent.<sup>115</sup>

In 1991, a secessionist administration was set up in the northwest regions, the "Republic of Somaliland," which has been pushing for independence from the rest of Somalia. Its claim to independence has not received recognition from the international community. In 1988, a regional administration was set up in the northeast, known as the "Puntland State of Somalia," claiming that it was a "regional state" of a future federal Somalia. Unlike "Somaliland," "Puntland" did not aspire to independence. In August 2000, a Transitional National Government (TNG) was set up in Arta, Djibouti with recognition from the African Union, the United Nations, and the regional Inter-Governmental Authority on Development (IGAD). But this central government had limited control over the Somali territory.

### **Conflict and Environment: An overview**

In the absence of a recognized central government formal laws regarding land tenure and land reform have been replaced. Instead there is a combination of Islamic Sharia laws, Somali customary law and the pre-1991 penal code which was widely in the use for the past fourteen years for solving land problems in most of Somalia. There is also widespread armed occupation in much of central and southern Somalia, particularly the inter-riverine agricultural areas of Middle Shabelle, Lower Shabelle, and parts of the Juba Valley. However, this 1990s land problem scenario is not new to Somalia. While armed militiamen and their faction leaders are the main actors in this specific land problem in war-torn Somalia, in pre-civil war Somalia former government officials, whether from pastoral or agro-pastoral clan backgrounds or not, swept into the valuable irrigated riverine areas of Lower Shabelle and parts of

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the Juba Valley, laying claims to state farms and private plantations by using the state machinery. Armed occupation is mostly done for political reasons since political power in Somalia roughly correlates with control of a larger or ecologically more valuable geographic area. This is a repetition of pre-civil war pictures but in a more lawless and anarchic situation.

In the rainfed agricultural areas in central and southern Somalia, local farmers continue to rely on customary land tenure. In this case, community elders and clan leaders have the authority to allocate plots of land to individual households, and households enjoy rights over land they have historically owned. While land disputes within villages are less common in Somalia today, in part because of partial depopulation of rural areas due to high displacement caused by the civil war, control over harvests is sometimes a problem where the farming communities will have to pay for protection fees to self-styled militiamen. This is quite common in central and southern Somalia, where members of the Bantu-Somali sub-clan and others from minority groups are badly affected.

The expansive pastoral rangeland of Somalia remains a commons area, where claims on water and grazing areas are seen as very communal and are possessed by clans and not by individuals. However, in some pastoral areas, private claims of land ownership are being made, principally via the rise of enclosures especially valuable rangeland which is fenced off with thorn bushes. This is common in “Somaliland,” “Puntland” and in parts of central Somalia where the wealthier and in this case more powerful pastoral households want to reserve good grazing areas for the dry season for their exported livestock. While the rise of enclosures was technically illegal in the past, as it tended to penalize poorer pastoralists by blocking access to good rangeland, local authorities have been unable to stop this trend. Other environmental problems include deforestation i.e. charcoal production; soil erosion and low agricultural input.<sup>116</sup>

The Transitional National Government (TNG) formed in Arta, Djibouti in 2000 made no changes in the land and property issues in Somalia. It failed to exert its control in Somalia during its three-year term. In the northern parts of the country, the unrecognized

“Republic of Somaliland” and the self-autonomous “Puntland State of Somalia” are the only polities in Somalia with the capacity to pass and enforce laws. In “Somaliland,” the two houses — the parliament and the council of elders — have in the recent past enacted land tenure legislation into law. In this case, “Somaliland” farmers have been granted full ownership of their agricultural plots, as opposed to the 99-year leases which the previous Somalia government allowed. In addition, the United Nations Development Program (UNDP) is now working on a very effective cadastral survey



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project. This project aims to define farm plots with precision and it provides laminated title deeds with full details of ownership, including a photo of the owner.

One other major problem in the country is that of urbanization. This phenomenon is occurring in most cities throughout Somalia, mainly in major cities like Mogadishu, Hargeisa, Kismayu, Baidoa and Bosasso. In this case, land ownership remains more contentious. People are experiencing a land rush as local municipalities are accused of issuing multiple title deeds in 'Somaliland' and in 'Puntland' with the most powerful obtaining land. In Hargeisa, the law requires landowners to begin building their houses within six months of taking possession of their land although this is widely disregarded. The case in Mogadishu is even more disturbing. The TNG gave out both public and private land, whose rightful owners have been displaced by the civil war, to individuals and other private entities.

### **Deegaan, politics and war in Somalia: A summary**

In 2001, ACTS commissioned a study on the ecological sources of conflict in the Great Lakes and the Horn of Africa regions including Somalia. The Somalia study identified and assessed the extent to which ecological factors were sources of conflict in Somalia. This was extremely challenging in view of the manifold conflicts in Somalia, as well as the extraordinarily fractured political landscape existing at this time. It did not, however, offer an exhaustive review of ecological sources of conflict in Somalia. Rather, it examined and reflected on a narrower segment of this very complicated relationship: the relation between

*deegaan*, politics and warfare. Generally, scarcity of land and continued environmental degradation is one of the many ecological dimensions that the Horn of Africa region is associated with and Somalia's Juba Valley was no exception. For example, land scarcity has been found to be an indirect source of conflict in the agriculturally rich Juba Valley region in the south, where much of the country's civil war is concentrated. Several factions have battled for control in the Juba Valley to stake their claim to its resource-rich *deegaan*, as conflict in this part of Somalia centers on access and control of *deegaan*.

Several lessons could be drawn from the study. Firstly, *deegaan* is clearly important to understanding the dynamics of conflict in Somalia. Although the exact extent of its importance is impossible to quantify, it became very clear that *deegaan* plays an important role in the onset and duration of conflict in Somalia. Secondly, local competition to access and control certain *deegaan* articulates with national level conflict to control the state as control of *deegaan* plays a critical role in determining political

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strength at the national level. Thirdly, control of *deegaan* plays a critical role in the unmaking of old power and the formation of new contractual agreements and power in Somalia following the collapse of the central state. Finally, there is a custom, incorporating dialogue, negotiation and reciprocity that can serve to constitute new policies and processes for conflict prevention and management.

The study, which was carried out shortly before the Somali peace process started in Eldoret in 2002, came up with a number of recommendations: any future conflict prevention and management strategy must be inclusive, incorporating all factions throughout the process of managing conflict and building peace; any peace-building framework for Somalia must address the core sources of conflict, as well as those factors that prolong conflict including – the issue of land; and Somalis themselves must guide the process of peace-building and national reconciliation, drawing on both customary and modern methods of conflict management. However, none of these recommendations seem to have been taken into consideration in the two-year long Somali peace process recently concluded with the formation of the TFG.

With regard to the country study team's observation of land problems in Somalia, African policy makers should move beyond the traditional methods of conflict management that have so far failed to bring tangible solutions to conflicts in the region. Instead, they should adopt an integrated and more holistic approach, which takes into consideration the ecological sources of conflict, if their efforts to bring peace to the region are to succeed. This relatively new school of thought needs to be advanced by peace negotiators in Africa since there is a need to incorporate an environmental perspective in their efforts aimed at resolving and preventing wars in Africa. Of late, conflict management approaches have largely focused on political sources of conflict, which are mainly the triggers rather than the root causes of conflict in the region. Political and diplomatic approaches traditionally used in the region have largely focused on the conventional concepts of conflict management, notably "conflict resolution", "conflict management", "post-conflict disarmament, demobilization and re-integration", and "rehabilitation."

This approach now needs to change, as policy makers need to adhere to the principles of good governance and fair use of and distribution of natural resources. This calls for an integrated and more holistic approach and a deviation of the conventional methods of conflict management. From experience, and from an ecological perspective, conflict systems in Africa, particularly the Horn of Africa sub-region are operationally complex. The levels of analysis and the number of variables underlying conflict are many; and more importantly the operation of conflict is quite uncertain. This is a sub-regional environment that not only has diverse extremes but which has

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significance to the livelihoods of the local communities. Many of the ecological factors and livelihood systems are linked with scarce resources resulting in environmental stress, mismanagement, high population growth or unfavorable climatic factors all emerging out of competing interests for the scarce resources. Therefore, there is a need to adopt a conflict systems approach in dealing with conflicts in such complex situations.

### **The Mbagathi Peace Process**

Kenya, under the auspices of IGAD and along with Somalia's two other frontline states, Djibouti and Ethiopia, sponsored a national peace and reconciliation conference held in Eldoret in October 15, 2002. This process which was later on moved to Mbagathi produced a 275-member transitional federal assembly, a president and a prime minister. A process is underway by which the prime minister is to form a government of reconciliation and national unity. This is a process that did not receive the local and international expertise and other necessary inputs for the various core issues that are at stake in the Somali setting. For example, during the second phase of the peace process conference participants assembled into various committees with deliberations on national peace and reconciliation; economic recovery and resource mobilization; disarmament, demobilization and re-integration; regional and international relations; the drafting of a federal constitution; and most important of all land and property rights in Somalia.

The then IGAD Technical Committee (TC) chose the members of the committees from among the delegates. This second phase aimed to address in detail the core reconciliation issues that were required to establish a lasting peace in Somalia. The working group of the land and property rights had to achieve two main objectives in their terms of reference: come up with a detailed proposal on legal mechanisms for the settlement of land and property disputes after a government is formed with a timeframe for its implementation; and undertake clan and regional efforts towards resolution of political disputes over occupied land and property.

The committee members concluded that problems of land ownership and property in general formed the core of the disagreements between the colonial administration and the local communities in Somalia particularly those who settled along the Juba and Shabelle rivers, those in the northwest, northeast and in central regions of Somalia. They also argued that small-scale land holdings were turned into plantations for commercial production thereby disturbing the pattern of traditional living as the land system displaced many subsistence farmers and that appropriation of public land and property coupled with its misuse led to the struggle and uprising against colonial

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expansion throughout Somalia. It was this time that the colonialists embarked on policy of changing the people's culture after failing to contain the peoples struggle and uprising. It later became mandatory for the Italian colonialists to enter into agreements with the Somali traditional elders. This led to the 50-year leasehold agreement of 1924 signed between the traditional elders and the Italians lasting up to 1974. This was a stopgap measure to contain the people's struggle against their subjugation but the agreement had grave consequences for the subsistence farmers and the pastoralists alike. The two groups lost their rights to land ownership, which were taken over by the urbanites from big towns and other organizations serving foreign interests with foreign funding.

According to the committee's report, land grabbing worsened in 1975 through the land reform legislation, which placed all land and other public property under state control replacing traditional ownership of land or customary land tenure systems. This land legislation (i.e. nationalization of land) further laid the foundation of appropriation of land and property by those in position of power and their relatives and friends, thus denying the small-scale farmers practicing subsistence farming access to land. Similarly, the civil war has inflicted damage on the individual rights of the citizens. In 1991, militias invaded the agricultural belt and appropriated agricultural land by force. They displaced those who were unable to defend themselves and who thus lost their livelihood. People, who were forcibly evicted, were traumatized, and some were even used as workers on the very farms they had previously owned. Land grabbing was not limited to agricultural land only. It also included plots, residential areas, business buildings and other properties in major towns and centers. Public buildings and properties of the state were overrun and taken over as well, either by individuals, groups or clans who own it individually or collectively.

The report finally agreed to the fact that currently, problems of land and property are the core of the unending civil war. Without properly addressing these issues, the formation of a national government is not possible and that those illegally holding public and private land and property know that a return to law and order may mean that they return the said properties to their rightful owners as they favor the status quo which they maintain by force. The committee further acknowledged that the formation of a national government that ensures justice would bring a lasting solution to these problems and that those occupying and holding public and private land and property by force would be disarmed and that they would be forced to accept to return these properties to their rightful owners unconditionally.

The committee finally issued a declaration which appealed to all Somalis wherever they are to forgive and reconcile among themselves and return both public and private properties to their rightful owners. They also advised the federal government to form

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and institutionalize a proper land tenure system and cooperate with other governments with experience of land ownership (i.e. pastoralism, settlement and farmlands). The declaration requests the neighboring countries to assist in the return of both public and private properties looted from Somalia by individuals, including the return of organizational properties some of which were brought to their countries for custody. It also calls for the international organizations such as the International Organization for Migration (IOM) to assist in the return of Somali professionals in the Diaspora and provide incentives to those willing to return.

Due to the comparatively high casualties among men to women in the civil war and the fact that women are often left as sole breadwinners, the committee recommended that special attention be paid to the female held properties and their safety. Similarly, the declaration calls, as a guarantee for the position of women with regard to land and property rights, that the constitutional process should lead to female representation of at least 25% in all bodies of legislation and the executive. The committee finally requested the international community to continue its support for the peace process and ensure its successful conclusion.

The committee recommended the formation of a commission with representatives from various ministries including the foreign, agriculture, justice, home affairs, the livestock and forestry and representatives of the local, district, regional and federal governments so that they can adopt a holistic approach to investigate the problems and come up with recommendations of resolving them. Since a national commission will be formed to look into land and property rights, the committee recommended that the members of such a commission should have a fair clan balance and that the new national commission should be independent to do its work and report back to the government for further action.

Once the plenary was reconvened in May 2003, the reconciliation committees presented their reports to the plenary where delegates debated them and the necessary amendments were made. A Harmonization Committee was engaged to bring together all the reports and produce a single coherent document from the six working committee reports. The Harmonization Committee's report was rejected by the "Leaders Committee." Except the draft constitution, which split members of the working group into two sub-groups and which took much of the debating time, the management of the peace process did not follow up any of the findings and recommendations of the working groups. It has become part of Somali history. There is a draft document for reference if one is to go back and read it but the will is not there for anybody to courageously use it or apply it to the current Somali situation due to the sensitivity surrounding land and property rights in Somalia.

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### What Next?

Presently, there are over six troubled spots in Somalia where there exist land and property disputes.

“Somaliland” and “Puntland” are contesting over Sol and Sanag regions and the district of Buhodle in Togdher in the north. The two administrations claim ownership of this area. “Somaliland” claims that the area under contention falls under their borders as part of the former British Protectorate while “Puntland” claims that the people in these areas are of “Puntland” origin in terms of their clan affiliation. There have been skirmishes between the forces of the two administrations for the past few years, the most recent occurring just last month. Middle Shabelle region has land disputes but is less problematic. The Jowhar Administration is in a structural conflict with the Shidle sub-clan within the Bantu-Somalia (known as Jarer). It is not only over the ownership and use of certain parts of the Middle Shabelle *deegaan*, but also over power and political participation which may lead to displacement in the end. In Merca, Lower Shabelle region, the Digil sub-clan within the Digil-Mirifle is in conflict with the Habar Gidir Ayr sub-clan over the ownership of coastal Merca and its agricultural environs. Similarly, the Bartire and the Awlyahan sub-clans of Absame are fighting over the *deegaan* and ownership of Middle Juba region.

The JVA is in conflict with the Somali Patriotic Movement (SPM) over the ownership and administration of the coastal town of Kismayu and its environs and Mogadishu is one of the most highly contested areas in Somalia where almost each and every Somali clan claims at least partial ownership, particularly the Habar Gidir, Abgal and Murursade on one side and the traditional Benadiri on the other side. In addition to the above, Hiran region does itself have a potential conflict over land disputes between the Hawadle and the Galje’el sub-clans. *Deegaan* is significant to understand the conflict in Somalia as the conflict involves many clans and sub-clans with shifting alliances to gain leverage in the conflict and to stake stronger claims over particular areas. In most areas of the troubled spots discussed above, the ecological conditions are rich compared with the rest of the country, and provide a major source of income and sustenance to Somalis. Thus, control of *deegaan*, in other words land and its resource base, in different ways — be it historical, political, social, or economic — is a major source of the conflict in Somalia.

The new TFG is yet to come up with a sound political program, let alone with detailed working documents on core issues, including land and property rights in the country. Its main focus for the time being is on security with no post-conference security arrangements in place so far. But it is, nevertheless, significant that land and property rights have at least been discussed during the peace process.

## **Conclusion and Recommendations**

Most civil institutions, particularly the Somali ones, cannot endure the stresses of armed conflict. This is especially the case for land tenure institutions where issues of land were a significant component of the cause and maintenance of the conflict. What was needed in the Somali peace process, was recognition of the difference between pre-conflict, post-conflict, and recovery tenure issues; and the opportunities that exist for engaging multiple approaches to land and property that will, in time, especially when supported by legal reform, move to a more solidified social, political, and legal environment within which land and property issues operate.<sup>117</sup> What is more important to the Somali peace process, and to the newly elected TFG, is the need to put up beforehand mechanisms that ensure equitable access and legitimate land tenure institutions able to embrace issues of existing land and property disputes between groups or between individuals who may view land resources very differently, possess profoundly different evidence with which to pursue claims, and may have participated or sympathized with different sides in the conflict. In this case, revising national policy to incorporate functional aspects of a peace accord involving land and property is frequently an important part of the post-war endeavor.<sup>118</sup>

In addition, there is a need for a long term commitment to the Somali peace process by members of the international community and a genuine political will by Somali leaders more than anything else. There is also a need to address the psychological and perceptual aspects of the conflict — i.e. core areas such as land and property disputes — before addressing the constitutional and institutional aspects of the conflict. Now that the peace process has come to an end and nothing really substantial has been done about issues of land and property disputes, there is a need to form an independent land and property commission to investigate problems, recommend and draw action plans and oversee the implementation of the commission's recommendations.

Membership of such a commission should be more inclusive and independent of any politicization and with experienced personnel on land and property rights; it should have the opportunity to consult widely with local Somali and outside experts i.e. AU, EC etc; have access to historical records available for reference; and get the support of the assembly's various sub-committees and that of non-state actors in Somalia including the civil society and local Somali think-tanks.

In conclusion, despite the sensitivity involved, land and property disputes will always remain [if not resolved] a significant barrier to both national and grassroots reconciliation in the country for the foreseeable future.

# **Land Tenure and Conflict: the case of Rwanda**

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## **1. Background**

### **1.1 Introduction**

In the recent years, all debates and studies concerning Rwanda are influenced by the events of 1994 war and genocide. Since, between April and July of that year there was a systematic campaign of genocide that aimed to annihilate a substantial section of the population of the country. This included many people who opposed the ideology behind the genocide.

However, since this paper examines the linkage between conflict in Rwanda and land, discussions in the paper go beyond 1994, as far back as the colonial times of the 1880s. The writer finds examining this period very pertinent, with a belief that the colonial time is actually the origin of the Rwandan conflict.

For many scientists, and for many Rwandans, the origins of the Rwandan conflict lie in the discourse-cum-practice of the colonizers.

“Whatever fluidity had previously existed in the system was greatly restricted as system of ethnic identity cards was introduced and ethnicity thus became a strict inherited characteristic. . . that has had grave political consequences in Rwandan politics, until to date” (Storey, 1999). Colonizers and post-independence leadership manipulated the ethnicity card that lead to the 1994 genocide, which left more than 1 million Rwandans dead and over 2 million forced into refugee camps in neighbouring countries especially to the Democratic Republic of Congo (DRC) and Tanzania. This movement of refugees is considered one of the destabilizing effects in the Great Lakes.

The major driving interest of all regimes in Rwanda, starting with colonizers is being in control of the main resource of the country, the Land. Elite power struggle for control of the State, links land and conflict in Rwanda, where historically, control of the State is the principal factor for rights to access, use and ownership of land. The question of who controlled decisions pertaining land as the main resource of the country was the key issue underlying conflict leading up to the 1994 genocide. Soon after the war, higher-ranking officials in the interim government made the land grabbing for personal gain a priority interest. I also lost the only piece of land that I had paid for to an MP with no compensation.



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Currently Rwanda has 5 major land issues, which include:

- Scarcity of land;
- Population pressure;
- Environmental issues;
- Insufficiency of human, material and financial resources; and
- Lack of proper compensation mechanism.

Therefore, the hypothesis of this paper is that, the root cause of Rwanda conflict is not ethnicity as widely believed, but competition over scarce resources, especially land as the main source of livelihood in Rwanda. Although the politicians, for decades have played well the ethnicity card, to manipulate the population, and win their support, especially popularization of the so-called support of the 'majority Hutu', when the cover up has benefited the minority elite.

### **1.2 Rwanda in context**

Rwanda is a landlocked and densely populated country with an area of 26,338 km<sup>2</sup> and a population estimated at 8.3 million in 2000. The country has one of the highest population growth rates in the world, at about 3.6 per cent per annum, making it the most densely populated country in Africa.

In Rwanda much of the land is steeply sloping, such that the country is known as the 'Land of a Thousand Hills'.

The economy of Rwanda is based on agricultural production. The sector supports over 90 per cent percent of the active population and is the source of nearly half the country's GDP (MINAGRI 1998). As a resource, land is Rwanda's most important asset for production and livelihoods, and is the foundation of the economy. From social and cultural viewpoints, Rwandans are very attached to their land by their cultural traditions. However, competition to have access to the use of a portion of it is growing relentlessly. The effects of population growth, a high and increasing number of landless people, and a strengthening hold by the urban elite over the rural people have combined to create a worsening land scarcity situation.

Rwanda has three ethnic/racial groups, the Tutsi, Hutu and Twa

- Twa being the minority and highly marginalized. Hutu/Twa/Tutsi coexist without separate tribal homelands, language, culture or religion.

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### **1.3 Colonial leadership**

At the UN Conference of Berlin (Conference held in Berlin to divide Africa among the European colonial powers and establish spheres of influence on the African continent) in 1884 and 1885, Germany was given a protectorate, which included Rwanda, Burundi and Tanzania. After realising that the kingdom of Rwanda was well organised and heavily populated, the German Colonial Administration instituted a system of indirect rule. While maintaining the machinery of royal power, a representative from the German Colonial Administration was placed at the side of the King of Rwanda – this is what **Indirect Rule** is about. German rule lasted until 1916, replaced by the Belgians. In 1933, the Belgian Colonial Administration instituted a system of identity cards that listed the bearer's ethnic group — Hutu, Tutsi or Twa.

In 1952, the Belgian administration instituted a system of popular representation, which called for election of representative counsels at each level of the political hierarchy. The first election of notable councils took place in 1953. Belgian policy during this period made it very clear to the Hutus that in order to achieve independence they would have to first ride themselves of their 'colonisers' - the 'Tutsi' (creating the image that the Tutsi were the colonisers when in reality the colonisers were the Whites – this was used as the Belgians strategy to divide Rwandan). Under these circumstances, the Hutu treated the Tutsis, not the Belgians, as 'feudal colonialists' and they fought not for independence from the Belgians, but for emancipation from the Tutsi (Berry, J; Berry, P, 1995).

The main concern of the colonial authorities was to control Rwanda's economy through political management. The complete control of the economy meant the control of land as the main source of the economy. In order to achieve this, the colonisers played the ethnicity card – to divide and rule.

### **1.4 Post-Independence Leadership**

Since independence in 1962, until 1994, war and genocide, Rwanda had experienced two Republic regimes. The first Republic, under the leadership of Gregoire Kayibanda, which existed between 1962-1973, and the 2<sup>nd</sup> Republic under Juvenal Habyarimana, which existed between 1973 and 1994. Only one party was allowed in Rwanda for most of the 1<sup>st</sup> and 2<sup>nd</sup> Republics, until 1990.

Both regimes, like the colonial period, promoted a highly centralised governance structure, and the ethnicity card. However, like during the colonial leadership, it was not every Hutu that benefited, in actuality only areas of where the President came from benefited. For example, the Northerners (Habyarimana's home area) came to dominate the army, the government, and the economy.”(Taylor, 1999).

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From 1990s it became clear that the Habyarimana regime power had become concentrated in restricted family circles, centred around the president's wife, Agathe Kanziga, and the 'Akazu' (Kinyarwanda word meaning 'little house'. The Akazu network is compared by many observers to a mafia-type organisation (Gasana, 1999). The term implies to people of the same family who share the privileges and the wealth of the country among only themselves to the exclusion of all others (Sibomana, 1999).

Therefore, as already mentioned in the introductory, ethnicity is not the root cause of the conflict in Rwanda, but has been set out as the main strategy of the politicians to remain in power, which meant the control of the economy by manipulating the population, as observed that, "the organisers of genocide were not afraid of ethnicity but the people who were questioning their management of the affairs of the country. . .it was the exposure of the corruption, the nepotism, and the violations of the human rights that the government feared. . .instead of addressing the real problems of the country, the group in power opted for ethnicity manipulation strategy" (Berry, J; Berry, P, 1995).

### **1.5 Post-Genocide Leadership**

Immediately after genocide in, the government of National Unity assumed power in July, 1994. In August 2003, the government organised democratic national elections, guided by a new national constitution, which had been voted by the majority population in May 2003. One of the major objectives of the post-conflict regime is of a non-ethnic society. The categorical imperative of "never again" is the national government's stated organizing principle.

The post-conflict regime remain with a big challenge of addressing the issue of the deep level of poverty, corruption, and the high population growth, which are seen as possible trigger of conflict in the country. These challenges impinges on the need and importance of a well balance national land policy and law to address the issues of ownership and access to land, land being the main source of livelihood for almost all Rwandans, hence closely linked with the high population growth which affects the land scarcity.

Soon after the national election held in August 2003, the government has embarked on finalising the national land policy and law as the priority areas in the country, in terms of national economic development, peace and reconciliation. The Cabinet approved the land policy in February 2004, and the law endorsed by the Parliament in November 2004. However, the government does recognise that land tenure is

one of the most complex and socially sensitive question faced by the current government and Rwandans in general (**Minister of Land, 2004**).

The next chapter therefore, examines different tenure system in Rwanda and how different regimes have managed land as the main resource for livelihood in the country.

## **2. Land tenure systems in Rwanda**

### **2.1. Land tenure in pre-colonial Rwanda**

The land tenure system in pre-colonial Rwanda was characterised by collective ownership of land, and was based on the intimate relationship between arable cropping and livestock. The system facilitated economic production, stability and harmony. Families were grouped together under lineages, and these in turn were grouped under clans each ruled by a chief. The benefits of this system were based on the freedom that lineages and clans of people had to occupy any territory, and they enhanced the complementary links between land and land uses.

There were four main aspects of this land tenure system.

*Ubukonde*, land law, was enacted by the head of the clan and concerned the rights to land following initial forest clearance. He would permit several families termed *Abagererwa* to settle on the area, and they would be subject to a land tax in kind.

*Igikingi*, the right to grazing land, was given by the King or his Chief to pastoral families in the country. The *igikingi* was the most common form of land right bestowed in the pre-colonial period.

*Inkungu*, the disposal of abandoned or confiscated land, was given as an authorisation to the local political authority. Such lands were then classed as reserved land, available for allocation by the authorities to those in need.

*Gukeba*, the process of settling families onto grazing or fallow land, was also the responsibility of the local authorities.

As the social, political and administrative structures became stronger and better organised over time, the land became more efficiently managed. The *Umutware w'Ubutaka* was the chief in charge of land and the *Umatware w'Umukenke* the chief in charge of livestock, with both at a similar level in the social hierarchy to the *Umutware w'Ingabo*, the chief in charge of the army. By means of the authority attached to such figures, land rights and customs were respected and transmitted down the generations according to Rwandan traditions and customs. The colonial rulers arrived with these

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rights in place and overlaid them with their own system of land administration that was supported by written codes. In practice the pre-existing customary and the colonial statutory land management systems then co-existed largely independently of one another.

### **2.2. Land tenure system during colonisation**

Colonial legacy is still strongly associated with crisis over land, where the best land always went under the ownership of the settlers. The settlers (colonialists) introduced foreign approaches to land tenure using individual land titling systems. In addition, most colonial wars of independence were fought by indigenous populations to reclaim their land (Mau Mau in Kenya). Today, most of conflicts in Africa, including Rwanda are based on competition over resources, including land as the main resource of livelihood. And, the ruling elite still own bigger shares of arable land, like the colonisers did.

Colonisation introduced new elements to Rwandan society, which lead to changes and distortions of the existing social fabric, but still customary land tenure continued to predominate over 90 percent of the country. The main concern of the colonial authorities was to control Rwanda's economy through political management. Following the Germans, the Belgian authorities introduced deep managerial changes that destroyed the traditional leadership structures. The traditional trilogy that had pre-existed as a well-balanced local system for land management was dismantled and replaced by a centralised administration.

The Belgian colonial administration passed far-reaching land legislation in which were two main principles. One, only the Colonial Public Officer could guarantee the right to occupy land taken from indigenous Rwandans. Colonialists and other foreigners intending to settle in the country were to apply for land through the intervention of the colonial administration, and to follow its rules when settling on it.

Secondly, formal occupation of vacant state-owned land should be accompanied by a title deed. Under no circumstances should Rwandans be dispossessed of land they were occupying. This provision provided for registered land to be occupied alongside land used under customary tenure, and triggered the dual system of land management that exists today in Rwanda. All land occupied by Rwandans remained subject to customary law, but only colonialists and other foreigners could benefit from the new statutory land registration system and have their land rights protected by it. This decree 240/01/43 concerning free transfers to scientific, religious and parastatal associations applied to Catholic and Protestant missions, urban districts and trading centres.

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In 1926 reforms divided the country into chiefdoms and abolished the rights of chiefs over vast tracts of land in different areas. This removal of traditional social structures was an attempt by the colonial authorities to control the land more effectively, but it succeeded in greatly disrupting Rwandan society. However, the result was that the new land management system continued to rely on traditional principles in many areas. The colonial government introduced written land laws in the Codes and Laws of Rwanda. They imposed legal structures that protected the interests of colonialists and other foreigners who settled on the land.

### **2.3. Land tenure after independence**

Following independence from Belgium in 1962 the systems of land tenure did not alter significantly, with 90 percent of the arable land still managed under customary law. Statutory land tenure was only applicable to a few land owners, more particularly those in urban areas, trading centres and religious communities. It was the customary land rights that were pressing for immediate attention and revision.

First the independent government recognised the important role played by the communes in land administration. Through the Loi Communale of 223/1/63, the conservation of rights to registered land under customary law was assigned to communes. This could have formed the foundations for a bridge between customary and statutory land tenure. However, the provisions of this law were in practice nullified by the Decree of 09/76 that concerned the purchase and sale of customary land rights and the rights of sole occupation.

The government of the early 1960s was required to make land available for the growing population. The *igikingi* system of rights to grazing land was suppressed and the land made available for communalisation, including the land left behind by the 1959 refugees. The people continuously sought more land for use and settlement. In the 1970s and 1980s intensive migrations occurred from the densely populated areas of Gikongoro, Ruhengeri, Gisenyi and Kibuye to all remaining available areas in the east and south east savannas. In 1976 the government attempted to impose the *paysannat*<sup>19</sup> system for the rationalisation of land use and land occupation. Decree 09/76 concerned the purchase and sale of customary rights to land, with the right of sole occupation giving the right to purchase and sell the land under customary tenure. A provision was attached, that the permission of the Minister in charge of lands had to be sought, and also a condition, that any land parcel subsequently had to have a minimum of 2 ha size. By this Decree the state only recognised land rights that were based on registration with distinct owners.

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At the beginning of the 1980s all available land for settlement had been acquired and was being utilised. New and serious problems then began to emerge, with decreasing sizes of land holdings, reductions in soil fertility, increasing erosion and degradation, and family conflicts stemming from land expropriation. From 2 ha in 1960 the average size of the cultivated plot on which a family subsisted was reduced to 1.2 ha by 1984. Since the beginning of the 1990s the country has experienced a deadlock on the resolution of outstanding land issues. The mounting problems include insufficient agricultural production to feed the people, increasing population pressure on the natural resources, a growing number of landless people, and competition for land between the needs of arable farming, livestock herding, nature conservation and urban expansion. Meanwhile, in the midst of this pressure, the government has appropriated large tracts of cultivated areas and marshland for reforestation.

- **Some responses to the land problem by the former regime:** Former government initiated a program to resettle rural populations into farming villages (with a proposal to provide basic infrastructure like roads, schools and water supplies), with the main purpose of encouraging rational exploitation of arable land in rural areas, mainly by reducing population pressure: an average of 2ha per every settled family;
- In order to address the issue of land fragmenting, practicing inheritance on a 2ha land or below was forbidden;
- The initiated village resettlement programme failed largely because it was not accompanied by real land reform that redistributed land to the rural poor fairly, or the transfer of technologies to peasant farmers;
- After the failure of resettlement program, the government proposed another initiative known as 'Rural Development Centres' (RDCs) to mitigate land scarcity;
- The RDCs were supposed to be the nodes for rural economic development and diversification, consisting of two zones. The inner zone which consisted of grouped settlements around a centre where basic services were to be availed, and the outer zone to be reserved for collective farming and livestock grazing. However, there was wide spread resistance to the RDC programme by rural population, especially complaining of the fact that houses were far from the farming areas and that there were limited opportunities for off-farm activities.

### **2.4. Land tenure system after 1994 (post-genocide)**

The new government continue to use the land policies and laws inherited from the former regime, a dual system with customary (applicable to about 90 percent of all rural land, though this is abolished in the new land policy and law on the basis that the system fragments the land further through inheritance) and statutory land tenure

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system (written law governs land under urban administrations, trading companies and registered religious bodies) is still in operation. However, there have been other new developments, since 1994. During the Peace Negotiations between the former regime (Habyarimana) and the opposition including the RPF, since the driving factor of the 1990 war was about the return of Rwanda refugees, it was agreed that a new resettlement plan for returning refugees be put in place known as 'Umudugudu' (grouped settlement), to cater for the returning refugees. This program was particularly brought about as a way of avoiding conflict over land and property rights. It was recognised that the returning refugees (old-case loads), had a right to land and shelter, but at the same time the peace accord recognised that if the old-case loads returned to their lands and property left behind in the 1959, 1960, and 1973, this could create a big conflict as these properties were already occupied by other people for decades. Therefore, the 1993 peace accords provides for the Umudugudu resettlement programme where the government identifies a free land for building Umudugudu for the returning refugees.

The Umudugudu programme became operational from 1996, and is still in effect, it has been turned into a policy for rural settlement. The policy provides that no new houses in rural areas are built in the scattered settlement scheme; local authorities in all provinces/districts have identified land for Umudugudu settlements.

The Umudugudu program is almost set up almost on the same principles as the RDCs, in that the houses are grouped together, and the farming field also grouped together, with each family member able to identify their own plots. RDCs had 2ha per family for agricultural activities, whereas Umudugudu has only one and a half hectares. People living in these Umudugudu have expressed the same concerns as in RDCs that the fields are far from their homes and lack of infrastructure. The RDCs were to a larger extent not successful because the government was not able to provide the basic facilities promised. In the Umudugudu program, the implementation has slowed down because of lack of financial resources by the government, since the international community withdrew the support, for provision of the basic requirement - infrastructure.

Other new provisions by the post-conflict government, is the promotion of land sharing. As seen below under the land problems in a post-conflict situation, when the old-case loads and new case-loads are encouraged to share the same plots of land, because of the land scarcity. When the new case-loads returned, some of the old-case loads, especially in Kibungo, had nowhere else to go, so the local leaders advised the two groups to share the competing plots.



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Sell of small farmers' plots is also on the increase during the post-genocide regime. Since there is no more land, and the poverty level among the majority small rural farmers is deepening, the urban elite have taken the opportunity to buy more and more land from these small farmers, although the customary law does not allow, and this problem is contributing to the increase of the landlessness.

The current government has also initiated the process of putting in place a new land policy and law (Land Reform), since the government found a lot of gaps in the exiting land policies and laws.

The cabinet approved the new land law in February 2004, and the land law was endorsed by the Parliament at the beginning of November, 2004 and is currently with the Senate, and is hoped that it should be finalised by end of November 2004.

Main objective of the land policy and law processes in Rwanda, is to strengthen security of tenure of all Rwandans as a basis for ensuring greater social stability, encouraging greater investment in land and improving people's access to credit – through giving land titles to all land owners (Minister of Land, 2004). The new land policy and law abolishes completely the customary rights. However, both the law and the policy state that, all current landowners including the customary, will be the rightful owners once the law is passed.

The law suggests two levels of land registration, Local Level, with a minimum cost for rural people who have 5 ha or less, with no conventional surveying instruments used, and the process will be done by using a community participatory approach; National Level, with maximum cost for those with more than 5ha which suppose a land development and exploitation for a high economic value, conventional methods of surveying and registration will be used, and done by the land centre – to be created, under the Ministry of Lands.

The new land policy and law talk about promotion of the Land Consolidation. However, with a clear statement that the system will be encouraged NOT forced. The system is proposed with a view of promoting higher production on big lands, while nobody is losing the rights and ownership of their plots, because individuals will obtain certificate of ownership. The systems is mainly to promote the production of cash crops like Tea, Coffee, Flowers and Rice; (Minister of Lands, 2004).

Another important element for the initiative of the current government is the recognition of the grassroots participation, as the PRSP states that "The process of allocating title will need to involve the communitie. . .it may be both cheaper, and more transparent, to conduct a survey which settles titles in each community on a particular

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occasion, rather than allow individuals to apply opportunistically to register particular parcels of land”.

The law provides that, in terms of land disputes, Land Commissions will be set up at the National, Provincial and District levels. At the Sector level, there is no land commission provided for, the Community Development Committees (CDC) together with the Abunzi (Mediation Committee – officially elected) will handle land issues. The President will appoint the National Land Commission, while the Ministry of Lands will appoint the Provincial and the District Land Commission.

The current government recognises the importance of protecting the rights of a woman. A matrimonial code enacted in 1999 gives equal rights to both girl and boy child to inherit equally and the new land law states that ‘ both women and men have equal rights to land rights including ownership.

### **3. Land issue in Rwanda**

Rwanda, like many other developing countries in a post-conflict situation has a lot of land problems, here only major ones are mentioned, which include:

- Scarcity of land;
- Population pressure;
- Environmental issues;
- Insufficiency of human, material and financial resources; and
- Lack of Proper Compensation Mechanism.

| Size of holdings | Percentage of agricultural holdings in Rwanda |
|------------------|---|
| <0.5 ha          | 58.6  |
| 0.5-1.0 ha       | 19  |
| 1.0-1.5 ha       | 10.6  |
| 1.5-2.0 ha       | 5.8   |
| 2.0-3.0 ha       | 3.5   |
| 3.0-4.0 ha       | 1.2   |
| 4.0-5.0 ha       | 0.5   |
| >5 ha            | 0.8   |

### **3.1 Impact of the existing land issues in post-conflict Rwanda**

All the land issues in Rwanda have lead to one major problem; the conflict on land rights, as discussed in detail below:

The situation of population pressure and land scarcity, combined with the displacements of the population has caused a new problem in post-conflict situation of double occupancy, where the old-case load and new-case loads share the same plot of land. As discussed elsewhere, when the old-case loads returned, they occupied empty land and property of the new-case load who had ran away to neighboring countries; and when the new-case loads returned, the old-case loads had nowhere to go (in some parts of the country, in most parts they vacated the properties of the new-case loads), and the two categories were advised by the local leaders to share the land, and this has turned into a policy, and make part of the new land policy and law. Moreover, family land holdings as the main source of access to land through the custom of inheritance, have reached extremes in fragmentation, some people have about 0.1 ha, barely large enough for even a house construction. And because of the population pressure and exchange of land rights, landlessness is on the rise.

Repossession of property — despite the Arusha Accord, which states clearly that “people who have lived outside the country for more than 10 years should not claim back their property, including land”, the old-case loads also argued that ‘some pre-genocide occupants had been undeserving, i.e. had acquired their properties without ministerial authorization. In this case, the issue is being raised on the rights of the old-case load over their land and property that they left behind. Another new development is the fact that since 1994, there are new-case load refugees who have never returned home, and since it is already over 10 years, do these people still have a right over their land or not!

It is believed that, the issue of wealth differentiation and class contributed so much to setting off the tragic of 1994, and that if the conflict issue in Rwanda has to be realistically addressed; this area has to be one of the key focus areas (Potter, 2002). Given the importance of land to all Rwandans, and its increasing scarcity, this area of wealth differentiation and class impinges on the issue of public morality and social exclusion, which has been very common in the Rwanda leadership.

The existing land problems/issues have increased land disputes. Currently, over 80% of cases coming from Provinces and Districts and the Ombudsman office, are land related. Most cases are related to: disputes between old and new case-loads; land expropriation/ damage of property by the state without compensation; Land

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expropriation by local authorities with no compensation; land expropriation to set up Umudugudu with no compensation; forced expropriation by local authorities in favor of highly-placed government officials, including high military officers and politicians.. The situation of Kigali City (Capital of Rwanda is getting worse) – the slum dwellers are being expropriated with no options and with no compensation. Kigali City case is very interesting because since the formation of the decentralisation system, the City is given autonomy over land issues, where the Ministry of Land have no say over the City land issues, so it becomes difficult to defend these slum dwellers in such a system. Recently the affected population has approached the office of the Ombudsman for help, but no result yet; only that already the Ombudsman office has put on hold any further expropriations.

In a post-conflict situation Rwanda, like elsewhere, the war also creates another element of demobilised soldiers. In an effort to build peace and reconciliation, there is a need to recognise the rights of the demobilised soldiers both from the old regime (returning from DRC) and in the current army; they all have to have a right over land, as the only social, cultural and economic resource.

The war and genocide has created a situation in Rwanda of very high numbers of female-headed households, widows, and orphans. These groups' categories rights over land also need to be recognised and protected despite the existing issue of land scarcity.

### **4. Linking land and conflict in Rwanda**

Nothing evokes deeper passions or gives rise to more bloodshed than do disagreements about territory boundaries, or access to land resources. Many of the armed conflicts of the past century have been linked to uncertainty and inequality in, and disputes over, land. All over the world, and developing countries particularly, addressing land rights is therefore of vital importance in post-conflict countries. Land

should always be treated as a human rights issue, so that it can become an inbuilt initiative in the programmes dealing with reconciliation and human rights protection in a post-conflict situation (International Federation of Surveyors Commission, 2004).

Increasing scarcity of land in the presence of high rates of population growth, with a historical legacy of discrimination and highly unequal land access, has greatly contributed to long history of conflicts in Rwanda.

Whereas land is not the root cause of the Rwanda conflict that has existed for decades, it is a major factor, in that the struggle is on control and rights over the State's resources,

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and land as the main resource of country, culturally, socially and economically, making it of a major political issue. Many analysts of the Rwandan conflict have focused on ethnicity as the major cause of conflict, yet ethnicity has always been used by politicians as 'a cover of competition to control the resources'. Also analysing processes of the peace negotiation in Rwanda, especially in 1990s, analysts state that 'the Arusha peace process failed because it focused on ethnic dimension of the conflict while ignoring the deeper and more critical issues relating to land and resource rights' (Porto, 2002).

The political crisis of 1959-1961 led to the flight of thousands of Rwandan refugees who left behind their land and property. Subsequent political crises, especially in 1964 and 1973, forced other Rwandans to follow suit. The return of these refugees became an important political question for the *Habyarimana* regime in the 1980s. Negotiations for the return of these refugees failed, and Habyarimana maintained the position that "return was impossible due to land scarcity".

The Hutu population during the two regimes after independence even towards independence, the motivating factor in taking on arms against their neighbouring Tutsis was that 'they will inherit the land for people being chased away or killed. During the 1994 genocide, to the poor rural Hutu, inheritance of additional land and property was a big incentive to participate in the genocide. Yet, great majority of both Hutu and Tutsi did not benefit from the 1959 social revolution, instead the poverty levels situation for the majority rural poor worsened and inequality and concentration of wealth in the hand of the ruling elite – Akazu, deepened.

Beginning in October 1990, the Rwandan Patriotic Front (RPF) waged a war against the Habyarimana regime to unseat his government and to guarantee refugees' right to return home. This crisis culminated in the 1994 genocide. Genocide left over 1 million Rwandans dead and about 2 million fled into exile, mainly in refugee camps in DRC and Tanzania.

The period 1994-1996, there was an influx of approximately 800,000 Rwandan 'old-case' refugees from neighbouring countries. Most of these Rwandans had spent over 30 years in exile. Upon return, most returnees were initially obliged to occupy properties abandoned by those who had fled in 1994 as 'new case' load refugees. Eventually, many of the old-case loads were settled in *imidugudu*<sup>120</sup> villages constructed by UNHCR and international NGOs.

In late 1996 and early 1997-1998, the new caseload refugees returned *en masse* from the camps in Zaire (an estimated 720,000) and Tanzania (an estimated 480,000). At the time the government of Rwanda promised to respect these new returnees'

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entitlements to property abandoned in 1994. This resulted in an immediate need for housing that was answered by the *imidugudu* settlement policy (Hilhorst & Leeuwen, 1999; RISD, 1999).

The resettlement of returning refugees both old and new have been to a larger extent guided by the Arusha Accords, Article 3 which states that, *“In order to resettle the repatriates, the Rwandan Government should release all unoccupied land, after identification by the Repatriation Commission... The commission will be at liberty to prospect sites for resettlement in any area within the national territory”* and, Article 4, which states that *“the right to property is a fundamental right for all Rwandans... consequently, the refugees have a right to claim their property...”*. However, the two parties in negotiation further recommended that, *“with a view to promoting social harmony and national reconciliation, refugees who fled the country over 10 years ago should not claim their property if it has been occupied by other individuals... to compensate them, the Government will put land at their disposal, and will assist them to resettle”*.

The return of old-case refugees was deeply political and emotional to poor rural Hutu who were concerned with the security of their own land rights, because the politicians (Habyarimana's regime) popularised that **‘the returning refugees are Tutsi who are coming for their land their left behind’**. Secondly, ordinary Rwandans (Hutu and Tutsi) are known to have participated in the genocide in the belief that land belonging to the murdered Tutsi and moderate Hutu would become theirs **(Uvin, 1998); Pottier, 2002)**.

In order to address this crisis of resettling returning refugees, about two ways of resettlement strategy were sought:

(1) **Umudugudu Settlement Programme** - Some were settled in Umudugudu in part of the Mutara Game Reserve (two thirds of the Akagera National Park) and the Gishwati Mountain Forest Reserve, as well as land belonging to certain state-owned projects (like the Communal land); and

(2) **Land sharing** - Based on the principle that land in Rwanda belongs to the state and that citizens only enjoy usufruct rights, Provincial and Local Authorities (in Kibungo) advised the old and new returnees that mutually agreed land sharing was a necessary compromise in the name of peaceful co-existence and reconciliation, and this arrangement has eventually turned into a policy and is considered in the new land law.

Due to the high population growth and inequitable distribution, since 1980, the political power over land in Rwanda became worse because of increase of land scarcity.

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The rural poor (both the Hutu and Tutsi) invented the term Abaryi (Eaters) referring to the ruling elite because of their exploitative mechanisms over land issues. 1980s – 1990s, the gap between the rulers and the ruled (Hutu and Tutsi) was widening hence the peak of poverty and conflict over resources. During Habyariman's regime, the Akazu dominated the State and maintained virtual exclusive control over Rwanda's land and resources using laws and institutions of the State.

Although both rural Hutu and Tutsi were denied secure rights to land and other resources, Akazu popularized a view that predatory Tutsi were the source of deprivation among Hutu peasants, as a cover up for their threat of corruption and inequalities.

Government failed to implement any substantive legal and policy reforms to balance inequities in the distribution of land, or other reforms to strengthen the land and resource rights of the rural poor and to prevent further capture of land by the wealthy. By 1984, 43% of poor families owned only 15% of cultivated land, 16% of rich families owned 43% of cultivated land (Port, 2002).

## **5. Suggestions/Mitigation**

Increasing scarcity of land in the presence of high rates of population growth, with a historical legacy of discrimination and highly unequal land access, implies that many historical and contemporary conflicts have their roots in struggles over land. This suggests a special role for land policy in many post-conflict settings. An ability to deal with land claims by women and refugees, to use land as part of a strategy to provide economic opportunities to demobilized soldiers, and to resolve conflicts and overlapping claims to land in a legitimate manner will greatly increase the scope for post-conflict reconciliation and speedy recovery of the productive sector, as a key for sustainable and subsequent economic growth. (Deigninger, K, 2004).

1. Since peace initiatives in the region, including Rwanda have failed because of focusing on the ethnicity issues as the root cause of the conflict, the initiatives should focus more on natural resources, particularly land as the major causes of the conflict in the region. Such a strategy will address the issue of unemployment for the youth which normally combined with inflation and existing resource competition provides a breeding ground for conflict. It has been realised that economic factors are particularly acute when they are associated with patterns of discrimination between groups. Taking the case of Rwanda in point, land scarcity and unequal land distribution is identified as one of the fundamental causes of competitions between Rwanda's elite groups, which have led to conflict of decades.

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2. Given the current major problem of land scarcity in Rwanda, strong and urgent programmes for population growth control; off-farm activities; and agriculture intensification should be introduced, nationwide, so that even the elite can learn to look for other opportunities of gaining wealth other than just grubbing all the land, including purchasing land from poor rural small farmers which continue to create a situation of increase of landlessness.
3. The issue of land sharing should be analysed with a lot of caution, in a post-conflict situation, if peace and reconciliation is to be achieved. Not only the rural poor with small farms should experience the program of land sharing, even the elite with huge amounts of land should be willing to share some of their land with the landlessness instead of aiming at even acquiring more. In the Rwanda context, this issue is even thornier, given the background of the former regime popularisation that 'Tutsis are coming back for their land'.
4. Land as a conflict issue **MUST** be integrated into the programs of Unity and Reconciliation and the Human Rights Commissions;
5. Rwanda is almost treated as a model for democracy in a post-conflict situation, because of the systematic pace towards democracy. Decentralisation has been put in place though still with a bit of constraints because of lack of human and financial capacity, and recently a national constitution finalised which guided the democratic and successful presidential elections held in August, 2004. However, the challenge now is to decentralise the land rights which historically has been a highly centralised and political issue. However, the success of the current government lies in the success of an equitable and decentralised land policy and law that gives a priority to the rights of the majority rural poor, who are 95% dependant on land, with special focus on women, widows, orphans, and Batwa who are the most marginalised groups, while baring in mind that more equitable access to land is intimately linked to more equitable sharing of power, which is the goal towards the end of the endless conflicts that have characterised Africa, Rwanda inclusive.
6. The issue of expropriation is a very thorny issue, should not be implemented with no strategic plan and budget in place, because this encourages urban landlessness.
7. Rwanda has made a very good progress in the process of developing both the land policy and the law; however, putting these documents in place is not an end itself. Based on experiences from elsewhere, implementation of the land policy and land law is the most challenging part of the whole process. Hence, inclusiveness focusing the grassroots is crucial to the success of the implementation process.



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Rwanda, like Mozambique has tried to make the process of developing the land policy and law very inclusive, by involving the civil society.

During the war in Mozambique, the majority of investors were unable to access their land, but upon the signing of the Peace Accord, most investors discovered their land to be owned or occupied by local communities. Some concessionaires were very influential, which resulted in many local communities feeling that their land rights were threatened. Which meant that, the signing of the Peace Accord in 1992 brought enormous relief to ordinary Mozambicans and paved the way for a period of reconstruction and sustained economic growth, however, it also presented new threats to land tenure security for many small-scale rural farmers.

The Mozambique experience demonstrates that, while peace in post-conflict situations provides new opportunities, it may also present new threats to small-scale rural farmers and poor people's land tenure, especially if the issue of elitism and corruption is not politically addressed.

Mozambique's Land Law is considered as one of the more progressive in Africa, but the real challenge is the implementation process. What makes the Mozambique land law very popular is the inclusiveness (more than 200 NGOs and 50,000 individuals, directly involved) process that has been realized. The government has successfully worked in collaboration with civil society especially the NGOs throughout the process of developing the land law and creation of awareness among the population.

8. Land conflict and dispute resolution mechanism should be a key element for the land policy and land law, for the success of the implementation. The Land Commissions and other dispute resolution channels should be as close and owned to the grassroots as much as possible, because this is a major part for the land rights decision-making, including decisions on land registration and redistribution. In the case of Rwanda Gacaca (Community Justice) system should be supported and strengthened together with Land Commission for the management of land issues in the country. In Rwanda, Land Commissions should be made as much inclusive as possible at all levels, and consider a Land Commission at the Sector level, not considered in the new Land Law, for the success of the implementation phase.
9. Last but not least, governments in post-conflict situation should politically make a genuine commitment towards fighting the existing inequalities over land rights, if the issue of conflict that has characterized the Africa region is to be permanently resolved.

## **6. Conclusion**

Based on Rwandan experience, I am glad to congratulate the Briar Commission for Africa that they have included land on their agenda, as a critical factor to the future success of Africa. Rwanda can not go it alone; neither can Africa, combined efforts is required, because it requires high level of resources both human and financial to address the existing challenges on addressing land issues as a major conflict issue in Africa. Therefore, International community should meet its responsibility of support the developing country's initiative of addressing the land conflict issue, if their agenda for globalisation is to be meaningful.

There is more research and document required on the linkage between land as the main source of livelihood in Africa and the conflict, in order to contribute more effectively to the on-going peace processes in African that have failed to take roots.

### **3.1.8 Limitations of the legalistic approach in solving Zimbabwe's Land Problems**

*By N. Marongwe<sup>121</sup>*

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#### **Introduction**

Zimbabwe's liberation war was fought over land-based grievances (Ranger 1985, Moyo 1995, Government of Zimbabwe 1998). At independence in 1980, the Government of Zimbabwe was faced with a skewed distribution of land along racial lines. Thus white large-scale farmers owned almost 40% of the largely freehold land, which also comprised of the best agricultural land in the country whilst blacks were crammed on 41.4% of highly inferior quality land in the communal areas. The immediate objective of the government was therefore to redress the colonial imbalances in land redistribution, within the constraints of the willing-seller willing-buyer principle which was "cast in stone" (for a period of ten years) by the Lancaster House Agreement of 1979. Zimbabwe's land reform has largely been about the acquisition of mainly white owned large-scale farms (freeholds) for redistribution to the majority of the black population. By and large, the process of acquiring farms has been and continues to be defined as a purely legal process.

Over the years, Zimbabwe's land reforms were largely stalled by the highly legalistic approach of the process. Land acquisition disputes between the Government of Zimbabwe and the white farmers were largely settled through the courts. On the part of the white farmers, the courts were always seen as the only available option that was used to contest the acquisition of their farms. Indeed there are many analysts who believe that the white farmers realized and exploited the weakness of the government in managing such a highly legalistic approach to land acquisition. Technical hiccups that include procedural flaws (e.g. incorrectly spelt names of property), complex and lengthy land acquisition processes and lack of capacities by the courts were used to frustrate land acquisition by many of the white farm land owners. As such, in the later half of the 1990s, the Government of Zimbabwe was increasingly making threats to seize white owned commercial farms unless the British Government agreed to fund land reform. As the government stepped up efforts to acquire more land, white farmers also went into overdrive in appealing against the acquisition of their farms in court. In 1997, the government gazetted over 1471 farms for acquisition and redistribution under the country's land reform programme. Out of these, about 42% were later de-listed as they did not meet the then laid down land acquisition criteria. Only about 35 farms measuring 70 000 hectares were subsequently acquired

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and compensation was paid for (Moyo 1998). In the face of increased legal challenges by white farmers contesting the acquisition of their farms and the procedural flaws associated with the legalistic approach to land acquisition, government displeasure became more pronounced as it announced that it would not allow the law to frustrate land reforms.

The trajectory of Zimbabwe's land reform from a legal perspective can be broken into three paths. The first reflect the period between independence in 1980 to early 2000 when the country had a solid and extremely rigid legal framework governing land acquisition. During this period, the government respected private property and the land reform battle was fought in the courts. Whilst the court battles were ongoing, local level land conflicts continued to escalate. Moyo (1995, 1998, 2000) elaborates on how land occupations/squatting/illegal settlements developed over the period, reaching peak periods during election periods. The second trajectory started in early February 2000 when nation-wide land occupations, which were later to evolve into what is now referred to as Fast Track<sup>122</sup> resettlement, sprung into motion with the support of the state (Marongwe 2002). This represents a period where the laws governing land acquisition were frozen for a period of not less than one year, and the Government of Zimbabwe ignored its own laws and allowed occupation of mainly white owned large scale commercial farms. This was virtually a period of lawlessness as the land occupations that took place were characterised by high incidences of conflict at the local level. For instance the mere fact that the land occupations were strongly associated with politically instigated violence on the farms created the basis for all other mishaps to flourish. Thus criminal behaviour that include murders and attempted murder, child abuse and rape cases, torture, public/political violence, burning of property etc have been prevalent on the farms. Physical conflict was perhaps the most visible form of confrontation and it is because of such mishaps that Fast-Track resettlement has largely been deplored nationally and internationally. On the other hand, psychological conflict and tension has been inflicted on both the white farmers and the new settlers (Marongwe 2004). The third pathway started when the government instituted far reaching legal reforms in an attempt to normalize the illegal land occupations (in retrospect), the landmark being the enactment of the Rural Land Occupiers Act of 2001. This phase, which runs to the present moment, is characterised by land conflicts of a diversified nature. The key argument presented in this paper is that the legalistic approach to land reform has failed the country. Each phase outlined above gave birth to a wide-ranging set of problems whose solutions lie outside the legal framework, yet few analysts have noticed this, including the policy makers (see also Table 1). This paper outlines the key land-related conflicts that were born out of the second and third phases. It outlines the main legal battles that have been fought as the government battled to restore order in the land occupations driven process. In

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doing so, the paper also unravels the finer details on the local level land conflicts that were born out of or were nurtured by the process.

**Table1: Legal deficiencies and Development of Local Level Conflicts**

| Period            | Key Legal features/Instruments   | Local Level Conflict Dynamics  |
|-------------------|--|--|
| 1980-Jan 2000     | <ul style="list-style-type: none"> <li>- highly legalistic approach to land acquisition (serving of notices, confirmation of acquisition through courts)</li> <li>- the major flaw included the lengthy periods before finalization of cases, and the process became costly</li> </ul> | <ul style="list-style-type: none"> <li>- white farmers abandoned farms in the early 1980s and those farms were subsequently occupied</li> <li>- Illegal settlements on large scale farms and state-lands</li> <li>- special and political expectations of the people not met, setting a potential explosive situation that could be exploited by any politician</li> </ul> |
| Feb 2000-mid 2001 | <ul style="list-style-type: none"> <li>- Lawlessness as te predominantly white owned farms were occupied</li> <li>- Court orders issued but ignored by the state</li> </ul>  | <ul style="list-style-type: none"> <li>- white farers confronted by land occupiers and vice versa</li> <li>- chaos, violence, murders and criminal behaviour on farms</li> <li>- vandalization of property</li> <li>- agricultural conflicts at peak (forest fires and poaching of wildlife)</li> <li>- power vested in individuals instead of institutions</li> </ul>     |
| Mid 2001 Present  | <ul style="list-style-type: none"> <li>- New legislation to correct illegality of land occupations (some perfect examples of bad laws!)</li> </ul>   | <ul style="list-style-type: none"> <li>- to various degrees of intensity, most of the 2000-2001 land conflicts continued into this phase</li> <li>- contestations over ownership of cane land</li> <li>- eviction of some land occupiers by government</li> <li>- Arresting of white farmers who defied Section 8 orders.</li> </ul>                                       |

Source: Author

### **The Legal Battles in the aftermath of Land Occupations**

The current predicament was born out of a legal miscarriage following the rejection of the Draft Constitution in February 2000. One of the most fundamental clauses in the rejected Draft Constitution was the one that put in the hands of the British Government as the former colonial power the obligation to pay for the compensation of acquisition of large-scale farms for resettlement purposes failure of which the Zimbabwe Government would only pay for improvements on the land. War veterans played a critical role in mobilizing rural communities to occupy farms. All other state machinery supported the land occupations. At this stage, the process was clearly illegal. The immediate response by the white farmers to the land occupations was, as usual, to turn to the courts for arbitration. Yet this period marked the beginning of

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the end of the use of litigation as a stumbling block to land acquisition. Thus court orders were issued for government to remove occupiers from the farms, and these were completely ignored (see Box 1). The next stage was for the Government to correct the legal anomalies in retrospect and since then judicial and legal reforms have replaced violence on the farms as the state's arsenal. The government was quick to push for judicial reforms which kick-started with the fast tracking of the exit of the then white Chief Justice who had to go for an early leave pending retirement. Apparently, the Government did not hide its displeasure with the Judiciary. Thus, as quoted by the Human Rights Monitor, Dr Chenjerai Hunzvi, the leader of the War Veterans Association at that time was quoted as saying " We are not afraid of the High Court. The Judges must resign. Their days are now numbered. I am telling you what the comrades want, not what the law says." At the same time the Deputy Chairman of Harare War Veterans was quoted as saying "The Judiciary must go home or else we will chase them and close the courts indefinitely until President Mugabe appoints replacements." The Minister of Justice, Legal and Parliamentary Affairs made utterances to the effect that if judges behave like "unguided missiles, I wish to emphatically state that we will push them out." And the Highest Office in the land burst "The courts can do whatever they want, but no judicial decision will stand in our way. My own position is that we should not even be defending our position in the courts," Human Rights Monitor, No 15, June 2001.

The battle line had been drawn and as reported in one of the weekly newspapers, "since the expropriation of land began in 2000, relations between the judiciary and the executive have been acrimonious, resulting in the forced early retirement of Chief Justice Antony Gubbay from the Supreme Court bench amid claims of threats of violence and persistent pressure from ZANU PF for him to step down" (Financial Gazette, April 29-May 5 2004). A new Chief Justice who had headed the Government appointed Constitutional Commission and was serving in the High Court replaced him ahead of other more experienced judges who were already sitting on the Supreme Court bench. Since independence, the Supreme court was manned by 5 Judges but when the reforms swept into motion, this was expanded to eight. This could have been strategic as then the new Chief Justice could not make any favourable court judgment on his own without the support of other judges. Thus, starting from the year 2000, the composition of both the High Court and Supreme Court has seen the coming in of new faces that can be described as sympathetic to the ruling party and Government. Indeed there is evidence to the effect that some of the Judges are beneficiaries of Zimbabwe's Fast Track resettlement. Some of the most far reaching legal changes are outlined in the next sections. Suffice to say that some of the legal changes that have been effected were done in the context of The Presidential Powers (Temporary Measures) Act enacted in 1986 whose preamble states that "An Act to

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empower the President to make regulations dealing with situations that have arisen or are likely to arise and that require to be dealt with as a matter of urgency, and to provide for matters connected therewith or incidental thereto". Thus the Presidential Powers (Temporary Measures)(Land Acquisition) Regulations 2000 and Presidential Powers (Temporary Measures) Acquisition of Farm Equipment or Material Regulations 2003 were put in place courtesy of this Act. In addition, various amendments intended to "simplify" land acquisition processes were made to the Land Acquisition Act.

When the land occupations erupted, there were at least two highly contentious issues that became the centre of legal debates in the legal fraternity. First was the concept of the rule of law and second was the existence of a land reform programme to guide land acquisition and land redistribution as required by the Zimbabwean law. Thus Section 16A(1) of the Zimbabwean Constitutions explicitly requires that compulsory acquisition of agricultural land for the resettlement of people has to be done in accordance with a programme of land reform. Thus in the case SC. 132/2000, the Supreme Court ruled that there was no programme of land reform that guided land acquisition under Fast Track resettlement. A court order was also issued as explained in Box 2 whose coming into effect was put on hold when the State was given a moratorium to put its house in order. Thus, in the case of the Minister of lands and Others v Paliouras and Another S.C. 55/2001:22, a Supreme Court Judge ruled that "The Court having concluded that it was a prior requisite for the compulsory acquisition of agricultural land for resettlement that there be a programme of land reform, appreciated the factual situation that the land acquisition exercise could not be stopped abruptly. It was therefore, decided that the Minister of Lands, Agriculture and Rural Resettlement, and the other respondents, should be given a period of six months within which to formulate a land reform programme and to attend to other matters set out in the order. In the meantime, the acquisition of agricultural land for resettlement was allowed to continue." In simplifying this Judgment, the Administrative Court of Zimbabwe, stated that "This clearly means applications covering cases of which preliminary notices and acquisition orders had been made since the 23<sup>rd</sup> May 2000 up-to 1<sup>st</sup> July 2001 were to be heard and determined without the need to prove the existence of a land reform programme provided such hearing was to take place within the period of suspension. Thereafter such cases could be heard provided a land reform programme was now in existence" (LA 212/00:4).

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### Box 1: When Court Judgments were Ignored: The Case of Police v Commercial Farmers Union (CFU)

Following the invasion and occupation of numerous white owned commercial farms by groups calling themselves war veterans, the respondent (CFU) obtained a court order, issued by consent, which, among other things, declared the invasions to be unlawful and required, within seventy-two hours of the issue of the order, to inform the invaders that the invasions were unlawful and to remove them if they did not leave the farms. The order also required the police to disregard any executive instructions to the contrary. Six days after the order was issued, the applicant applied to the court to delete the paragraphs of the court order requiring the police to disregard contrary instructions from the executive and requiring the police to evict the invaders. The application did not address the other parts of the order directed at the police, requiring the police to inform invaders that the invasion was unlawful. These other parts of the order were not complied with. Although the application was not made on an urgent basis, the respondent applied for the matter to be treated as urgent. The main ground for the application was that, after the order was issued, the police realized that they had insufficient resources to effect the evictions. The applicant (Commissioner of Police) cited the size of the police force, the number of the invaders, the fuel shortage in the country, and transport and budgetary constraints. It was also argued for the police that to intervene in a situation that was charged with political and racial overtones would be ill-advised and would ignite a powder keg. The land distribution and ownership pattern in Zimbabwe was iniquitous and should be rectified in the shortest possible time. The applicant applied, at the hearing, for the deletion of the order to instruct the invaders that the invasion was unlawful. The applicant argued, with regard to the concept of the rule of law, that enforcement of unjust and inequitable ethnically based ownership structure, through the application of brutal state power, such as demanded by the respondent, would not promote the rule of law. In dismissing the application by the Commissioner of Police, the Judge urged the Executive to recognize that the permanent interest of Zimbabwe and the rule of law are served by ensuring that the land invasions were brought to an immediate end. The Judge urged the Executive to provide the applicant with all the additional resources that the police force may require to carry out its functions under the law. The Judge however lamented the predicament that the Police found themselves in where they had to enforce a court order when the Executive were giving conflicting signals to the contrary. Despite the ruling, the court order was not obeyed as reported in Judgment SC./2000. Although in some situations tension eased, politicians urged further demonstrations and the police pleaded insufficiency of manpower and what might be termed "superior order."

*Source:* Extracted from Zimbabwe Law reports 503 (H), 2000; Judgment S.C. 132/ 2000



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### **Box 2: Court Order Issued by the Supreme Court of Zimbabwe in December 2000.**

1. It is declared that the rule of law has been persistently violated in the commercial farming areas of Zimbabwe since February 2000, and it is imperative that that situation be rectified forthwith
2. It is declared that persons in the commercial farming areas have been denied the protection of the law, in contravention of S 18 of the Constitution, have suffered discrimination on the grounds of political opinions and place of origin in contravention of section 23 of the Constitution, and have their rights of assembly and association infringed in contravention of section 21 of the constitution
3. It is declared that there is not in existence at the present time a programme of land reform as that phrase is used in section 16A of the Constitution
4. It is declared that the purported amendment of section 5 (4) of the Land Acquisition Act (Chapter 20:10) by section 3(b) of the Act 15/2000 is null and void as being in conflict with the requirement of reasonable notice in section 16(1)(b) of the Constitution
5. Accordingly it is ordered-
  - A. that respondents comply immediately with the order of this Court, made by consent of the parties thereto, on November 2000 in case No. SC 314/2000, and with the order of the High Court made on 17 March 2000
  - B. that an interdict prohibiting the first, second and third respondents from taking further steps in the acquisition of land for resettlement is hereby granted, but its operation is postponed until July 2001, to enable the, first, second and third respondents to produce a workable programme of land reform, and to enable the fourth and fifth respondents to satisfy this court that the rule of law has been restored in the commercial farming areas of Zimbabwe.

Source: Judgment No. S.C. 132/2000, p 29-30, in the case of Commercial Farmers Union v (1) The minister of Lands, agriculture and Resettlement (2) The minister of Local Government, Public Works and National Housing (3) The minister of Rural resources and Water Development (4) The Minister of home Affairs (5) The Commissioner of Police (6) The President of the Republic of Zimbabwe

However, a somehow different interpretation on the existence of a land reform programme was given by the then Acting Chief Justice (ACJ) who was later confirmed as the Chief Justice. In Judgment No. S.C. 55/2001: 9, the ACJ had this to say “.... The general proposition in the CFU case (at p 18) to the effect that a land reform is a prior requisite for compulsory acquisition of agricultural land overstates the position. The existence or otherwise of a land reform programme is relevant to the determination of the issue of compensation in terms of section 16A of the constitution. That issue was not before the court quo. The court therefore erred in coming to the conclusion it did. A land reform programme is not a pre-requisite to the acquisition of land in terms of section 16 of the Constitution.” The other Judges however disagreed with this observation as emphasized in the following statements “..with the greatest respect, I cannot agree with the learned Acting Chief Justice when he says : a land reform is

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not a pre-requisite to the acquisition of land in terms of Section 16 Of the Constitution” (S.C. 55/2001: 16). “In our view in the CFU case, whilst we recognized the fact that the State was acquiring land unlawfully and that there was need to grant the interdict sought, we nevertheless suspended the effect of it until 1 July 2001. It is therefore patently apparent that the state was given a moratorium to put its house in order.....we also do not wish it to be understood that we are in agreement with the dicta of the learned Acting Chief justice in relation to the wisdom of the issuing of the interdict in the CFU case” (SC55/2001:21).

Interpretation of the rule of law concept also became controversial. Box 1 summarized the view on the rule of law as interpreted by Government agencies in this case being the Police. In Judgment 132/2000: 22, the Attorney General also submitted that the decision as to when and where to enforce court orders was “not one for the courts, because it was a political affair falling outside the powers of the Courts.. (the rule of law ) must be looked at from a political point of view.” In addition, the Commissioner of Police also argued “the problem is better solved politically. The solution to the land issues lies in the political domain and not (in) the courts.” The Judge proceeded to elucidate ‘Of course, it is fundamentally true that the land issue is a political question. It is equally true that the political method of resolving that question is by enacting laws. The Government has done so. It has enacted, and amended, the Land acquisition Act. It has failed to obey its law. That is the point at which, with respect, the Attorney-general and the Commissioner have gone astray. The courts are doing no more than to insist that the State complies with the law. The courts are doing no more than to insist that the State complies with the law. The procedures under the Land Acquisition Act have been flouted. The Act was not made by the Courts. It was made by the state.” In another case on Commissioner of Police v Commercial Farmers Union (ZLR 503:525), the Police argued along similar lines. “...the rule of law which is divorced from justice and just laws becomes a hollow concept. Enforcement of unjust and an iniquitous ethnically (sic) land ownership structure, through the application of brutal state power, such as demanded by the respondent, is not promotive of the Rule of Law.” In response to this argument, the judge, whilst acknowledging the different schools of thought on what the rule of law is at the philosophical level, argued that “...At the practical level, however, where a written constitution, amenable to amendment by the people in existence, and statute laws, old and new exists, and which the people’s representatives can amend or repeal, an argument such as the one advanced ...is but spurious” (ZLR 503: 525).

### **The Legal Milestones**

A series of legal instruments have since been put into place to correct the anomalies created by Fast Track resettlement. To begin with, there was Amendment No. 16 of

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the Constitution of Zimbabwe. Then there was the enactment of the Rural Land Occupiers Act of 2001. The Land Acquisition Act was also amended several times. This section summarises the legal changes.

### **Amendment No. 16 of the Constitution of Zimbabwe**

The Government of Zimbabwe was not to be outdone following the rejection of the Draft Constitutional. By then, the Government still had more than two thirds majority in Parliament and hence the constitution was quickly amended before the parliamentary elections which were coming in June 2000.<sup>123</sup>

Section 16A of the Constitution was amended to the effect that:

“(1) In regard to the compulsory acquisition of agricultural land for the resettlement of people in accordance with a programme of land reform, the following factors shall be regarded as of ultimate and overriding importance-

- a.- Under colonial domination the people of Zimbabwe were unjustifiably dispossessed of their land and other resources without compensation
- b. The people subsequently took up arms in order to regain their land and political sovereignty
- c. People of Zimbabwe must be enabled to assert their rights and regain ownership of land and accordingly
  - 1. The former colonial power has an obligation to pay compensation for agricultural land compulsorily acquired for resettlement through an adequate fund established for that purpose and
  - 2. If the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay such compensation for agricultural land compulsorily acquired for resettlement.

(2) In view of the overriding considerations set out in subsection (1), where agricultural land is compulsorily acquired for the resettlement of people in accordance with a programme of land reform, the following factors shall taken into account in the assessment of any compensation that may be payable

The amendment was with effect from April 2000. Following the amendment, the Zimbabwean Government now only has got a obligation to pay for the improvements made onto the land. Payment of compensation for the farm is staggered in the following manner:

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- a. "at least one quarter of the compensation shall be paid at the time the land concerned is acquired or within reasonable time thereafter.
- b. A further one quarter of the compensation payable shall be paid within two years after the land concerned was acquired, and
- c. The balance of the compensation payable shall be paid within five years after the land concerned was acquired"

### **Rural Land Occupiers Act**

Following an appeal by the Commercial Farmers Union (which represented mainly the white farmers) against the continued occupation of their farms, the Supreme Court (SC111/2001) concluded that "a huge problem has been created. Thousands of people have been permitted and encouraged to invade properties unlawfully. They have no right to be there. That situation will not be easy to resolve, but it must be resolved. Either their presence must be legalized or they must be removed". The option chosen by the Government was to legalize the farm occupations through enactment of the Rural Land Occupiers Act of 2001. The effect of this new legislation was that all people who occupied farms for the period 16 February 2000 to 1<sup>st</sup> March 2001 were "protected occupiers" and could therefore not be evicted.

In interpreting and applying the Rural Land Occupiers Act, the courts have made pertinent observations and decisions that are worth noting. For instance, following the land occupations, violence erupted at farms, resulting in injuries and death in some situations, destruction of property and disruption of farming operations. It is in this context that the white farmers applied for court orders, that among other things, would seek to ensure that their farming operations were not disrupted by the land occupiers. Thus in the case of *Igudu Farm (Pvt) Ltd vs. the Commissioner of Police and Others*, the Judge ruled that "it is not possible for the court to order the carrying out of normal farming operations in the light of the presence on the farm of protected occupiers on rural land has of necessity redefined the rights of the owners and/or lawful occupiers on rural land. Exclusive occupation and use thereof have been abrogated and can only be enjoyed subject to protected occupation. The law has forced joint possession between the parties and using the principles of joint possession, one can approach the courts in the event that another part is unreasonable in their demands" (HH 143-2001, *Igudu Farm (Pvt) Ltd vs. the Commissioner of Police and Others*, p 20). In this particular judgement, the white farmer and the new settlers were ordered to work out a *modus vivendi* for the joint possession of the land.

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### Box 3: Provisions of the Rural Land Occupiers Act

Restraint on eviction, etc. of certain occupiers of rural land

1. A person occupying rural land who, but for this act, would be subjected to any legal proceedings or an order referred to in subsection (2), shall be a protected occupier of rural land for the period referred to in section *four*, if:
  - (a) he was occupying the land on the fixed date and is still occupying the land at the date of commencement of this Act; and
  - (b) he occupied land in anticipation of being resettled by an acquiring authority on that or any other land for agricultural purposes in terms of the Land Acquisition Act [*Chapter 20:10*]; and
  - (c) he qualifies for settlement on that or any other land in accordance with the relevant administrative criteria fixed by an acquiring authority for the resettlement of persons for agricultural purposes.
- (2) Notwithstanding anything to the contrary in any other law, but subject to this act, no court shall issue any order for the recovery of possession from a protected occupier of any rural land, or the ejection therefrom of a protected occupier, or the payment of damages by such protected occupier in respect of the occupation or trespass of such land during any period referred to in section *four*.
- (3) Any order referred to in subsection (2) that was issued in relation to any protected occupier before the date of commencement of this Act shall be suspended and of no force or effect during any period referred to in section *four*.
- (4) Notwithstanding anything to the contrary in any other law, but subject to this Act, no protected occupier shall be liable for any statutory or non-statutory offence of trespass upon or un-authorized entry into rural land in respect of which he is a protected occupier.
- (5) Subsection (4) shall apply notwithstanding any court order that was issued in relation to any protected occupier before the date of commencement of this Act.
- (6) For the purposes of this section, "land" does not include any building permanently attached to the land.

*Source:* Rural Land Occupiers Act, GoZ.

In some instances, occupiers settled on arable parts of the farm that already had planted crops. This was the case with settlement on parts of the sugar producing Hippo Valley Estates in Chiredzi district, Masvingo Province, where people were eventually (and formally) settled on land that already had a sugarcane crop. To date, there is an ownership wrangle of the inherited crop between the old white farmers and the new farmers which has already spilled to the High Court of Zimbabwe. The settlement of the ownership wrangle is still pending and payment for the sugar that has been harvested has been deposited in a fund administered by the High Court of Zimbabwe, pending finalisation of the case. In the meantime, the Government of Zimbabwe has recently produced the Land Acquisition Amendment No 1. of 2004 which now allows it to acquire the land following the repeal of the Hippo Valley Agreement Act (see next sections).

### Amendments to the Land Acquisition Act

The Land Acquisition Act of 1992 has been amended several times since the start of the land occupations in the year 2000. Thus the Presidential Powers (Temporary

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Measures) (Land Acquisition) regulations 2000 (SI 148 A/2000) and Land Acquisition Act No. 15 of 2000 were instituted as the government resolved that the best way of dealing with conflicts between white farmers and previous invaders now occupiers would be to prohibit the former from continuing to use the land. The Land Acquisition Act, as further amended by SI 5/2001 and Land acquisition Amendment No.1 of 2004, governs the land acquisition process. First and foremost, the Government has to make an order in terms of section 8(1) of the Act in writing to the owner to cease to occupy, hold or use that land immediately on the date of the service of the order. The owner is given 3 months to wind up his or her business and vacate the property. On the face of it and from a practical point of view, occupation of land is therefore allowed immediately after the government has made the acquisition order, although legally this should not be the case as explained in Box 4 and elsewhere in this paper. However, confirmation of the acquisition of the farm will still need to be done by the Administrative Court. What happens on the ground in the event that the Administrative Court refuses to confirm the acquisition of a farm which has already been settled is something that is yet to be established (see also box 4).

Section 7 (6) of the Act was also amended to the effect that “a refusal by the Administrative Court to grant an order in terms of section 7(1) confirming the acquisition of any land whether before, on or after the date of commencement of presidential powers..2000 shall not prevent the acquiring authority from issuing a fresh preliminary notice and subsequently acquiring the land concerned in terms of this Act.” Effectively the determination of government to acquire a particular farm or farms does not end when the Administrative Court refuses to confirm its acquisition as it (the government) can restart the acquisition process. Thus Section 7(6) was intended to allow the acquiring authority subsequent chances of acquiring the same property provided it does not seek to do the same on the same grounds on which the Administrative Court had refused the original application.

Just to emphasize, the serving and expiring of the Section 8 Orders, the white owner is required to vacate the farm, failure of which it is a criminal offense not to do so. It is in this context that many of the white farmers were arrested for failing to vacate their premises (see table 2 for the situation in Mashonaland East province). This also complicates the ability of the white farmers to represent themselves in court when they would have long moved from their properties. This was the case in *The Minister of Lands, Agriculture and Rural Resettlement v David Charles Walker* when the later vacated his property at the expiry of the 90 day period and proceeded to go outside the country. When the case was brought to court the owner had to be represented by somebody else and apparently managed to win the case as the Judge ordered the allocatees who had already entered the property to move away from the property. In passing Judgment, the Judge also remarked “The evidence which was tendered and

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which evidence was not controverted is that the allocatee of the property in question invaded and entered the Respondent's residence in a typical criminal style before the acquisition of the property had been confirmed. Whereas this could have been accepted when land hungry peasants spontaneously occupied various white owned farms in or around 2000, the behaviour exhibited by the allocatee can no longer be accepted and indeed this court is unable to condone it." (LA 2977/02:9).

### **Box 4: The Court Refuses to confirm Acquisition of Lot 5 Lawrencedale farm measuring 1185 ha**

The Minister of Lands, Agriculture and Rural resettlement (hereinafter referred to Applicant) applied to the court for the confirmation of the acquisition of Lot 5 Lawrencedale, measuring 1185 ha and located in Makoni district, Manicaland province. The applicant wanted to acquire the whole farm save for 78 hectares it wanted to remain with the owner of the farms (hereafter referred to as the Respondent). At the same time the respondent offered two thirds of the farm and proposed to retain 376 ha in order to continue with farming operations. Various attempts had been made to reach a settlement before approaching the courts. The Respondent initially and voluntarily conceded 260 ha of land which was later followed by another offer of 250 ha to the Applicant. The applicant demanded more land and the respondent gave another 226 ha, coming to a total of 736 ha all land offered. The Applicant still demanded more and concerned by the insatiable desire by the Applicant to get more land, the respondent then decided to have the matter resolved in court. In analyzing the facts presented before the court, the Judge noted that the difficulties which occurred at the Respondent's farm appeared to have been more pronounced after the Managing Director at the Respondent's farm and other employees had a conflict with one employee of the Acquiring Authority and who happened to be an aide to the Minister responsible for land acquisition. Despite the fact that it was common knowledge that the case was pending in court for adjudication, the acquiring authority's head office went ahead and demarcated and allocated land direct from Harare, without even consulting the Provincial Office. Some of the potential allocatees received more land than what had been reserved for the respondent who had more than 20 years of farming experience. The Judge also noted that the Respondent had the technical know-how and the infrastructure to pursuing multi-faceted agriculture, including horticulture. Further the respondent had offered some of its existing agriculture to the new farmers as well as providing voluntary technical assistance to some of the new farmers. The Judge also noted that there was overwhelming evidence that the minister's Aide had abused his position in Acquiring Authority's Ministry. The Judge further commented that it looks like the Aide orchestrated the three unilateral peggings done between June and September 2003 in order to fix the Respondent for the conflict they had over his abortive attempt to interfere with the Respondent's irrigation network. "It cannot possibly be accidental that immediately after this conflict with the respondent's employees arbitrary peggings took place with the pegging teams showing him some of the boundaries. That is an abuse of office which this court is not prepared to accept" (LA 1362/02:7). The Judge also reaffirmed disapproval of the actions of those involved land acquisition. "Those involved in land acquisition must understand that a Section 8 Order does not entail resettling people on the land. Resettlement of land beneficiaries must follow the decision of the court. Once the matter has been set down for hearing in terms of Section 7 of the Act, it is prudent to wait for the outcome of the case as opposed to prematurely resettling people like what happened at the respondent's farm. It is expensive on the part of Government to relocate people who would have to be evicted in the event of non-confirmation of the acquisition. To settle on a targeted farm before acquisition is confirmed in court is merely being overzealous and it sends the wrong signal that this court will inevitably confirm the acquisition of any farm brought to it. That is not the function of this court. It does not merely rubber stamps the decision of the Acquiring Authority. It endeavors to look at each and every case and decides whether or not the acquisition should be confirmed...It appears in the court's view that this matter was primarily set down for hearing because of San'anza's (the Aide) influence in the Acquiring Authority Ministry. It defeats common sense and logic. This is unacceptable and the decision to bring this case to court was unreasonable" (LA 1362/02:8). Accordingly the Judge dismissed the application for the acquisition of the farm in its entirety and ordered that the Respondent should retain 376 hectares of land.

Source: Extracted from Case No LA1362/02 of the Administrative Court.

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Table 2: Enforcement of Section 8 Orders in Mashonaland East Province

| District  | Farms Served with Section 8 | Farms with Matured section 8 | Farms Vacated | Farms Not vacated | Farmers arrested |
|-----------|-----------------------------|------------------------------|---------------|-------------------|------------------|
| Chikomba  | 119                         | 94                           | 94            | 0                 | 10               |
| Goromonzi | 185                         | 163                          | 38            | 125               | 15               |
| Hwedza    | 53                          | 33                           | 20            | 13                | 12               |
| Marondera | 194                         | 154                          | 72            | 82                | 51               |
| Murehwa   | 91                          | 85                           | 35            | 50                | 3                |
| Seke      | 153                         | 118                          | 39            | 79                | 17               |
| Total     | 803                         | 298                          | 298           | 349               | 108              |

Source: Mashonaland East Provincial Administrator's Records 2003.

### Statutory Instrument 273A of 2003

Following reports that departing white farms who lost their farms were destroying their farm equipment in frustration over none-compensation, this instrument was introduced to curb the situation. According to these regulations, the Government as the acquiring authority can enter any land or premises at any reasonable time to ascertain:

- a. whether there is on the land or premises any farm equipment or material not currently being used for agricultural purposes on any agricultural land, and
- b. the owner or holder of such farm equipment or material, and
- c. the items of such farm equipment or material on the land or premises, and
- d. the condition of such farm equipment or material and its suitability for agricultural purposes.”

After the initial investigations, the owner is then requested to compile an inventory of the farm equipment or material on the land or premises. In the event that the owner refuses to do so, the relevant government officer will proceed to do the same. After the equipment has been identified, the owner or holder of farm equipment will not be allowed to sell, donate, demolish, damage, alter, impair or dispose such equipment.” The Government will then proceed with the compulsory acquisition of such farm equipment or material following its evaluation. Those convicted under these regulations can be fined an amount equivalent to the damage caused or they can be imprisoned for a period of up-to 2 years. In terms of payment



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of compensation, “ .. at least one quarter of the compensation payable shall be paid at the time the equipment or material concerned is acquired, or within thirty days thereafter, and the balance of the compensation payable shall be paid, i) five years after the acquisition thereof in the case of farm equipment ii) one year after the acquisition thereof in the case of farm material.” In a highly inflationary environment where inflation is quoted at above 600%, payment of the bulk of the compensation after five years is almost the equivalent of surrendering the equipment for free.

### **Land Acquisition Amendment No. 1 of 2004**

In early 2004, the Land Acquisition Act has been further amended. These changes are targeted at specific farms which the government failed to acquire because the law explicitly stated that these should be left untouched. Under the recent amendments, the guidelines for land acquisition are neither an obligation nor a legal imperative that has to be strictly followed. Thus a farm that was formerly protected from acquisition on the grounds that it was in an export promoting zone; approved conservancy; a plantation farm engaged in large scale production of tea, coffee, timber, citrus fruit, sugarcane etc can now be acquired for resettlement purposes. More drastically, the publication in the gazette of a notice to acquire land is now considered sufficient notice to the owner and it is no longer necessary to serve notice individually to the owner or anyone else with the real interest in the land.

Box 4: Amendment No.1, 2004 of the Land Acquisition Act

The fact that:

- a) Any land was offered in substitution for agricultural land required for resettlement purposes,
- b) Any portion of agricultural land required for resettlement purposes was offered in substitution for the whole of such land...
- c) The offer of any land or portion of agricultural land was accepted in terms of Section 6(A) or 6(B) of the Principal Act, before the commencement of this Act, was confirmed by the Administrative Court after the owner had initially objected to the proposed acquisition....

Shall not constitute valid grounds for an objection to the compulsory acquisition of the whole or part of the agricultural land required for resettlement purposes, nor shall it form the basis of any claim or right in law.

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A)...the publication in the Gazette of a notice of the application and particulars of where and the time within which any related documentation may be collected by the owner of the land to be acquired and the holder of any other registered real right in that land shall be deemed to constitute sufficient service of the notice of the application upon the owner and any other party concerned in the application.

. . . it shall not be necessary for the purposes of proviso (A) to identify by name the holder of any registered real right in the land who is not the owner of the land.

. . . Notwithstanding any condition in any agreement of lease or save or other disposition between the Hippo Valley Estates or its successions in title and any person in respect of land transferred to it or under its control in terms of the agreement....., the State may in terms of the Principal Act, compulsorily acquire as agricultural land required for resettlement purposes any such land.

. . .Section 2(a). For the avoidance of doubt, it is declared that, the criteria listed in the Land Reform Programme for the acquisition of agricultural land required for resettlement purposes are not binding in the acquiring authority, accordingly the fact that the land to be acquired:

- i. Is a plantation farm engaged in large-scale production of tea, coffee, timber, citrus fruit, sugar cane or other plantation crops;
- ii. Is an agro-industry property involved in the integrated production, processing or marketing of poultry, beef and dairy products and seed multiplication;
- iii. Is without an export promoting zone or operates under a permit issued by the Zimbabwe Investment Centre;
- iv. Is an approved conservancy;
- v. Is the only piece of land belonging to the owner.

Shall not constitute valid grounds for any objection to the compulsory acquisition of land nor shall such criteria form the basis for any claim or right in law.

### **Discussion**

Although far-reaching legal changes have been effected, normalcy is still far from returning onto the farms. Following the extensive changes, the question is no longer one of the rule of law, but one of what is a good law and what is a bad law, and who is defining it! What seems very clear is that whilst white farmers arguably heavily relied on the legal framework to protect their interests and consequently became very reactive in their approach for almost two decades, this came to an abrupt end when the Government firstly ignored its own laws to further its political goals. In the midst of the chaos and confusion, drastic changes were made to the legal framework and the system is now perfectly working against the white farmers. Indeed some of

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the farmers affected by Fast Track resettlement could have left the country empty-handed. As the state relied on its muscle to formulate and implement laws that are politically motivated, it has also enacted other punitive legislation in the form of the Access to Information and Privacy Act (AIPA) to support its broad maneuvers and other intentions. Although this legislation is far from being linked to land per se, its impacts are being absorbed by all other sectors. Thus the removal of the only other independent daily newspaper from circulation has meant that some of the legal wrangles that were being reported almost go unnoticed by the public.

Another interesting observation is that with the change in the composition of the Supreme Court Judges inevitably resulted in a change in the interpretation of statutes as was evidenced by the issues raised in case no. S.C.55/2001. Five judges out of a team of 8 constitute a Constitutional Court and the selection of judges to hear constitutional cases or any other case brought to the Supreme Court can be designed to suit certain situations.

Generally, the courts are incapacitated in terms of personnel. Thus by mid-2004 the High Court was operating at less than 50 per cent of its capacity as only 16 judges were employed out of a possible 35 while the Supreme Court had six judges instead of eight. Since the start of land occupations and Fast Track resettlement, "about half of the judges in both the Supreme and High Courts, have left the bench due to what analysts said was the erosion of the rule of law, outright harassment, demeaning acts and remarks targeted at the Judiciary and the government's contemptuous disregard of court orders. Since then, there has been a spate of resignations by senior judicial officers including magistrates and prosecutors in protest, among other issues, against poor remuneration and conditions of service" (The Financial Gazette, April 29-May 5, 2004). The ability of the legal system to deliver justice promptly and fairly has been compromised. Thus from Table 3, it can be seen that between 1998 and early 2004, over 4420 cases have been filed in the Court and yet only 345 farms have been confirmed as acquired by mid 2004. Most of the cases are still yet to be heard in Court. It has to be understood that settlers are already on the land and in the event that the Court does not confirm the acquisition of a particular farm, what ultimately happens is a puzzle to everybody else. Thus whilst thousands of farms have been settled, very few have been confirmed as acquired by the Administrative Court. This means that the security of property rights for both A1 and A2 farmers remain unresolved. As long as the situation remains like this, securing financial resources from the banks for investment on farms will remain problematic. How investment on the land is expected to happen and how agriculture is to be resuscitated in the immediate period remains a puzzle.

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If the current events/trends are closely analyzed one does not fail to observe that any obstacle that is met in trying to acquiring certain farms is later followed with legal amendments meant to crush such impediments. This seems to be the main rationale behind the most recent amendments to the Land Acquisition Act. As an illustration, the acquisition of a farm called Sweet Waters measuring over 2,600 hectares was not granted by the Administrative Court of Zimbabwe mainly because Barclays Bank as the bond-holders to the property had not been served with some of relevant legal notices and orders pertaining to its acquisition. Accordingly Barclays had also not provided a waiver that specified that it would not contest the acquisition of the particular farm. Thus in judgment LA 113/2000:8 the President of the Administrative Court stated “It is very clear in my view that applicant has failed to comply with mandatory provision of the Act, in particular section 5 (1) by not serving the required notice on Barclays and section 8(6), by not serving on Barclays a copy of acquisition order in terms of section 8, both of which ought to have been served at the relevant stages, not at the stage of service of section 7 application.” However, the latest changes to the Land Acquisition Act crushed these provisions. As noted in Box 4, publication in the Government Gazette of notice to acquire a certain farm is now considered sufficient notice to both the land owner and any other party affected by the application and it is no longer necessary to identify by name the holder of registered real right in the land other than the owner of the land. This further strips the rights of the original farm owners and just demonstrates the viciousness with which the State can go at full strength in crafting a bad law.

Table 3: Cases filed with the Administrative Court (1998 – 2004)

| Year            | No. of Cases |
|-----------------|--------------|
| 1998            | 321          |
| 1999            | 360          |
| 2000            | 400          |
| 2001            | 469          |
| 2002            | 2355         |
| 2003            | 445          |
| 2004            | 70           |
| Total filed     | 4420         |
| Total confirmed | 345          |
| % confirmed     |              |

Source: Administrative Court of Zimbabwe Records (May 2004)

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More recent figures show that whilst many farms have already been settled, most of these have not yet been confirmed as legally acquired by the state. By and large, most of the former white farmers still have the title deeds to their farms although the land itself is no longer in their hands. This has ultimately delayed the processing of leases for the new farmers and hence the issues of tenure security are yet to be resolved. From Table 4, just around 15 per cent of the farms have been confirmed as acquired by September 2004, five years into Fast Track resettlement programme. Certainty and normalcy in the country's land reform programme will take long to be realized as long as the legal wrangles are not solved. In the absence of other options that will attempt to de-legalise the problem, there is no sign that things will stabilize and various local level conflict subside in the near future.

**Table 4: Legal Status of Farms Settled**

| Province     | No. of Farms settled | No. of farms legally acquired | % Con-firmed | Hectarage Settled | Hectarage confirmed | % Hectarage confirmed |
|--------------|----------------------|-------------------------------|--------------|-------------------|---------------------|-----------------------|
| Midlands     | 412                  | 118                           | 28.6         | 695 638           | 192 078             | 27.6                  |
| Masvingo     | 381                  | 44                            | 11.5         | 1 440 212         | 421 259             | 29.2                  |
| Manicaland   | 384                  | 102                           | 26.5         | 206 663           | 78 766              | 38.1                  |
| Mat. South   | 291                  | 28                            | 9.6          | 874 837           | 82 945              | 9.4                   |
| Mat. North   | 323                  | 33                            | 10.2         | 686 312           | 41 296              | 6.0                   |
| Mash East    | 701                  | 101                           | 14.4         | 553 441           | 126 846             | 22.9                  |
| Mash West    | 1238                 | 139                           | 11.2         | 1 162 508         | 163 533             | 14.1                  |
| Mash Central | 594                  | 79                            | 13.3         | 744 069           | 82 613              | 11.1                  |
| Totals       | 4 354                | 644                           | 14.8         | 6 363 680         | 1 189 336           | 18.7                  |

Source: Government Records 2004

A new wave of evictions have been instigated by the government over the last one or two months but have since been put on hold with no public explanation as to why they were effected in the first place, and why they have been abandoned as well in the meantime. The move had created a new wave of conflict between the state and some of the land occupiers who had gotten onto the farms with the government's consent. The chaotic nature of Fast Track has given rise to wide range of problems, including some of the following:

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1. Multiple land allocations as greedy people capitalized on the poorly developed land information system, and were therefore allocated more than one farm (use of political, social and financial relations to gain access to more land)
2. Huge land allocation problems as some are having their offer letters withdrawn for allocation to others. In some cases, small-holder farmers (A1 model) are being removed to make way for the commercial farmers (A2 scheme)
3. Boundary conflicts especially among the small-holder farmers. Some farmers deliberately shifted the pegs that demarcated their plots in an attempt to enlarge their farms
4. Problems around accessing and utilization of inherited infrastructure on the farms. Some A2 farmers have allegedly defied policy and have refused to share infrastructure with other farmers
5. A new wave of landlessness among the former farm-workers. To date, there is no credible information on the status of farm-workers, including details of how many were allocated land, how many are still loitering on the farms etc.
6. A new wave of farm evictions which has pitted land occupiers against the government (see Box 5 for detailed examples on recent farm evictions in Mashonaland West province)

### **Concluding Remarks**

Based on the foregoing discussions, it is clear that even the law cannot escape the mighty power of the State (see also Madhuku 2004). The doctrine of the separation of powers seemed to have been suspended in the Zimbabwean case. The Judiciary and the Legislature seemed to be dancing to the tune of the Executive. One can hardly fail to realize that there are concerted efforts meant to whip the Judiciary into line as directed by the Executive. This discussion is much wider in its context and goes beyond the issues that relate to land as elaborated in this paper. Of relevance to this paper was that people occupied and settled on farms when it was clear that it was illegal. Whilst acknowledging that the process was illegal, the courts for example decided to give the government a moratorium and allowed the illegal to continue for 6 months while the state was putting its house in order. On the part of the Government, ignoring its own laws was its first weapon. As events progressed, the laws were changed and continue to be changed. It seems as if there are no limits to which the state can use the law to further its own political ambitions. To begin with, litigation was the safe haven for most white farm owners. Events in the country since the year 2000 tell a story of how the safe haven turned into villain. For those who can see and observe, a more proactive approach on the part of the then white landowners could have saved the country from falling into the current predicament. A less confrontational

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### Box 5: Recent Farm Evictions: examples from Mashonaland West Province

#### 1. Little England Farm (Zvimba District)

- Most of the land occupiers are alleged to have entered the farm after the cut-off date as specified by the Rural Land Occupiers Act.
- One of the occupiers was claiming to be a chief and had brought with him many other people, claiming they were his subjects.
- Some farm/workers had also taken plots at the farm
- Many of the land occupiers had come from Harare, and some even commuted to and from work from the farm
- The Presidential Land Review Committee had ruled that the occupiers should be evicted, and had left the task to provincial authorities. Politicians from the province had continuously thwarted any efforts meant to secure the evictions
- The current Taskforce mandated to effect evictions held meetings with the occupiers and requested them to vacate the farm. Instead it advised them to register for land with the District Administrator's office. The occupiers refused to vacate the farm and when the one-week grace period given to them expired, they were forcibly removed and had their property torched.

#### 2. Sunview of Chenene (Makonde)

- The farm was originally occupied by villagers and war veterans
- Thereafter, a series of plots were consolidated and were allocated to a local businessman based in Chinhoyi, the provincial capital of Mashonaland West province.
- This triggered-off serious conflicts at the plot
- A couple of other plots had not been occupied, and a compromise was reached with the war veterans. War veterans were reallocated the vacant plots, but the bulk of the villagers were evicted from the farm.

#### 3. Wolewhoek Farm (Makonde)

- Originally there were 3 war veterans who occupied a neighbouring farm, together with other villagers, on an A1 scheme
- The war veterans later relocated to this farm, together with other villagers. There are allegations that the war veterans sold some plots.
- Yet the farm had already been allocated to someone else, who in fact had an offer letter. It proved difficult for the A2 farmer to take occupancy of the farm, as he was chased away from the farm.
- The Police were reluctant to enforce the evictions.
- With the new Taskforce, it was ruled that they should be evicted. Fortunately, there were many other vacant plots, and the occupiers were moved to the other plots

#### 3. Kosana Ranch (Makonde)

- The Provincial Land Allocation Committee had recommended that the white farmer be left with a portion of the farm, on condition that he surrendered the title deeds of the farm. AREX, however, delayed in effecting the subdivision.
- In the meantime, the white farmer would cultivate on all the vacant plots, sparking running battles with the occupiers.
- The occupiers were later relocated to the vacant plots, and the white farmer was allocated another portion.

#### 4. Manengas Farm (Makonde)

- A ZANU P.F MP had been allocated the farm, which earlier on had been given to a relative of the former governor of the province. Immediately the MP was sworn in a by-election, he expressed interest in the farm.
- The original offer letter which had been issued to the first allottee was withdrawn
- However, the white farmer is believed to have strong links with the ruling party, and he wanted also an offer letter for a portion of the farm. Some politicians wanted the new allottee out as well
- The offer letter to the MP was subsequently withdrawn, and an offer letter was given to the white farmer
- At the present moment, both the MP and the white farmer are co-existing at the farm.

#### 5. Spring Farm (Makonde)

- The farm had been subdivided into two plots, one was allocated to a controversial and prominent individual, and the other was given to a certain lady.
- The prominent individual had also applied for another farm on behalf of his brother who is based outside Zimbabwe, and was allocated Scorpion farm. The prominent individual would straddle between the two farms, cultivating both of them
- This arrangement was reversed by the Land Inspectorate, and the second farm was re-allocated to someone else
- The Prominent individual had been allocated the developed part of the farm, but he was always in constant conflict with his neighbouring female plot holder, and would close the water source, stopping the other farmer from accessing water.
- The other farmer was subsequently relocated.

#### 6. Muzvezve Old Resettlement in Kadoma

- A powerful war veteran, led a group of occupiers to settle in the grazing area of an old resettlement area. Most of these were largely from Gokwe, in the Midlands Province. Meetings between Midlands and Mashonaland West Provincial structures resolved that only 106 households should be officially allocated land.  
Even after the 106 households had been allocated land elsewhere, more people came and took occupancy of the vacant plots. To date, the problematic situation is yet to be resolved.

Source: Field Data 2004

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approach characterized by less reliance on the use of the litigation route, and supported by genuine land offers could have been all it took to avoid what is now commonly referred to as the Zimbabwean crisis. Even the debate on the rule of law needs to be recast given the Zimbabwean context. As mentioned in the paper, equally important in the discussion is whose law, what is a good and bad law and who is defining it!

It needs to be emphasized that based on the Zimbabwean experience, the purely legalistic approach to land acquisition is essentially about creating winners and losers. In the final analysis it is a winner take-all situation. This approach, as already noted, ignores the social/moral and political consequences of land reform and more importantly, does not create space for other conflict management techniques to be tried and tested. The approach can therefore be designed or manipulated to suit the interests of one side of the equation, a situation that nurtures the development of conditions that either ignite or are supportive of violent conflicts over land. The approach does not recognize the importance of having dialogue between those with the land and those without. In Zimbabwe, it was only during the 2000 land occupations that the white farmers were confronted directly on their farms by “the landless blacks.” By then, it was already too late for any meaningful dialogue to take place. Also, the highly legalistic approach is somehow divorced from reality, is largely non-participatory in nature and can hardly be democratized. In light of the Zimbabwean experience, re-distributive land reform, which is solely based on the legalistic approach, has proved to be a failure. First it was the white farmers who benefited. Then the tide changed and the government “ran amok” and went for the extremes in effecting legal reforms. Yet the land problems have not been solved and land conflicts are quickly transforming into an issue amongst blacks themselves, as opposed to the struggle between blacks and whites as before.



### 3.1.9 Land Tenure and Land Reform in Sub-Saharan Africa: Towards a research agenda

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#### The nature of 'customary' land rights

When thinking of land as socially embedded, we become aware that land is the site of a complex interlocking of rights (Mackenzie 2003). Tenurial rights frequently have to do with the *rights of individuals* to particular plots, but also with *rights to land held collectively*. Crucial in the context of our conference is Mackenzie's (documented) assertion that rights 'allocated according to custom' are not necessarily free of struggle. Struggle existed already in colonial times (caused in part because 'custom' was being written up / invented), but, as her research in Murang'a District reveals, land allocations in pre-colonial times were also regularly marked by tension. Fiona Mackenzie:

Prior to colonialism, security of tenure in Murang'a depended on the resolution of two sets of tensions. The first was between individual and collective rights to land of the (male) kinship group and the second was between women, as wives and producers but non-members of the kin collectivity, and men, non-producers (as far as basic crop production was concerned) yet members. Rights to land were, in both situations, subject to negotiation. Under colonial rule, customary law provided the means through which individuals or groups, differentiated by race, class, and gender, negotiated access to and control of land. (...) Here, customary law became "an ideological screen of continuity," a "language of legitimation" (Chanock 1985: 59, 4). It may have provided the political space through which Africans resisted colonial rule, but *the reworking of customary land law by African men privileged not only male rights, but also the interests of wealthier men*. (Mackenzie 2003: 258; emphasis added)

One of the better known examples showing that recourse to customary law is prone to cause struggle is the Jahaly-Pacharr irrigation scheme in The Gambia. Following the launch of this gender-friendly project, for which land 'customarily' controlled by women was used, men reacted by changing the discourse of custom, thereby re-labelling the project plots women cultivated as *private* land (Carney 1988; for a summary review see Pottier 1999).

Mackenzie's observations on the introduction of freehold tenure or contract production regimes is of direct interest to the current situation in Rwanda. Freehold tenure – often based on land consolidation and then registration— does not pre-empt existing

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rights. What emerges in reality, Mackenzie tells us, is 'a complex picture in which *people contest rights to land by drawing ... on whichever legal resource they can*' (Mackenzie 2003: 258; emphasis added). Mackenzie concedes that modern situations of legal plurality often compromise women's tenurial security, even when women hold a title deed, yet she is equally keen to stress that women are highly resourceful in securing their rights.

Examples like the Jahaly-Pacharr scheme have made some anthropologists argue that analysts must not over-celebrate the agency or initiative of subordinate groups. As Pauline Peters (2004) contends, the ethnographic tendency to put the spotlight on 'the ability of "small acts" and small people to out-manoeuvre the powerful must be complemented and modified by stories of differentiation, displacement and exclusion' (2004: 306). Among the many examples she reviews is Zimbabwe, where private individuals are regularly 'annexing parts of communal woodlands or grazing lands by enclosing them with a fence'. Unsurprisingly, such moves cause 'considerable ... tension' among others who have been using the common resources (see Fortmann 1995: 1056). Responsible for this uneven appropriation are 'local and national elites, some in collaboration with transnational networks' (Peters 2004: 298). Throughout sub-Saharan Africa, appropriations by legal and not-so-legal means always result in social conflict. In some cases the workings of international development aid exacerbate volatile situations.

So let us be clear what we mean by terms like 'customary law' and 'customary tenure'. These concepts do not refer to a pre-colonial oral culture and time when every land-related issue was clear-cut. Rather, these concepts have been 'produced out of colonial misunderstandings and politically expedient appropriations and allocations of land' (Peters 2004: 272). As Peters reminds us:

Elizabeth Colson's incisive critical assessment (1971) of the creation of 'customary law' (up through the 1930s) showed how colonial rulers confused territoriality with sovereignty, and conflated African ritual roles, whose authority lay in rain-making or fertility of the land, with political roles exerting authority over people in lineage, clan and chiefdom. Where the colonial rulers could not identify an appropriate 'chief', they created one. (Peters 2004: 272)

The colonial encounter in Congo-Zaire provides us with ample examples. In the long-run, and this I regard as the crux of the matter, 'the formation of customary law and communal tenure [has] served to promote both state and private European interests' (2004: 272), in colonial as well as in post-colonial times.'

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I draw attention to this debate for two reasons. First, international and national policymakers are (re)discovering African custom, and seem to be doing so in a peculiar way (see below). Second, the national discourse that dominates debates on land reform in Rwanda is a discourse inspired by the World Bank and the FAO.

### ***The Return to the Customary: Policy discourses on Women's land rights'***

In policy circles today,

there is an emerging consensus among a range of influential policy institutions, lawyers and academics [that] the potential of so-called customary systems of land tenure ... [can be harnessed] to meet the needs of all land users and claimants. This consensus ... is rooted in modernizing discourses and/or evolutionary theories of land tenure and embraces particular and contested understandings of customary law and legal pluralism. (Whitehead & Tsikata 2003: 67)

Certain policymakers claim that Rwanda does not know any absolute landlessness. A range of customary practices are invoked (ingaligali, etc.) to make the point that custom provides some kind of safety net for the poor, albeit a not very reliable one.

The 'harnessing' of so-called customary systems of land tenure may sound like an interesting idea, but what have anthropologists and historians learned from field research? As already mentioned, colonial authorities moulded a customary world to suit their own purposes. We now know that

Many of the supposed central tenets of African land tenure, such as the idea of communal tenure, the hierarchy of recognized interests in land (ownership, usufructory rights and so on), or the place of chiefs and elders, have been shown to have been largely *created and sustained by colonial policy and passed on to post-colonial states* (Okoth-Ogendo 1989; Berry 1992, 1993, 2000; Shipton and Goheen 1992; .....). In addition, the so-called customary rules reflected only some of the voices of indigenous society. In Chanock's well-known interpretation, what came to be the content and procedures of customary law were generated out of a compromise and uneasy alliance between the power holders of African indigenous societies and colonial powers (Chanock 1985). (Whitehead & Tsikata 2003: 75; emphasis added)

What resulted was a perception that customary law was coherent, static and overly legal. In other words, distinct meanings in Western law were used to describe characteristics of customary

*systems*. Customary law, as it emerged as a concept, was thought to be 'a different kind of primarily legal system carrying out many of the same functions as formal

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[Western] law' (Whitehead & Tsikata 2003: 75). It is that kind of perception that some influential policymakers and policy-making bodies are today rediscovering.

In contrast to this overly legalistic approach to customary land tenure, anthropologists and historians acknowledge that many diverse practices exist regarding land and access to land. There is broad agreement that African systems of land access were (...) *created by use and negotiated*, and that to some extent they remain so today. ... [C]ommunity-level patterns of land access were *not rigid, but flexible and negotiable*. [Note: this is generally attributed to the abundance of land.] ... Within kinship groups and households, claims to use were made by men and women for land inherited within these social groups, while between them, claims could also be made on a number of basis. Pawning, pledging and loaning provided access to land for use without undermining the flow of land through inheritance and most communities also had ways in which in-migrants could make claims to land that was not already assigned. (Whitehead & Tsikata 2003: 76-77; emphasis added)

Importantly, anthropologists and historians did not regard local-level systems of dispute settlement as "law"; the practices they recorded were processual as well as socially embedded (2003: 76). It follows that they object when policy advocates use a 'rights language' to describe land claims in indigenous systems.

Another contested (analytical) issue is the strength of women's claims to land. Many authors have reported that the way women access land is through marriage. Husbands devolve land to their wives for farming. This view is restrictive. Other authors argue that it is not the husband (an individual) we need to focus on but the husband's kin group. It is from the latter that wives get land and it is this kin group that may in some circumstances protect her claims. Women often also retain some residual land claims in their own kin groups as well as frequently obtaining land by loan or gift from a wider circle of social ties. That women get land through many social relations bears emphasis because *some policy discussions assert that women get access to land as wives and go on to argue that their claims are weak because of this*. (Whitehead & Tsikata 2004: 78; emphasis added)

Recent studies (Bosworth 1995; Kevane and Grey 1999; Yngstrom 1999) have produced strong challenges to the view that the difference between women's claims and men's would imply that women's claims are weaker.'

That said, it is very important that we should also bear in mind that land use has changed over time, especially with the introduction of new crops and forms of agriculture, and that change has resulted in increasing contestations between men and women. The weight of evidence suggests that economic changes, e.g., through

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privatization, have generally diminished women's access to land (Whitehead & Tsikata 2003: 78). Whitehead & Tsikata explain that this 'development' has come about 'because women suffer systematic disadvantages both in the market and in state-backed systems of property ownership, either because their opportunities to buy land are very limited, or because local-level authorities practise gender discrimination, preventing women from claiming rights that are in theory backed by law' (Whitehead & Tsikata 2003: 79). Mackenzie's research has made a similar point in the context of titling/registration in Kenya in the 1950s. She argues that registration gave a new context for claims in the language of custom, through which '*men found they were able to manipulate the historical precedent of "custom" to exercise greater control over land to the detriment of women*' (Mackenzie 1993: 213). It is examples like those provided by Carney and Mackenzie that show that a Return-to-Custom in contemporary policy discourse could be quite detrimental to women. Custom never was static, nor did it provide women with a guaranteed 'bundle of rights.'

What should matter to us/researchers is not what *really* happened in the past (in many situations we shall never find out), but how customary institutions function *within* the modern state. Thankfully, we do have a few studies – especially from Uganda's Kiga region in South Kigezi (Bosworth 1995) and from Kenya (Mackenzie) – that show that statutory law and so-called customary laws are more interconnected than is realized. The point here is that in everyday life, men and women 'sustain their claims to resources by employing arguments from both the statutory and so-called customary law' (Whitehead & Tsikata 2003: 95). The outcomes do not always favour women, however, because there is much gender bias in legal cultures and statutory law (see Stewart 1996; for an example from the DRC, Schoepf and Walu Engundu 1991). The point that needs emphasizing here is that we need to learn more about how claims are made with reference to both 'systems' simultaneously.

Nonetheless, policy discourses that advocate land reform – whether they come from the World Bank or Oxfam GB or the London-based IIED institute – are increasingly working with a rather static notion of 'the customary'. They also envisage that custom can be 'modified' through appropriate intervention. A 'modified customary' has a role to play in local-level land management.

For the World Bank, the policy is to encourage these [customary forms of ownership] to evolve; for the independent land policy advocates, more democratically accountable management systems are to be introduced to build upon what already exists locally. (Whitehead & Tsikata 2003: 89)

In other words, although the two approaches differ, they share the view that land reform is to be promoted and based on customary law, as if the latter were a homogenous and clearly defined *body of rights*.

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To give an example of what is meant by the evolution of customary inheritance, I turn to how Agnes Quisumbing's counters the oft-heard complaint that Akan inheritance practice 'implies that wives do not have secure rights to their husbands' land in the case of death or divorce' (Quisumbing *et al*, 2001: 158). Her argument is that that situation is now changing:

Recently, [Akan] husbands have increasingly transferred land to their wives and children as a gift during their own lifetime if their wives and children, especially wives, have helped in planting [cocoa] trees. The individualization of land-tenure institutions was strengthened further by the Intestate Succession Law (ISL; PNDCL 111) in 1985, which provides for the following division of the farm: three-sixteenths to the surviving spouse, nine-sixteenths to the surviving children, one-eighth to the surviving parent, and one-eighth in accordance with customary inheritance law. However, the common interpretation of the ISL is one-third each for the spouse, children, and maternal family. We postulate that the inheritance of gifts increases in areas where matrilineal inheritance is practised in order to strengthen individual land rights. (Quisumbing *et al*, 2001: 158)

Quisumbing *et al*/speculate that the increases reflect recognition of women's labour input:

Cocoa-tree planting and subsequent tree management are labour-intensive activities that require the work of the wife and children, particularly in weeding. Thus, it is likely that the [increasingly] strong rights are conferred to reward the effort of wives and children to plant and grow trees. (Quisumbing *et al*, 2001: 163)

The observed change in 'custom' has convinced Quisumbing and her team of researchers that 'one cannot generalize that individualization of land rights necessarily leads to weaker rights for women' (Quisumbing *et al*, 2001: 176).

### **Future research**

ACTS's commitment is that research must take place in the context of a concerted effort aimed at conflict prevention through improved policies (Huggins 2004). I suggest the following themes should feature among the priorities. I merely itemize the themes, they will be elaborated upon at a later stage.

- The contemporary significance of 'custom' and 'customary law/systems';
- Competing discourses of landlessness;
- Memory and the boundaries (and meaning) of ancestral land;
- Group displacement and land conquest in relation to reconstructions of identity;
- Land as a resource of conflict;

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- Unpacking 'customary rights' (focusing on 'rights' and struggles);
- Women's land claims;
- The mixing of 'customary' and 'statutory' law in land claims, possibly linked to identity claims.

### **3.1.10 Land Tenure and Conflicts in Burundi (Summary)**

*Lucy Nyamarushwa, Ligue ITEKA, Bujumbura, Burundi*

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Inequalities around land were present in pre-colonial times, but land conflicts were here in former times for two major reasons:

1. Land was still available and people were free to move from place to place to settle wherever they wanted if the chief of the region gave them land.
2. People were so respectful of the monarchy and the king that they could not protest against the established order in spite of its problems. Consequently, it was rare to hear of conflicts around land at all levels.

Today, however, things are different because even the socio-political and economic contexts have undergone significant modifications generating new types of socio-economic and political inequalities. Also, new land access patterns and land administration were set up but they generated new types of land conflicts too. The latter grew more and more acute with the persistent socio-political instability and the growing scarcity of land. Those new types of land conflicts are mainly:

1. Conflicts around family land or individual land conflicts.
2. Conflicts resulting from the land law violation by the authorities and outdated norms.
3. Conflicts between agriculturalists and pastoralists.
4. Inter-group land conflicts.
5. Conflicts around land for refugees.

Concerning the first type of conflicts, 90 per cent of pending cases in Burundian tribunals concern land conflicts among relatives, individuals or neighbours. They often quarrel about sharing property limits because with the land scarcity even an inch of land is precious and people can quarrel over it for years and years. The other source of conflicts is the existing gap in the Burundian law which excludes females from inheriting land from their parents and from their husbands. This exclusion condemns females to an eternal economic dependence and major insecurity in many ways:

1. Unmarried or divorced females are continually harassed or ill treated by their brothers who don't want them to have access even to a small portion of land. Things often worsen after the parents' death because the brothers can definitely expropriate their sisters.



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2. Widows are also victims of half or full expropriation by their in-laws, especially if they are childless or if they have only female children.
3. Females sometimes have the portion of land they benefited from their parents, alienated by their brothers after the parents' death.

Burundian females are trying hard to obtain positive changes of the Burundian law in their favour but things are not easy. Burundian women managed to get a new law on inheritance that will take into account females, written. However, its promulgation is delaying because this law has been under preparation for three years and women need to press again for a quick promulgation of the law.

The second type of land conflicts generated by the authorities usually results in the land law violation. In the actual land law, Section 2, Article 253 and 254 specify the authorities who have the competence to cede and concede land and the norms that regulate the process. Actually this cession and concession are often done through favouritism and usually in favour of wealthy persons who sometime amass land just for prestige; consequently big properties remain unexploited for years

Also, the land law specifies in Article 331 of the 1<sup>st</sup> chapter, title 14 that the marsh belongs to the first person who exploits it. So though the management of the marshes is under the competence of the government like any public land, the latter cannot, then expropriate the first exploiter of a virgin marsh except for the public interest. Yet this article undergoes regular violations these days.

Some cases of expropriation without prior indemnification are also registered here and there (e.g.: the expropriated people of Buramata. In Bubanza province, whose properties were used to settle former combatants but who have not received any indemnification up to now, after two years.

The other litigious situation is that of people whose properties have been occupied by internally displaced people and where the local administration finally built villages for them. Those property owners have not been indemnified and continue to claim indemnification or other plots of land in exchange, especially where IDPs seem to be permanently settled.

Above all, though there is a law on indemnification, it is outdated and does not fit the cost of living nowadays.

Another crucial problem is that of people who have been exploiting public land under the systems of emphyteusis (contract granting possession of land for long period on certain conditions) and usufruct, in the Burundian land law the two systems can extend to 99 years. So a person who has been exploiting public land for such a long time

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and who doesn't know anything about this law, finally considers this land as a family land as it is even exploited through generations. Finally, when the government seeks to recover this land, even in the public interest, there is a "wrestling match".

The third type of land conflicts oppose agriculturalists and pastoralists. It is an old conflict but it has grown significant during this long crisis. In former times when land was still available, cattle owners had their own pastures and they were big enough for cattle. Nowadays things have changed because even the space used for pastures has been cultivated in many parts because of the big population. The situation worsened with the war because many cattle were grouped in secure places—which were few—especially in the plain where the situation has grown increasingly tense between the rice farmers and cattle owners.

As for the inter-group land conflict, it is a new type opposing mainly Hutus and Twas in some areas. (e.g. in Bubanza province). Twas have been landless for a long time because they mainly survived thanks to their pottery and hunting in former times.

But nowadays, products from pottery are rarely used and there is no more market for them. So Twas begin to feel the need to survive through agriculture like most Burundians and start feeling the importance of land now. In fact, in past years as most Twas were kinds of nomads who did not settle in a place, even when they got land, they sold it to Hutus at a very low price. So today, those Twas who sold their land to Hutus are claiming it back arguing that the price was unfair—after many years and this raises tension between those communities.

The most crucial conflict of all conflicts is the one around land for refugees. With the repetitive crisis in the country, many people fled to other countries, the majority to the neighboring Tanzania. The majority of those refugees were from the fertile plain of the Jimbo region bordering the Democratic Republic of Congo, along Lake Tanganyika.

In all places, refugees' lands have been occupied by other people, whether relatives or not. There are two types of refugees: refugees of earlier times in the 'Sixties,'Seventies—especially 1972 and the 'Eighties and the group of recent refugees—1993.

For both refugees: of earlier times and the recent ones, they all find their lands occupied by others when they come back home. For refugees of the 'Nineties, things are not too complicated because if the local authorities are effective, they help them recover their lands; however some authorities are even involved in land alienation. There are regions then, where refugees of 1993 have not recovered their land yet and are then supported by friends or relatives (e.g. Kinundo province).

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According to the land law in use now, it is said under Chapter III, Section I, Art. 382, that if a rural land remains unexploited for 5 years without any known motive, the government can give it to another person who asks for it, often consultation with the communal counsel. In Article 384, it is also said that rural land unexploited for 10 years or confiscated land which within the five years of confiscation is not claimed can be confiscated for the general interest.

In addition, the civil law, Book III, under title II, chapter V, Section 2, Art. 647 talks about the prescription regulations. It says that all land can be prescribed after 30 years. Land for refugees which did not fall in the hands of family members is now managed in accordance with those laws. For the first case, the refugees are not supposed to have problems; though in reality, it is not always the case. The situation is more difficult for the sixties and seventies refugees who now return home to face numerous problems.

In fact, alternative solutions seem not yet ready to help, those refugees who cannot recover their land or resettle in a temporary way at least. That is why problematic situations are sometimes observed; quarrels over land and property between the former owner and the second ones. Other refugees who don't remember their roots have nowhere to settle and they encounter serious problems. Some even prefer to go back to camps arguing that they may have come too early.

In conclusion, Burundi is experiencing hard land conflicts like many other African countries. Many factors are at the origin of the situation but the government has the major role to play in order to put an end to most land conflicts. Indeed, it is the law that makes the society organized; hence improvements in the law and implementation of laws must thus represent the major means to maintain social cohesion.

### **3.1.11 Human-centred environmental security in Africa: The link between environmental care and the creation of a more secure society**

*Jenny Clover, Institute for Security Studies (ISS), Pretoria, South Africa*

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Africa entered the 21<sup>st</sup> century facing a security and development crisis of immense proportions. It is the continent hardest hit by growing poverty and inequity - average life expectancy has declined from 50 to 46 since 1990 and in most of sub-Saharan Africa one in 10 children die before age five. It is threatened by the lack of access to resources: the loss of arable land, water scarcity, over-fishing, deforestation and loss of biodiversity present enormous challenges for sustainable development. War and violent conflict have resulted in massive displacement of people and diversion of financial resources away from vital sectors, posing a significant barrier to development. Increasingly violent and protracted this new generation of violence (fundamentally internal but with internationalised elements, and highly destructive) is particularly threatening, not only for the countries involved, but also more broadly for regional and international security. Currently some half-dozen African countries are suffering directly or indirectly from serious armed conflicts, among them the Democratic Republic of Congo, Burundi, Côte d'Ivoire, and the Sudan. These conflicts have affected many countries and have often drawn in neighbouring countries. More importantly, peace is often fragile, making it difficult to apply the term "post-conflict" to many countries.

#### **A changing world: Expanding concepts of security**

For many of Africa's peoples, the State has long since ceased to be the provider of security, physical or social. In fact, weak governmental institutions appear to be a more important cause on the causal pathway to conflict. The global environment has also reconfigured in a number of ways in the last 20 years with the whole landscape in which politics plays out having changed radically. With globalisation the concentration and centralisation of power has grown, and with it the geographic spread and degree of insecurity.<sup>124</sup> It must not be forgotten that globalisation implies exclusion as much as it does inclusion. The world is facing a global environmental crisis, and, inseparable from this, a crisis of growing global inequality and growing poverty. These urgent and unprecedented environmental and social changes pose huge challenges and all the signs are there indicating a need for society's cross-sectoral attention to the environment as an underlying security issue.

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### **So how do we respond to the question of what makes people in Africa secure?**

We have to adjust our thinking if we are to recognise and come to terms with the new challenges, to recognise that insecurity takes many forms. Approaches must be diverse, multi-dimensional and located at many levels – local through to international. This calls for a critical view of structures, institutions, and processes where these are seen to threaten or undermine people's security, as well as a more holistic concept of human security. Recognition that security threats cover a far broader spectrum<sup>1</sup> – among them resource scarcity, diseases, global warming, or religious fundamentalism – has increasingly gained credibility. Traditional security institutions – have begun to respond to the validity of this shift in security thinking, a paradigm shift that requires answers to the central questions of – *whose security, security from what, insecurity how?*

### **Environmental security**

As security researchers have moved away from narrowly defined militaristic understandings of threat, vulnerability, and response mechanisms, “environmental security” has become one of the critical areas on the security agenda, reflecting a common concern for the implications of environmental change. However, while the environmental movement has succeeded in providing the world with a new lens to look through as it seeks to define the requirements for security and development, the term environmental security has generated considerable confusion and contentious debate of how the environment and security are linked. Research on environment and security has failed to produce a commonly agreed definition or a common policy agenda, with both the traditional security community and the environmental community expressing some resistance to the use of the term, each for quite different reasons.

Debates have mainly been conceptual with the development of different schools of thought over the past 15 years. Priority to nature, seen in a “security of the environment” concept, an interpretation which emphasises securing the integrity of the environment as both primary referent and the security goal, is reflected in early research. A great deal of environmental change is directly and indirectly affected by human activities and conflicts. Exploring the links between the environment and security were first articulated (albeit implicit) in the 1960s with the problem of human-generated environmental degradation. In the 1970s analyses of the environmental effects of war and violent conflict, as well as the impact of conflict refugees, on the environment emerged.

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Questions of whether environmental problems are really security problems were answered by research which focussed mainly on environmental scarcity: the relationship between environmental degradation, depletion of renewable resources (water, land, forests) and violent conflict. More recently research has highlighted the importance of conflict arising from access to/control over non-renewable resources (gold, oil, diamonds) for strategic purposes. The term “New Wars” has been used to capture the changing nature of war, the gradual shift in the causes of conflicts, their duration and the increase in the incidence of regional conflicts. Ostensibly based on identity politics, statehood (control or secession), the control of natural and other resources, these conflicts are largely devoid of the geo-political or ideological goals that characterised earlier wars.

Implicit in these “greed or grievance” debates are that environmental factors can and should be integrated into traditional security affairs in so far as they threaten national interest. The issue then is not seen to be environmental degradation or scarcity *per se*, but the fact that it poses a security concern because of the potential for violence or conflict. This “*environment-and-security*” debate offers only a partial broadening of the security agenda: what is to be secured remains predominantly the survival of the state. Thus environmental insecurity becomes synonymous with environmental threats to the state.<sup>125</sup> Such an approach is consistent with conventional notions of national security, which do not necessarily guarantee the security of individuals and communities.

In contrast to the statist approach is the argument for a more interdisciplinary and integrative approach that sees environmental security as a crucial component of the broader concept of “Human Security”— it identifies the individual and, by extension, the collectivity, as the referent object of security. It has not necessarily—brought clarity, precisely because of the elasticity arising from a broader concept of environmental security. The relationship between the environment and security is complex one in which many factors play a role: cause and effect of tensions and vulnerabilities are multi-dimensional, and the links between the various components may be direct or indirect. Vibrant debate also reflects different concepts of nature and environment and what gets counted as environmental.—The danger of many approaches is that they risk dichotomising humans and nature. On the one hand environmentalism is often seen as just another special interest, a “supposed thing” out there which requires protection and for which technical fixes are promoted; on the other is the pre-eminence of human interests as if the environment did not matter. If one understands the notion of the environment to include humans, then the way we define problems alters and we arise at a reformulation of environmental security in terms of human security, and one which draws on the insights of ecological security. Jane Lubchenco appositely

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sums it up: “As the magnitude of human impacts on the ecological systems of the planet becomes apparent, there is increased realisation of the intimate connections between these systems and human health, the economy, social justice and national security. The concept of what constitutes ‘the environment’ is changing rapidly.”<sup>126</sup>

Firstly, I wish to explore the value of a reformulation of environmental security in terms of human security, and one which draws on the insights of ecological security. Examining ways in which the environment is connected to human security is an approach that focuses on three premises.

**The crucial role that social framings of the environment play.** What becomes an environmental issue cannot be assumed to be simply the extension of scientific understandings. Scarcity, for example, is determined by more than the mere physical limitations of a natural resource; rather it is frequently determined by specific political, socio-economic and cultural contexts. This calls for an understanding of how social and political framings are woven into both the formulation of scientific explanations of environmental problems, and the solutions proposed to reduce them.

People have always used nature to further their goals and this manipulation has resulted in a series of environmental problems. Our fate is bound up with risks that are deliberately taken – for the sake of benefits conceived in advance by means of technological mastery over nature. It is in exploring the significance of the social, political, economic and cultural factors in the production of hazards and risk that we reach an understanding of the structural causes of risks and hazards.

Responses to and engagement with nature are highly diverse, ambivalent and embedded in daily life. One culture may perceive nature as robust, another as fragile – and it is on these images of reality that we act. It is a question of interpretation. It is those perceptions that dominate, how they are constructed, and how political decision-making takes place in this context that informs and explains why certain actions are taken and who or what determined whether action is taken.

Two of the key factors that have contributed to tension and insecurity throughout the world are **poverty and inequity**. There are close and complex interconnections between people, the environment and livelihood opportunities in terms of access to natural resources, and vulnerabilities to environmental threats which are expressed in their overall impact on human survival, wellbeing and productivity. Environmental change has direct and often immediate effects on well-being and livelihoods. Insecurity often arises from conditions of inequality and impoverishment, such as is seen when political and economic power relations affect society-nature interconnections as evidenced by ‘resource capture’ and ‘ecological marginalisation’.

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**Scales.** The third premise is that environmental security problems must focus on the ecosystem level, not simply political boundaries. Creative solutions are called for; there is no place for traditional security responses where states cannot take unilateral action to attain and maintain the security of their own environment. Furthermore, while the challenge of environment and security is principally a challenge at the domestic level, it is a challenge common to the region, as well as for advanced industrialised countries which carry much of the responsibility for global environmental change.

Secondly, I wish to focus on the value of applying a Sustainable Livelihoods Framework as an analytical tool.

Assessing the nature of linkages between the environment and security is challenging because of the complexity of multiple interactions and feedbacks

- the environment is background to tensions, sometimes a channel leading to tensions, and sometimes it triggers tensions. This has led to calls to look more closely at two main research shortcomings
- the empirical and the theoretical - as much of the research, particularly as it relates to environmental change and conflicts - has been seen to be speculative.

Because livelihoods insecurity is an important factor in the causal chain leading to social disruptions and conflict, a Sustainable Livelihood framework serves as a valuable analytical tool. Poverty is not viewed as a uni-dimensional and static concept, but one that is multi-dimensional and dynamic. It also incorporates concepts of resilience, the counterpart of vulnerability – resilience that largely depends on assets and entitlements that can be mobilized in the face of hardship, demonstrating the intricate inter-connectiveness of human, social and environmental systems. It does this by providing a conceptual framework for understanding how people live, the interplay of various factors that determine behaviour, strategies and outcomes, and it helps identify the trends and factors in the micro, meso and macro environments that enhance or undermine their means of livelihood and their sustainability. Livelihoods are determined to a large degree by contextual factors operating at different levels, from local to global, that are both enabling or create vulnerabilities depending on the dynamic interplay between these various factors: economic, institutional, political, social, natural and the built environment.

When it comes to finding solutions, a decentralised approach which is inclusive of local scales, and acknowledges the value of local level knowledge, is critical. Implicit in this is a participatory approach to examining environment–security linkages: Local



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level knowledge is extremely important in understanding how environment interacts with social, economic and political systems, at all levels from the local to the global.

A major strength of the framework is that people are seen as dynamic actors, not as vulnerable and helpless victims, able to adapt to trends and cope with shocks. However, it is the (crucial) concepts of social and political capital,<sup>127</sup> of differentiation, applied in a livelihood framework that provides a nuanced understanding of the differences in power and voice, and the disparities in access and entitlement to resources that exist between households and individuals. In doing so it “sheds light both on the complexities in society and livelihood strategies, and on the dynamic interactions of conflict and cooperation, bargaining and negotiation, relative power and powerlessness that define social relations.”<sup>128</sup> It recognises that entitlements are affected by gender, and also that livelihood strategies do not necessarily entail a win-win scenario: the livelihood strategy of one household may bring positive results, but at the expense of another household.

Understanding the structures and processes of institutions, both formal and informal, is an important component of a livelihoods framework. The power relations that are embedded in these arrangements are critical to the social and political negotiation processes that determine access - restrictions and opportunities - to resources. In other words, the problem is not so much one of resource endowments or geography, but also a problem of institutions and governance. Inequitable access to resources, discriminatory pricing policies and lack of control are often more important than resource scarcity itself. Weak institutions of governance are often the more immediate triggers of environmental insecurity. In the case of conflicts over scarce resources, where institutions have the political will for peace, scarcity will not give rise to conflict, but if people want reasons for conflict, then resource scarcity easily provides ample reasons. Environmental differences lend themselves to adding to existing tensions, perpetuating a general sense of insecurity in a context of poor governance or political instability. Misinformation easily becomes a tool for antagonists and their supporters.

Insecurities for example that surround access to water and land, extend beyond simple access and include capital and other resources as well. In analysing the strengths and weaknesses of particular systems of land tenure, and their evolution, a sustainable livelihoods framework is most valuable. It is particularly useful when considering options for change, issues of access, of financial resources and social capital and the anticipated impacts on people's asset base. It helps to expose questions of who ultimately gets the effective command over making actual economic use of a resource and its products – who are the winners and who are the losers.

## **Conclusion**

The field of environmental security studies is still largely an emerging one. There are ambiguities, but this does not mean that we should not pay more attention to understanding environmental change and its relationship to human security. This is not an argument for a redefinition of international or national security, but for a greater appreciation of the nature of certain threats and of a more comprehensive approach to the politics of security. The emphasis also needs to shift away from focusing on conflict as an outcome of resource scarcity, to the prevention of resource scarcity, and to be more concerned with social disruptions than with violent conflict as the principal sources of insecurity. This calls for the urgent need for mitigation against the causes, and management of, environmental insecurities arising from threats such as degradation and climate change. Implicit in this is security of the environment, valuable in its own right and not merely as a set of risks, and as a crucial component of human security. Implicit in the term Human security is that it prioritizes achieving freedom from fear and freedom from want *urgently*. It also implies moving beyond a needs-based focus, to a rights-based focus.

What we currently have is environmental insecurity. It is arguably impossible to achieve environmental security as an absolute condition, not least because security is a highly relative concept. But what we need to work towards is the goal of sustainable security which integrates human, state and environmental security – in other words, making security more human and more sustainable. This is a process of ongoing monitoring and adaptation.

Implicit in a concept of environmental security which does not prioritise national security and the issue of conflict above the needs of those who are most environmentally insecure is recognising the importance of environmental cooperation – that is of not overlooking the potential for trust, harmony and cooperation arising from the nexus of security and environmental issues. Focussing only on threats overlooks the environmentally related opportunities available to improve human security.<sup>129</sup> Insights gained from this debate have important implications for practical action agendas, such as the role that the protection and responsible management of natural resources could play in preventing unequal patterns of resource distribution, of exploring mechanisms of governance, building institutional capacity and empowering local populations. We need to “seize upon the opportunities presented by the environment, in recognition of its inherent value, and its deep connections to human beings, societies and economies.”<sup>130</sup> The future imperative of coping with uncertainty, complexity and change is all we can be sure of.

### **3.1.12 Oxfam and land in post-conflict situations in Africa**

*ROBIN PALMER, Global Land Adviser, Oxfam GB, November 2004*

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#### **Introduction**

I was asked to write a paper on Oxfam's<sup>131</sup> strategy on land in post-conflict situations. To the best of my knowledge – and I think I should know – there is no such thing! Instead, there tend to have been a series of (very British) pragmatic responses to individual situations, highly dependent on local contexts. I don't believe that there is any need to apologise for this.

These days all organisations seem to undergo regular, in some cases almost constant, internal restructurings, and Oxfam is certainly no exception. In recent years we have sought to focus our programme work around specific aims and strategic change objectives, and have become much more assertive as a global campaigning organisation (e.g. [www.maketradefair.com](http://www.maketradefair.com)). Our work on land, a lot of which is documented in the website I manage on *Land Rights in Africa* ([www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights)) has taken a bit of a battering in this process. Land is not easy to campaign on in Western countries, and in the course of our programme restructuring into livelihoods, land was initially almost completely written out of our strategy in favour of 'power in markets' and 'women's labour rights'. It may be making a subterranean comeback however, as people belatedly recognise its critical importance to livelihoods and much else.<sup>132</sup>

Given the absence of an overall corporate Oxfam strategy on land in post-conflict situations, I intend to focus on 5 brief case studies of what we actually did in the following (roughly chronological) order – in Zimbabwe, Mozambique, South Africa, Rwanda and Angola.<sup>133</sup>

Before doing so, however, I need to state the Oxfam and its partners deeply resent the remorseless pressures for privatisation of land emanating from USAID. This has been a feature in Mozambique, where USAID has recently sought to undermine a highly progressive land law, and in Angola, where it has exploited the inexperience of civil society actors. Outrageously, very recently in Kenya it has been pressing other donors to withdraw their support for the Kenya Land Alliance, which is by far and away the most effective and constructive lobby group currently operating in a highly volatile climate.

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The Kenya Land Alliance (KLA), while not the product of a post-conflict situation, is an interesting case of an institution established by a range of actors at a time when political space for action on land was entirely closed, but which was created in the belief that thinking, analysing and planning were absolutely vital so that the Alliance would be in a strong position to intervene in the policy arena when that political space opened up, as it finally did in 2002. This is a prime example of intelligent forward thinking – and Oxfam was involved, with others, in the mobilisation which led to the creation of the KLA.

### **Zimbabwe**

Oxfam had been supporting organisations working in Rhodesia during the war, and it quickly moved to open an office in Harare following Zimbabwe's independence in 1980. Land issues had featured prominently in the rhetoric of the liberation struggle, but fairly rapidly dropped down the new Government's priority list. Oxfam focussed its priorities on supporting a range of local organisations seeking to help peasant farmers re-establish themselves on the land after the massive dislocation of the final years of the war. These included ORAP (the Organisation of Rural Associations for Progress), which worked in Matabeleland and became very well-known in development circles, the Zimbabwe Project, which helped war veterans re-establish themselves, and the influential Zvishavane Water Project, under its charismatic leader, Zephania Phiri.<sup>134</sup>

This kind of approach was entirely appropriate; it was very much 'hands off' and was premised on enabling such organisations on the ground, whose capacities and vision we thought highly of, to support local communities recover and develop after the ravages of war.

We made one specific intervention on land at the national level in 1989/90. This came about in the context of a Front Line States campaign which we were mounting, which sought to illustrate the destruction being wrought across the region by South Africa in its notorious (and genteelly worded) policy of 'destabilisation' and to argue the case for sanctions against South Africa. This latter got us into considerable hot water with the (then very conservative) British Charity Commissioners. In Zimbabwe, the 10-year constraints imposed by the Lancaster House Constitution of 1979 were about to come to an end, and Peter Nyoni, Oxfam's Country Representative, decided that there was need for some shaking up. So he asked me (I was then a Desk Officer for Zimbabwe and other countries) to come to Zimbabwe, interview key members of the Zimbabwean Government, and write a review of the first decade of land reform. This I did; it became a chapter in our Front Line States book,<sup>135</sup> was published in the

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journal *African Affairs* as 'Land Reform in Zimbabwe, 1980-1990'<sup>136</sup> and has recently been made available electronically.<sup>137</sup> I was told that it was recommended reading for successive British High Commissioners going to Harare!

The thrust of the article was highly critical of the Zimbabwean Government, for only paying serious attention to land issues when there was an election to be won, and of the British Government, for seeking to constrain any radical redistribution of land, which it seemed in those Cold War days to equate with Communism. The article concluded by warning that Namibia and South Africa would be next in line for such constraining treatment. So it proved, and the folly of such attitudes is being proved in the tragedy now unfolding in Zimbabwe. Currently, Oxfam is doing what little it can to prepare for what may be yet another post-conflict situation, which will almost certainly be more complex and difficult than that of 25 years ago.

## **Mozambique**

One of the most memorable experiences of my work with Oxfam, which I joined in 1987, was travelling in Mozambique in December 1992, a couple of months after Frelimo and Renamo signed a peace agreement in Rome. It was the sight of people making peace on their own, going home without waiting for official demobilisation, deserting both armies in droves, and being able for the first time in over a decade to do perfectly normal things in upcountry towns in Zambézia that was so memorable. I was then the Regional Manager for Mozambique, managing our Country Representative, Thabisile Mngadi. On that visit we made contact with Renamo local officials who proved to be significantly different from the stereotyped images we had expected. Thabi and I recognised that we needed to do everything we could at local levels (we worked in the Provinces of Zambézia, Niassa and Cabo Delgado) to cement the peace. Within a couple of weeks of my visit, our Zambézia Coordinator, Agostinho Chirime, had accepted an invitation to go to a Renamo zone to do a needs assessment. Within a couple of months we sent a nurse to work in a Renamo demobilisation camp. Much later we supported election monitors to help ensure that the October 1994 election was free and fair.

When I talked in London in January 1993 to a large audience at the Royal African Society on

*Mozambique, December 1992: Peace, Rain and Lunching with Renamo*, I stressed the critical importance of bringing Renamo into the peace building process at all levels, and the absolute need to deal - and be seen to deal - even-handedly with Renamo and Frelimo. This was something we had all stressed during our field visit,

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but it was sometimes difficult for some within the Mozambique Government and in the external solidarity movements to accept. Many of us had a somewhat one-dimensional view of the civil war which had just ended, and had failed to recognise that the war was often suddenly and brutally visited on local communities, who generally had no choice when it came to being press-ganged into one army or another, or that while Renamo had certainly been created and initially sustained by racist Rhodesia and apartheid South Africa, it was later able to exploit significant abuses by Frelimo in its Marxist-Leninist mission that 'for the nation to be born, the tribe must die'. So I pressed this 'reconciliation and cementing the peace' line at all the inter-agency and other meetings I attended in the UK and elsewhere through 1993/4. This was my 'line' on Renamo:

Renamo cannot be ignored, or wished away. They are signatories to the Rome peace agreement. Lasting peace will not come to Mozambique until Renamo is fully brought into the peace process. International agencies such as Oxfam have an important role to play in this process. Until the war ended it was not possible for agencies to work on both sides. Now it is, and it is crucial that they all work in a non-partisan way in responding to humanitarian needs so as to help consolidate the peace. In the initial stages, this may involve 'getting to know' Renamo, establishing a relationship of trust and then visiting the Renamo zones to observe, verify and, where appropriate, distribute and monitor. Renamo may need to be 'wooed' to trust international agencies and helped to feel that they are getting something positive out of the peace process, and so have less incentive to return to war. Encouraging, supporting and strengthening the peace process must be the major criteria by which Oxfam (and, hopefully, others) judge their proposed activities, in both relief and development, over the coming year. If the peace fails, there will be no development.

On land, it was remarkable to watch first women and children going home to plant before the rains came at the end of 1992, and later to witness the remarkable degree of reconciliation at the local level. When I asked how communities were coming to terms with the return of ex-combatants and of individuals known to have committed atrocities, the responses were overwhelmingly positive. This perhaps reflected the fact that people often had very little choice about which side they found themselves on; in essence Frelimo held the garrison towns (into which international agencies poured help, usually in the form of seeds and tools for the displaced), while Renamo held much of the countryside.

In my tour report of December 1992, I noted with respect to land that there were significant developments in the form of former Portuguese settler owners seeking to regain their property, which had been nationalised at independence in 1975, and of elite interests seeking to lay claims to land (especially in Zambézia) in an extremely fluid situation. 'At this moment', I wrote, 'there is a legal nightmare and great confusion about whose title to land is most valid.' Those warnings proved prescient and it was not long before Oxfam International lent its support to lobbying for a progressive land

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law, and then campaigning to spread awareness of its existence and what communities needed to do in order to claim those rights. I have written more fully about that process elsewhere, and this quote comes from my 2003 article in the *Journal für Entwicklungspolitik (JEP)*:<sup>138</sup>

In summary, as soon as the civil war ended in 1992, the Wisconsin Land Tenure Center and USAID were again busy pushing privatisation of land, just as they had done in Uganda. Mozambique clearly faced huge problems of reconstruction, having suffered massive destruction during a war which had displaced millions of people. There were concerns around competing claims to land as people returned to a countryside much of which had previously been unsafe, as a large number of concession claims were made by South African and other speculators, and as plans were mooted to settle in parts of Mozambique some Afrikaner farmers who had difficulty coming to terms with the new South Africa. Frelimo was also busy transforming itself from Marxist-Leninism to neo-liberalism in the wake of the collapse of its former Soviet ally. In this somewhat unpromising situation, to which should be added a long history of highly directive top-down governance, there emerged a quite remarkably open and consultative process of law making, culminating in the 1997 Land Law (*Lei de Terras*) which was followed by an equally remarkable campaign of public awareness (*Campanha Terra*) to help people understand their new rights under that law... co-ordinated by the respected academic José Negrão, and supported by a range of international NGOs including Oxfam.

More recently, in 2002, in response to pressures to undermine the Land Law from local elites and USAID, Oxfam commissioned the veteran Mozambique watcher Joe Hanlon to conduct an investigation and write a report to raise awareness of this situation. This he did in a work entitled *The land debate in Mozambique: will foreign investors, the urban elite, advanced peasants or family farmers drive rural development?*<sup>39</sup> Recently, being asked my advice by Rosário Advirta, Oxfam International Advocacy Coordinator in Angola, I tried to be encouraging by suggesting that while in Mozambique 'we' won some of the early rounds in the fight but are now in serious danger of losing the later rounds, in Angola, just possibly, the reverse might prove to be the case.

## South Africa

During the late apartheid years, Oxfam (and many other international NGOs) supported local land sector NGOs such as the National Land Committee and some of its regional affiliates, and other organisations, like the Legal Resources Centre, which together attempted to resist forced removals (and many other abuses) through a combination

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of political and legal struggles. When apartheid was in its death throes, Oxfam supported groups working on policy and constitutional issues as well as continuing to support local advice centres. When apartheid was finally overthrown, international NGOs faced difficulties about where to focus support and attention in the 'new South Africa'. Most donors poured money into the new government, which many former struggle NGO leaders joined. There was an assumption (which proved false) that, by contrast to its neighbours, the local NGO sector was very strong and so needed little support. So, after a decent interval, Oxfam withdrew its funding from land sector NGOs and played no part in supporting the new, highly ambitious land reform programme, except at a very local level in Kwa-Zulu Natal after we moved our office from Johannesburg to Pietermaritzburg. (We have recently moved back to Johannesburg and are struggling with how best to engage in poverty issues at the national level).

I had two personal (i.e. non-Oxfam) engagements with both the land reform process as a whole and with the land reform programme of the Legal Resources Centre, which I reviewed.<sup>140</sup> In 1999, DFID asked Lionel Cliffe and I to join a South African team reviewing donor support to the land reform programme. We did our work immediately after an election and the change of minister from Derek Hanekom to Thoko Didiza, at a moment when all past policies seemed to be on hold and there was considerable disarray and tension within the Department of Land Affairs. It was clear that the programme was in great difficulties, but Lionel and I gently tried to suggest that land reform takes time and that total despair was premature. But many parts of rural South Africa and the small towns that I visited (mostly in Northern Cape and Kwa-Zulu Natal) seemed far less unreconstructed than post-war Mozambique a decade earlier. The recent emergence of a Landless Peoples Movement (LPM), drawing some of its inspiration from Brazil's MST, renowned for its land occupations, and from Robert Mugabe's 'fast track' seizure of farms in Zimbabwe, may indicate the dangers of leaving redistribution to the mercy of market forces.

### **Rwanda**

Post-genocide Rwanda self-evidently faced a whole plethora of reconstruction challenges. Few were more daunting than that of land. The country has the highest population density on the continent; successive pogroms had forced huge numbers to flee into exile, and generational conflicts over land had played a significant role in the 1994 genocide,<sup>141</sup> in which over a million people were killed. Trying to be even-handed (as in Mozambique) was clearly going to be extremely difficult. Oxfam got engaged for the initial few years, with particular emphasis on the new government's villagisation policy. Oxfam's Regional Manager for East Africa, Ian Leggett, was



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approached by Patricia Hajabakiga, Secretary-General in the new Ministry of Lands etc, MINITERE.<sup>142</sup> The two had known each other in Tanzania, where both had worked in the NGO sector. Anticipating this, in 1998 Ian had commissioned through me a desk study of previous attempts at villagisation in Ethiopia, Tanzania and Mozambique. These countries were chosen with some care; the first two were allies of the new RPF Government. Christy Cannon Lorgen undertook the research and wrote a report, which was interesting both in its content and in the vehemence of the reactions from some of the people she interviewed who had been involved in villagisation programmes in those countries.

The intention of this piece of research was both to demonstrate what had happened elsewhere and to alert the Rwandan Government to possible pitfalls. Of course we were not blind to the politics and possible unstated reasons for the policy (social control). The handling and presentation of Christy's report required obvious sensitivity. In the meantime, in Rwanda Oxfam had come in contact with RISD (Rwanda Initiative for Sustainable Development), a new local NGO committed to participative approaches. Oxfam supported its surveys (April-June 1999) of the *implementation* (the policy could not be challenged) of villagisation in a range of different zones. Its Director, Annie Kairaba, was close to Patricia Hajabakiga and obviously needed her support and encouragement to ask any questions at all on such a sensitive subject. Also, having lived for many years in Tanzania, Patricia was well aware of the issues highlighted in Christy's report. At the end of 1999 we held a workshop which was intended to publicise both the RISD research and Christy's report and to bring villagisation into the open as a subject for legitimate discussion. We were seeking to target local and national decision makers and a number of Rwandan organisations. We hoped to create space for subsequent activities. The sensitivities certainly strained the relationship between RISD and Oxfam; there were complex discussions about whose workshop was it, the planning was difficult, and some things were off limits, such as tenure and compensation. The focus was on implementation and lesson learning, rather than criticism of policy. It was very well attended, there was lots of interest and keen participation, though Government people were tense and nervous.<sup>143</sup>

This was a cautious first step. It was followed by a workshop on the draft National Land Policy in 2000, in which RISD and Oxfam were also involved.<sup>144</sup> I had written a critique of the policy and shared land policies from other countries. Soon after this Oxfam, exhibiting a rapid turnover of Country Representatives, withdrew from national land issues to engage in conflict management and peace building work at a local level in its programme areas in Ruhengeri and Umutara.

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I made my last visit in 2001, as a DFID-funded consultant, to support capacity building for LandNet Rwanda, of which RISD was a key member, and to help plan a workshop on *Mainstreaming Grassroots Consultations into the National Land Policy and the PRSP*.<sup>145</sup> Here is an extract from my report to DFID:

This was the third occasion on which I had attended a workshop on land in Rwanda. The previous ones were on the *National Land Policy* (November 2000) and on *Land Use and Villagisation* (September 1999). As I said when introducing my paper to this third workshop, it is clear to me that considerable progress has been made in gradually opening up space in which the highly contentious and sensitive issue of land in Rwanda can be publicly discussed.

The first workshop was characterised by considerable nervousness on the part of Government and other participants, and even of the organisers (RISD and Oxfam). Its real purpose was to make villagisation (more specifically its implementation) an issue which could legitimately be talked about in public. The second workshop, in which MINITERE (the Ministry of Lands, Human Resettlement and Environmental Protection) tabled the first draft of its National Land Policy and opened it up to some comment and debate, was a good deal more open and relaxed than the first. This third workshop was very much a civil society affair and was notable for quite open and honest discussions, particularly on the second day when, at my prompting, people began to speak in Kinyarwanda (rather than in English or French).

Obviously there are very particular constraining factors in Rwanda, and civil society is still feeling its way and cannot be seen to be moving too far ahead of government. But the change over this two year period is very noticeable to an outsider, and something which is greatly to be welcomed. In the workshop report, you can find words such as corruption, greed, fear, mistrust, inequality, and phrases such as lack of participation and dialogue, and inequitable distribution.

For me one of the real pluses was the fact that the workshop was dominated by Rwandans, to the extent that on the second day Peter Brinn, Christine Piontek of IRC, and myself were the only foreigners present – though a number of others had attended sessions on the opening day. The fact that Rwandans (representing both local and international organisations) were in the ascendancy was to me a very positive sign, and was again something which contrasted strikingly with the workshops in the two previous years

One of the less overt but nonetheless important purposes of the workshop was to publicise the work of LandNet and land issues across a broad section of Rwandan civil society, in order to attract more members and greater interest and involvement. Time alone will tell how successful this will prove.

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A final note is that I strongly urged that DFID spend some of the money it was lavishing on Rwanda to provide much needed technical support to MINITERE. This they agreed to do. The very experienced land specialist Harold Liversage was recruited, and I was delighted to hear that he took Patricia and Eugene Rurangwa, Director of Lands, to look at how land conflicts were being handled in Mozambique and Kwa-Zulu Natal, where he had previously worked. This struck me as both a highly intelligent use of technical assistance and useful exposure to other post-conflict situations.

### **Angola**

National land issues were relatively slow to emerge in post-conflict Angola, following the cease fire agreed between the MPLA and UNITA in April 2002. This was almost certainly in order to allow - before a new election could be held - the elites on both sides to intensify the process of land grabbing they had begun in some areas during the war. The Angolan Government is acknowledged to be one of the most corrupt in the world, while civil society is extremely weak and inexperienced. But with Oxfam International support and encouragement a land network, *Rede Terra*, has taken shape and over the past two years has sought to engage with government and donors in order to try to introduce some checks and balances in favour of the poor. I was very pleased to hear that Oxfam had been prominent in supporting *Rede Terra*

and I found myself from time to time engaged long distance in this process, writing a critique of the draft land law (which had emerged from a highly secretive process) and trying to bring relevant experience from elsewhere, especially from Mozambique, and from FAO, which has a presence in Angola – and considerable relevant external expertise in the form of Paolo Groppo. In my comments on the atrocious draft land law, I stressed:

The need for relevant civil society and donor actors to seek out allies in different levels of government who share some of their concerns. The need for rural communities to assert their 'customary' land rights as communities and to have those rights affirmed by government. (This should proceed regardless of what happens to the draft land law).

The need for concerned actors to support communities to assert these rights and for those actors to build alliances at different levels (national, provincial, local).

I suspect that as a result of staff changes Oxfam International took its eye off the ball at critical moments, allowing *Rede Terra* to fall too heavily under the influence of USAID. But a recent (and current) advocacy officer, Rosário Advirta, has taken a keen interest in land issues and has strongly supported *Rede Terra* in its campaign

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*Por uma Justa Lei de Terras* (Towards a fairer Land Law), aimed at pointing out the problems the draft law would create if it remained unaltered. Last year I helped to bring two of its members to a workshop in Pretoria on women's land rights in Southern and Eastern Africa, and the exchange appeared to be mutually beneficial. But my attempt to get a key person from Mozambique to offer training and support to the Angolans came to naught.

In June 2004 Rosário reported <sup>146</sup> that:

In spite of civil society weakness, there has been some mobilisation around the land issue. For example, *Rede Terra* in Luanda, *Forum Terra* from Huíla and some smaller coalitions and associations, in both rural and urban communities, have been following some of the legal concerns raised in various fora and also unfair practices against the poor.

From September 2003 to March 2004, *Rede Terra* consulted rural citizens on the draft law. This consultation, supported by Oxfam International, started with the creation of a manual explaining in clear terms, and in the principal national languages, what questions arose from the project. Activists were then trained, and the process of consultation was initiated in selected communities in 10 of the country's 18 provinces.

On 8 April *Rede Terra* sent an open letter and a position statement to the National Assembly, accompanied by the report with the results of the consultation with the communities. At the same time there was also participation in seminars and debates on Luanda radio stations.

Following the consultation process, *Rede Terra* and other stakeholders made submissions to commissions of Parliament based on the findings of the studies and opinions collected from diverse experts. The Campaign took various forms, including a Gala held on 16 April, the use of T-shirts and stickers for cars or shop windows, distributed in Luanda and in several other Provinces, and participation by members of the network in ongoing debates on these issues. *Rede Terra* is planning to continue to improve the Campaign through other tools in order to have a wider impact, particularly outside Luanda.

In recent months the process of actually passing the Land Law (*Lei de Terras*) through the Assembly took the normal highly secretive route, designed to keep everyone guessing. *Rede Terra* and Oxfam International have hung in there and apparently won some concessions here and there, with the draft presented in December 2003 showing considerable improvements on earlier versions, including recognition of and partial protection of the traditional rights of rural communities. But the extent that the law will either be enforceable or seriously address growing land conflicts in both urban and rural areas must remain seriously in doubt. For example, all citizens, families

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and communities are expected to complete the official process of legalising their land tenure situation (i.e. getting their 'titles') within one year. In the capital, the 'Clean Luanda' government campaign is seen by many as 'fighting the poor, not poverty', as widespread and often violent slum evictions continue and families in rural areas continue to be dispossessed of their land, but little is known about this.

But a serious attempt has been made to consult with communities and to persuade the Angolan Government to take a long term perspective and avoid sowing the seeds of future conflict - a phenomenon with which Angolans have been all too familiar for far too long.

Indeed, as Allan Cain, long-time Director of the urban NGO Development Workshop, has warned:<sup>147</sup>

Land is emerging as the most critical flash-point of conflict, as displaced persons seek settlement sites in rural and urban districts alike...The urban poor are left in a position of extreme vulnerability, with weak tenure rights over the land they occupy, and risk being turned into illegal occupiers... Mass expropriation of land occupied by poor urban families, with inadequate financial compensation, is becoming a new feature of post-conflict urban development in Angola...

The alienation of the urban poor from lands that they have lived and worked on for many years is likely to produce serious civic conflict in the years to come, unless the Government develops policies that recognise customary and existing occupational rights.

## **Conclusions and lessons**

Writing this paper, in an hotel room in Lusaka where I have come, with others, to confront the dangerous myth that

'there is no land problem in Zambia', has perhaps been both something of a personal indulgence, but also an interesting voyage of discovery, reflection and learning. What kind of conclusions and lessons is it possible to draw?

I made the point at the very beginning that there is no Oxfam strategy as such in dealing with land in post-conflict situations, but there are a number of common themes which have run through this narrative. Among them are:

The need to do everything you can, at all possible levels, to cement the peace.

The extent to which any organisation like Oxfam can do this will of course depend on its past track record, its resources and competencies. In Mozambique, Oxfam had

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been big players in the emergency (i.e. we had spent lots of money) and had always tried, alone I think among international NGOs, to work through government structures (DPCCN), however fragile they might be, and however frustrating that could be at times. This gave us a degree of credit and credibility which could be exploited for peaceful purposes.

### **The need to be – and to be seen to be – even-handed.**

This is part of the humanitarian imperative, and doubtless countless books and theses have been written on the subject. But it is critically important to do this in really practical and demonstrable ways at all levels.

### **The need to adopt a pro-poor, long-term perspective on land issues.**

A pro-poor perspective almost goes without saying, but needs to be complemented by taking a long-term perspective in the lobbying and campaigning work that was / is a feature in both Mozambique and Angola. This almost always, as here in Zambia as I write, comes into conflict with the short-term horizons of politicians anxious for re-election and, as in Angola, also keen to indulge in unrestrained rural and urban land grabbing and slum clearances.

### **The need to build capacity within civil society.**

This is a familiar refrain and illustrated in the encouragement and support both to the kind of networks described in South Africa, Mozambique, Rwanda and Angola, and also to the kind of NGOs like ORAP in Zimbabwe which worked on land as only a part of their broader objectives of post-war reconstruction and development. (Oxfam played an important role in helping Sithembiso Nyoni to found ORAP).

The need for awareness campaigns to help make women and men become aware of what rights they already have or may be about to acquire.

This is always the case with land issues, but is perhaps particularly relevant in post-conflict situations, when communities have often been displaced and there are therefore likely to be immediate competing claims to land, and where gender issues need to be addressed much more seriously than they usually are.<sup>148</sup> Again, experiences in Mozambique, South Africa and Angola illustrate this need for consciousness raising. In Rwanda the issues are obviously even more sensitive and complex, in part because of the country's history, in part because some historical claims to lands are clearly impossible to meet.

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### **The need to build capacity within government policy making and planning.**

This means establishing and reinforcing trust, offering critical but constructive comment on e.g. draft land policies, sharing relevant information and experiences from elsewhere, e.g. on the *Land Rights in Africa* website, and encouraging a genuine dialogue with civil society actors. I have mentioned the particular case of Rwanda, which called for extreme caution and sensitivity. However, in this context I fully acknowledge Johan Pottier's warning<sup>149</sup> that:

Hidden from the (chosen) outside expert's gaze is any detailed consideration of real-life scenarios and their complicating factors, such as the existence of a strong public discourse of morality through which policy directives are locally (re)interpreted. Also hidden from view is the commonly high degree of political autonomy at the local level... policy arguments may contain subtexts to strengthen the legitimacy of the post-genocide regime in power. Newcomers to Rwanda do not detect these subtle manipulations.

The need, in politically sensitive environments, to work at creating space in which land issues, which are always highly emotive, can be discussed.

Here too gaining and retaining trust is obviously a critical factor and the Rwandan case described earlier well illustrates this kind of process.

### **Last, individuals really can make a difference.**

At all levels individual relationships, established on the basis of previous contacts and collaboration, of building good rapport and trust, can really bring about significant

change for the better. In my experience, individual relationships can play an absolutely pivotal role in negotiating land issues.

### **3.1.13 Aperçu Surles Conflits Fonciers Ruraux d Ans Lenord Kivu**

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*Par Christol Paluku Mastaki*

## **Summary**

The Province of North Kivu, in the eastern Democratic Republic of Congo (DRC) is composed of nine major tribes who customarily occupy different territories: the Bahunde, Banande, Bakumu, Batembo, Banyanga, Barega, Bakusu, pygmies and Kinyarwanda speaking populations (Tutsi and Hutu).

A certain similarity is found in the organization of all these tribes, particularly in terms of land tenure systems. The land belonged to the clan, or to the tribe and it was the

*Mwami*(chief) or his nobles who were responsible for distributing land to the members of the community. This customary system was maintained until the proclamation of the land law in 1973.

Our paper concerns conflict over land in rural areas. Recently, land conflicts have become common in North Kivu Province; however, we have to remark that they are not recent. During the colonial period, the colonial administration gave plots to agricultural or livestock

'societies' or to colonial farmers but usually only after the permission of the Mwami of the area. Nevertheless, because of land scarcity, some chiefs whose land was expropriated by the colonial administration were disgruntled. There have been even conflicts among the population of the same ethnic groups in Beni and Lubero territories.

Since the 1990s, the Democratic Republic of Congo (DRC) in general, and the province of North Kivu in particular has known an unprecedented crisis and a complex vicious circle of political violence. Ethnic conflicts across much of the country were exacerbated by the presence of a million Rwandan refugees in 1994, which was followed by two armed conflicts lead by the *Alliance Démocratique pour la Libération du Congo*

(AFDL) in 1996 and the

*Rassemblement Congolais pour la Démocratie* (RCD) in 1998. These troubles have had negative impacts on the land rights of rural communities and on the environment.



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The political authorities have been involved in dispossessing many from their land and are implicated in the current legal insecurity of land rights.

It is this insecurity that has accentuated land conflicts, between members of rural communities (smallholders who don't know the law and are easily deprived of land rights); or between smallholders and big landowners (businessmen or politicians who know the law and possess title deeds to land); or between those who manage the protected areas (e.g. National Parks) and local populations.

For most of the rural population, these problems are part of a broader situation of poor governance, notably by the army and the police, the judicial sector and the land cadastre service. These difficulties are also linked to the slow progress of development in the region, and high levels of poverty which are exacerbated by the absence or insufficiency of available land for cultivation or livestock herding. Marginalization of rural communities, who feel abandoned by the authorities, is another factor.

After the presentation of the context and the weaknesses of the modern land law and administration system in the Democratic Republic of Congo, the paper discusses the nature of land-related conflicts (historic and current), and attempts to explain the specific character of conflicts in different areas. Finally, recommendations for actions by the Congolese government, and international organizations are presented.

## **Resume**

Le Nord – Kivu comprend 9 grandes tribus réparties dans ses différents territoires : les Wanande, Bahunde, Bakumu, Batembo, Banyanga, Barega, Bakusu, Pygmées et des populations Rwandophones (Tutsi et Hutu).

Une certaine ressemblance se dégage dans l'organisation de toutes ces tribus, en particulier dans le domaine foncier. La terre appartenait au clan ou à la tribu et c'est le Mwami ou encore ses notables par délégation qui procédaient à sa répartition aux membres de la collectivité.

Ce mode d'attribution fut conservé jusqu'à l'avènement de la loi foncier de 1973.

Notre présentation ne concerne que les conflits fonciers dans les milieux ruraux.

Si, à nos jours, les conflits fonciers ont pris une grande ampleur dans la province du Nord Kivu, il faut remarquer qu'ils ne sont pas récents. A l'époque, après avis favorable du Mwami du lieu, la colonisation, l'administration coloniale attribuait des terres domaniales à des sociétés ou à des colons. Par manque de terre, certains chefs expropriés par l'administration coloniale ont été mécontents. Il eut même des conflits entre les populations des mêmes ethnies dans le territoire de Beni et de Lubero.

Depuis les années 90, la République Démocratique du Congo (RDC) en général, la province du Nord Kivu en particulier a connu une crise sans précédent et un cercle vicieux complexe de violence politique. Tout le territoire congolais a été caractérisé par des conflits ethniques sans égales et la présence de milliers de réfugiés rwandais en 1994, suivi de 2 conflits armés successifs de 1996 mené par l'Alliance des Force Démocratiques pour la Libération du Congo (AFDL) et de 1998 par le Rassemblement Congolais pour la Démocratie ( RCD). Ces troubles ont eu des effets néfastes sur les droits de propriété foncière des populations rurales et sur l'environnement. Les instances politiques ont été interférées dans la dépossession et l'insécurité juridique de jouissance sur la terre.

Ce qui a accentué l'envergure des conflits fonciers qui opposaient, d'une part, des populations rurales (petits exploitants des terres qui ignorent la loi et qui sont démunis des titres fonciers) entre elles, soit celles-ci et les grands exploitant des terres (opérateurs économiques ou politiciens qui connaissent la loi et qui détiennent des titres fonciers), et d'autre part, les gestionnaires des aires protégées et les populations riveraines.

Pour beaucoup de ruraux, la préoccupation est liée à l'attitude oppressive des services publics notamment l'armée et la police, le service judiciaire et le service de cadastre qui se caractérisent par la spoliation des terres.

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La difficulté est aussi liée à la privation d'accès à la terre dans beaucoup des terroirs et du retard de développement social. Aussi, la pauvreté se traduit par l'absence ou l'insuffisance des terres disponibles pour l'agriculture, l'élevage...mais aussi par la marginalisation de communautés rurales qui ont le sentiment d'être délaissées par les autorités.

Après la présentation du contexte et les faiblesses du système foncier en vigueur en République Démocratique du Congo, nous nous sommes attelé à présenter l'état de lieu des conflits fonciers (conflits anciens et conflits actuels), cela, en essayant de ressortir la spécificité de chaque territoire pour finir par les recommandations qui s'adressent à l'Etat congolais et aux Organisations internationales et aux ONG internationales.

# 1. Contexte et Breve Presentation de la Province du Nord Kivu

## *1.1. Brève présentation de la Province du Nord Kivu<sup>150</sup>*

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### Summary

The Province of North Kivu, in the eastern Democratic Republic of Congo (DRC) is composed of nine major tribes who customarily occupy different territories: the Bahunde, Banande, Bakumu, Batembo, Banyanga, Barega, Bakusu, pygmies and Kinyarwanda speaking populations (Tutsi and Hutu).

A certain similarity is found in the organization of all these tribes, particularly in terms of land tenure systems. The land belonged to the clan, or to the tribe and it was the *Mwami* (chief) or his nobles who were responsible for distributing land to the members of the community. This customary system was maintained until the proclamation of the land law in 1973.

Our paper concerns conflict over land in rural areas. Recently, land conflicts have become common in North Kivu Province; however, we have to remark that they are not recent. During the colonial period, the colonial administration gave plots to agricultural or livestock 'societies' or to colonial farmers but usually only after the permission of the Mwami of the area. Nevertheless, because of land scarcity, some chiefs whose land was expropriated by the colonial administration were disgruntled. There have been even conflicts among the population of the same ethnic groups in Beni and Lubero territories.

Since the 1990s, the Democratic Republic of Congo (DRC) in general, and the province of North Kivu in particular has known an unprecedented crisis and a complex vicious circle of political violence. Ethnic conflicts across much of the country were exacerbated by the presence of a million Rwandan refugees in 1994, which was followed by two armed conflicts lead by the *Alliance Démocratique pour la Libération du Congo*

(AFDL) in 1996 and the *Rassemblement Congolais pour la Démocratie* (RCD) in 1998. These troubles have had negative impacts on the land rights of rural communities and on the environment. The political authorities have been involved in dispossessing many from their land and are implicated in the current legal insecurity of land rights.

It is this insecurity that has accentuated land conflicts, between members of rural communities (smallholders who don't know the law and are easily deprived of land

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rights); or between smallholders and big landowners (businessmen or politicians who know the law and possess title deeds to land); or between those who manage the protected areas (e.g. National Parks) and local populations.

For most of the rural population, these problems are part of a broader situation of poor governance, notably by the army and the police, the judicial sector and the land cadastre service. These difficulties are also linked to the slow progress of development in the region, and high levels of poverty which are exacerbated by the absence or insufficiency of available land for cultivation or livestock herding. Marginalization of rural communities, who feel abandoned by the authorities, is another factor.

After the presentation of the context and the weaknesses of the modern land law and administration system in the Democratic Republic of Congo, the paper discusses the nature of land-related conflicts (historic and current), and attempts to explain the specific character of conflicts in different areas. Finally, recommendations for actions by the Congolese government, and international organizations are presented.

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La province du Nord Kivu, une des provinces de République Démocratique du Congo, est limitée à l'Est par les Républiques de l'Ouganda et du Rwanda (sud-Est), au Nord et à l'ouest par la province orientale, au Sud-ouest par la province du Maniema et au Sud par la Province du Sud – kivu. Sa superficie est de 59.631 km. Elle comprend 6 territoires qui sont : le territoire de Beni, le territoire de Nyiragongo, le territoire de Lubero, le territoire de Rutshuru, le territoire de Masisi, le territoire de Walikale. On dénombre au Nord Kivu 17 collectivités (chefferies ou secteurs), 95 groupements et des localités qui varient entre 900 et 1000 (cfr. Division Provinciale du Nord Kivu de l'intérieur).

Le Nord'– Kivu comprend 9 grandes tribus réparties dans ses différents territoires : les Wanande, Bahunde, Bakumu, Batembo, Banyanga, Barega, Bakusu, Pygmées et des populations Rwandophones (Tutsi et Hutu).

Une certaine ressemblance se dégage dans l'organisation de toutes ces tribus, en particulier dans le domaine foncier. La terre appartenait au clan ou à la tribu et c'est le Mwami ou encore ses notables, par délégation, qui procédaient à sa répartition aux membres de la collectivité.

Ce mode d'attribution fut conservé jusqu'à l'avènement de la loi foncier de 1973. Notons tout de même que pendant la colonisation, l'administration coloniale donnait des terres domaniales à des sociétés ou à des colons mais après avis favorable du Mwami du lieu.

Des conflits fonciers sont nés, d'une part, soit au sein des populations rurales (petits exploitants des terres qui ignorent la loi et qui sont démunis des titres fonciers), soit entre celles-ci et les grands exploitant des terres (opérateurs économiques ou politiciens qui connaissent la loi et qui détiennent des titres fonciers), et d'autre part, entre les gestionnaires des aires protégées et les populations riveraines.

### I.2. Contexte

Depuis les années 90, la République Démocratique du Congo (RDC) en général, la province du Nord Kivu en particulier a connu une crise sans précédent et un cercle vicieux complexe de violences politiques, elle a été caractérisée par des conflits ethniques sans égales et par 2 conflits armés. Ces troubles ont eu des effets néfastes sur les droits de propriété foncière des populations rurales et sur l'environnement. Les instances politiques ont interféré dans la dépossession et l'insécurité juridique de jouissance sur la terre.

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Actuellement, le pays traverse une période de transition lente et fragile qui n'exclut pas un optimisme de paix et de sécurité favorable à la reconstruction nationale, à la relance du développement économique du pays et à la lutte contre la pauvreté.

La pauvreté dans la province du Nord Kivu est associée avec un accès limité aux ressources naturelles, aux compétences et capacités des ressources humaines et à l'état des infrastructures qui empêchent les ruraux de bénéficier des progrès du développement économique. La pauvreté est aussi liée à la privation d'accès à la terre dans beaucoup de terroirs et du retard de développement social. Aussi, la pauvreté se traduit par l'absence ou l'insuffisance de terre disponible pour l'agriculture, l'élevage...mais aussi par la marginalisation de communautés rurales et elles se sentent délaissées par les autorités. Pour beaucoup de ruraux, la préoccupation est liée à l'attitude oppressive des services publics notamment l'armée et la police, le service judiciaire et le service de cadastre qui se caractérisent par la spoliation des terres.

Depuis plus d'une décennie, la province du Nord Kivu connaît des difficultés d'ordre divers qui peuvent être classées de manière suivante<sup>151</sup>:

- les effets de la suspension de la coopération bilatérale en 1990 et l'arrêt brutal des certains projets sectoriels (élevage, agriculture, environnement) de suite de mauvaise gestion et corruption du régime Mobutu ;
- les effets cumulés du déclin économique aggravé par le séjour prolongé des réfugiés rwandais à cause du génocide au Rwanda en 1994 ;
- l'abandon par le pouvoir public de la préoccupation de plusieurs secteurs de la vie sociale et communautaire et l'absence d'une politique de protection sociale de la population ;
- l'endommagement de plusieurs infrastructures communautaires de base par les actes de vandalisme et les pillages, les conflits ethniques et fonciers, les conflits armés internes et conflits armés internes et internationalisés ;
- le déséquilibre environnemental de suite de l'exploitation illicite des ressources naturelles ;
- l'exode rural et les mouvements des populations ;
- la faible production alimentaire en milieu rural à cause des conflits ethniques et conflits armés causant ainsi les déplacements des personnes ;
- la faible assistance aux personnes déplacées dont la province a le nombre le plus élevé au niveau national (plus de 713.000 déplacés) (OCHA, avril 2004) ;
- la dégradation des routes et la vétusté des infrastructures administratives ;
- la présence des milices et des insurgés de Laurent Nkunda.

## **II. Les Systeme Foncier en Vigueur en R. D. Congo : Source de conflits fonciers**

Les règles et procédures officielles actuelles en matière foncière sont définies dans la loi n° 73-021 du 20 juillet 1973. Ce texte législatif s'articule autour des principales dispositions suivantes<sup>152</sup>:

1. L'Etat possède toutes les terres. Elles sont réparties en domaine public et domaine privé de l'Etat. Seules les terres du domaine privé sont concessibles.
2. Les droits fonciers accordés par l'Etat aux personnes physiques ou morales le sont sous forme de concession. Celle-ci représente un droit de jouissance sur la terre. Ces concessions peuvent être perpétuelles ou ordinaires. Les droits de propriété foncière légalement obtenus avant la loi de 1973 sont automatiquement convertis en concession perpétuelle pour les personnes physiques de nationalité congolaise, à condition qu'il y ait eu une mise en valeur effective des terres, et en concession ordinaire pour les étrangers et les personnes morales.
3. Les terres occupées par les communautés locales et exploitées individuellement ou collectivement, conformément aux coutumes et usages locaux, deviennent des terres domaniales (art. 385 et 386). Mais les droits de jouissance régulièrement acquis sur ces terres seront réglés par une ordonnance du Président de la République (art. 387).

Par cette procédure légale prévue par l'article 387, le législateur congolais protège le premier occupant de la terre.

Malheureusement, force est de constater que cette ordonnance n'a jamais été promulguée. Ce qui laisse les droits fonciers coutumiers dans un statut confus et indéterminé. Quoi de plus choquant pour un paysan d'apprendre que la terre sur laquelle ont été enterrés ses ancêtres et, par conséquent, lui appartenant, n'est plus sien et qu'elle appartient à une autre personne brandissant un titre foncier établi par une autorité administrative?

L'échec de l'Etat à définir jusqu'à ce jour la nature légale des droits fonciers appliqués aux terres communautaires, concrètement, les règles d'accès et les structures d'exploitation compétentes, a institutionnalisé l'incertitude, alors que ces règles sont clairement prévues dans l'article 385 de cette loi.<sup>153</sup> On peut conclure que, juridiquement, toute terre cultivée par des paysans se trouve dans un régime transitoire.

Cette loi n'a jamais été revue et elle est toujours d'application. Son introduction est un moment important dans le relevé des contours sociaux des provinces du Kivu. Plus précisément, la loi de 1973 a catalysé l'exclusion sociale et le problème demeure.



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Notons que les imperfections de la loi et les procédures ambiguës d'acquisition de la terre amplifient le phénomène de corruption dans les administrations foncières aujourd'hui.

Quant à l'organisation de l'administration foncière, la loi stipule que la gestion foncière relève du ministère ayant les affaires foncières dans ses attributions et qui applique la politique de l'Etat en matière d'affectation et de distribution des terres (art. 181). D'une manière générale, la terre est gérée par les agents des titres fonciers qui font parties de l'administration publique.

En analysant la loi foncière, on constate que les compétences foncières sont fixées en 5 niveaux principaux:<sup>154</sup>

- le Pouvoir législatif ;
- la Présidence de la République ;
- le Ministère des affaires foncières à Kinshasa ;
- le Gouverneur de province ;
- le Conservateur des titres immobiliers.

Ces différents niveaux repris ci-haut montrent que toutes les autorités capables de délivrer légalement les titres fonciers sont loin de la masse paysanne. Au niveau des territoires et collectivités, les agents fonciers n'ont pas le pouvoir foncier et s'occupent des tâches d'exécution concernant les enquêtes foncières préalables à l'octroi d'un terrain. Les compétences foncières officielles des autorités régionales sont donc limitées. Il existe ainsi une grande distance entre les autorités foncières et la masse paysanne laissant une place importante à divers intermédiaires fonciers. La majorité de paysans ne dispose pas des moyens nécessaires pour mener à bien un dossier permettant l'obtention d'un titre foncier suite à un vide d'autorités foncières entre les agents administratifs autorisés à délivrer des titres fonciers et la population paysanne. Ce vide démontre une certaine polarisation du pouvoir foncier dans la hiérarchie administrative supérieure qui se trouve à la base du désordre foncier. Les autorités politico administratives s'octroient illégalement le pouvoir de délivrer les titres fonciers. Ce fossé entre autorités foncières compétentes et exploitants paysans est à la base de l'existence de plusieurs intermédiaires qui travaillent en connivence avec les autorités foncières légales et allongent la procédure d'obtention des titres fonciers.

C'est ainsi que l'administrateur du territoire qui devrait seulement contrôler l'exactitude des informations concernant les enquêtes foncières préalables procède à des distributions des terres dans certains terroirs. Il en est de même des chefs coutumiers et des chefs de localité.

L'absence d'une autorité administrative proche de la paysannerie et dotée du pouvoir d'octroyer des titres fonciers rend l'administration foncière opaque et complexe, créant ainsi une confusion sur le statut des droits fonciers paysans. Deux autres éléments contribuent à la confusion foncière dans le milieu rural : le statut des autorités coutumières et l'incompétence des agents fonciers.

### **III. Etat de lieu des -Conflits Fonciers Ruraux dans la Province du Nord Kivu**

Juridiquement, le régime foncier est basé sur la loi n° 73-021 du 20 juillet 1973 laquelle stipule que la République Démocratique du Congo garde la plénitude de souveraineté dans la concession ou la cession des droits fonciers, forestiers et miniers sur toute l'étendue de son territoire.

Cependant, cette loi promulguée en 1973 n'a jamais été ni diffusée, encore moins appliquée aux masses paysannes. C'est le pouvoir coutumier qui continue à assurer la gestion des terres dans les milieux ruraux.

A part les conflits fonciers anciens qui ont opposé certaines populations au sein des communautés et certaines populations à l'autorité du parc national des Virunga lors de sa création, « les conflits fonciers gagnèrent l'importance dès la promulgation de la loi foncière ( loi de 1973), et ce, suite à l'incompréhension et à l'ignorance de ce texte de loi et aussi au non respect des conditions légales d'attributions »<sup>155</sup>.

Au Nord-Kivu, la majorité des terres est régie selon le régime coutumier. Dans la plupart des cas le pouvoir politique se confond avec le pouvoir foncier. Ainsi donc, en ce qui concerne le régime foncier au Nord Kivu, on constate, dans l'ensemble, une ambivalence de la gestion du sol et des difficultés pour l'acquisition de terre.<sup>156</sup>

#### **A. Ambivalence de la gestion du sol**

Le droit écrit et le droit coutumier semblent s'opposer quant à la gestion des terres. Le principe de l'appartenance exclusive du sol et du sous-sol à l'Etat qui est consacré par le droit écrit s'oppose à celui de l'appartenance du sol et sous-sol au Mwami. Le pouvoir du conservateur des titres fonciers et immobiliers constitue une menace à celui du Mwami et ceci a toujours été (il est) à l'origine des conflits très sanglants.

#### **B. Acquisition et propriété foncière**

S'agissant de l'acquisition des terres rurales, partant des réalités et les pratiques, tout repose sur la volonté du Mwami.

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En ce qui concerne les droits de l'acquéreur d'une portion de terre reçue du Mwami, il ne jouit pas de tous les attributs de la propriété.

Il n'a droit qu'à l'issus (le droit d'user de la chose) et au fructus (le droit de fructifier la chose et de jouir de ses fruits). L'abusus qui est le droit d'abuser de la chose (exemple la vente) ne revient qu'au Mwami.

Juridiquement parlant, dans ce système l'acquéreur d'une terre est un usufruitier.

Dans les territoires de Rutshuru et de Masisi, le paysan devient ainsi propriétaire de la terre et peut en disposer à sa guise. Par contre, dans les territoires de Beni et Lubero, la terre reste la propriété du chef et le paysan est susceptible de se voir retirer le droit d'usufruitier.

En principe, chaque occupant doit posséder un titre, mais dans la pratique, très peu sont ceux qui sont informés et / ou qui ont les moyens d'effectuer les démarches pour l'obtention de ces documents.

### **III.1. Les conflits anciens nés lors de la création du Parc national des Virunga<sup>157</sup>**

A sa création, par le décret royal du 21 avril 1925, le Parc national des Virunga couvrait une étendue de 50.000 ha autour de la chaîne des Volcans éteints (Mikeno et Karisimbi) au sud du territoire de Rutshuru. Entre 1929 et 1958, le parc s'étendra sur les autres parties des territoires de Rutshuru, Beni et Lubero jusqu'à couvrir une superficie de 800.000 ha.

Pour créer le Parc national des Virunga, l'administration coloniale a procédé de manière différente, notamment les expropriations paysannes (pour cause d'utilité publique), cession et échange des collines, rachat des droits indigènes...

D'abord, les chefs coutumiers des terres ancestrales ont dû perdre en tout ou en partie, leur souveraineté. En effet, spoliées totalement, ils étaient contraints de se placer sous la tutelle d'autres chefs dont les terres avaient été épargnées. Au cas où la perte n'était que partielle, il arrivait à certains sinistrés de venir vivre côte à côte sur la portion de terrain préservée. Dans un cas comme dans l'autre, la conséquence a été la même. Nostalgiques de leurs positions politiques et sociales d'avant l'installation du Parc national des Virunga, les premiers sont inévitablement entrés en conflit ouvert avec le seconds.

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Tel est le cas des conflits qui opposent les Banisanza et les Baswagha à Beni'-centre ; les Bashu et les Bambuba (Bambati) à Kihingi ; de même les Bahima et les Banande au Bashu.

Par ailleurs, d'autres conflits existaient déjà bien avant la création du Parc national des Virunga. En effet, les différentes communautés formant l'ethnie Nande n'ont jamais cessé de se disputer les droits de « premier occupant ».

Ainsi, ceux qui se considèrent comme les véritables et légitimes propriétaires fonciers accusent-ils les autres d'avoir leurs terres. C'est le cas des conflits qui opposent BOHIO-BASHU (Bambuba) contre les Batangi à Banyianza en collectivité de Ruwenzori. Ajoutons également le conflit où les Bakira et les Baswagha se dressent contre les Basongora au Rwenzori.

Enfin, il est aussi arrivé que deux frères se disputent âprement les terres héritées de leur père en raison du fait que celles'-ci ont été considérablement grignotées par la réserve intégrale. La tension qu'on observe chez les Bangola en collectivité de Watalinga illustre ce dernier cas de figure.

Notons tout de même que certains conflits, notamment celui qui avait opposé les Bamate aux Batangi et celui de Bashwagha-Bashu datent d'avant l'occupation européenne.

### **III.2. Conflits actuels**

Nous entendons par conflits actuels, les conflits fonciers qui ont déchiré la province du Nord Kivu vers les années 90 mais ayant des origines antérieures.

#### ***III.2.a. Conflits opposant les gestionnaires des aires protégées dans les territoires de Beni, de Lubero et de Rutshuru.***

Des conflits fonciers grandissent entre les gestionnaires des aires protégées et les populations riveraines suite à l'empiètement ou même à l'envahissement de ces systèmes de conservation par celles'-ci à la recherche des ressources ( alternatives) des revenus ou des ressources de base comme les bois ou des nouvelles terres agricoles.<sup>158</sup>

C'est ainsi qu'à l'Est du Parc national des Virunga, dans le territoire de Rutshuru, la forêt Kongo vers Nyamilima fut envahi par la population locale sous l'impulsion des certaines autorités locales et associations d'encadrement des paysans à cause de la première guerre dite de libération de l'Alliance des Forces Démocratiques pour la Libération du Congo (AFDL) en 1996. Une bonne partie du parc fut ainsi défrichée

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jusqu'à une distance de 20 km à l'intérieur même du parc. Ces champs parsemés de cultures vivrières et pérennes ont côtoyé sensiblement le lac Kizi.<sup>159</sup>

Le surpeuplement aux alentours du parc (densité : 207 habitants / km<sup>2</sup> au nord du PNVi) et l'appauvrissement du sol suite au manque des techniques et méthodes culturelles et le faible revenu sont aussi des causes de l'envahissement du parc. On constate sur le mont Tshiabirimu 7km<sup>2</sup> sur 60 km<sup>2</sup> soit 11% détruits ; à Mayangos vers le nord, dans le territoire de Beni, plus de 2400 ha sont détruits aux fins de champs pour 6524 ménages. Les escarpements Kabasha vers la Rwindi sont aussi occupés par les populations pour les cultures de manioc.

On signale un recensement de 17430 habitants à évacuer du parc de Kyavinyonge sans compter l'agglomération de Kisaka, Lunyasenge, Kasindi port et Vitshumbi.<sup>160</sup>

Avec cette forte pression démographique, il y a une grande demande de terres arables pour l'agriculture mais également celle des terrains pour établissements.

### **Causes et motivations des conflits<sup>161</sup>**

L'envahissement du parc par la population n'est pas seulement une action récente mais elle date déjà d'une dizaine d'années. Certains politiciens, pour chercher de l'estime ont fait des campagnes disant qu'ils allaient réclamer des terres ancestrales expropriées en faveur de la création du parc. En 1996, au moment du changement de régime MOBUTU par la prise du pouvoir KABILA, on a assisté à l'envahissement du PNVi et trois faits sont à l'origine de cet envahissement notamment, la jalousie de la population vis-à-vis des facilités qu'ont eu les réfugiés rwandais pour l'exploitation des ressources naturelles, les campagnes politiques et le désarmement des gardes parc. 30.2% de la population sont établis au PNVi à cause de la guerre tandis que le reste soit 69.8% s'y est établi pour des raisons telles que l'amélioration des conditions de vie, pêche et agriculture.

La dégradation du sol aux alentours des Virunga est l'un des problèmes perçus dans les villages de culture. C'est en effet, l'une des causes amenant la population à envahir le parc à la recherche des terres fertiles.

Nayamilima, Kibirizi et Kabasha sont des secteurs d'agriculture. Environ 50.6% de la population interviewée vivent de l'agriculture. Il fut observé que l'escarpement de Kabasha était déjà transformé en champs des cultures vivrières et déforesté également par l'intensification des coupes de bois liées à la carbonisation de la production du charbon de bois. De même que à Kibirizi, le parc fut empiété pour la recherche des nouvelles terres fertiles. Il faudra signaler, toutefois, qu'à Kibirizi et

Nyamilima environ 10,625% de la population reconnaissent avoir acquis des portions des terres de quelques gardes et autorités politico administratives en redevance des indemnités.

### **III.2.b. Complexité actuelle des conflits fonciers dans le Masisi et dans le territoire de Walikale<sup>162</sup>**

1. En 1965, il y a eu un mouvement insurrectionnel dénommé « Kanyarwanda » (la population rwandophone s'était insurgée contre le pouvoir coutumier Hunde). Les instigateurs ont été découverts et ont été poursuivis. Certains ont fui au Rwanda et d'autres dans le territoire de Rutshuru ; et leurs champs ont été cédés à d'autres bénéficiaires. Pendant le conflit armé du 2 août 1998 déclenché par le Rassemblement Congolais pour la Démocratie (RCD), beaucoup de ces instigateurs sont revenus dans le Masisi pour récupérer anarchiquement les terres qu'ils occupaient en utilisant le terme rwandais « *Kubohoza* » (reconquérir, libérer).
2. Pour le groupement Banyungu et Nyamaboko, vers les années 76-77, la terre était occupée d'une façon désordonnée. Certaines personnes qui ont acheté de lopins de terre et qui ont obtenu des certificats d'enregistrement les ont mis en valeur (fermes, fromageries). Après achat de terres, les acquéreurs chassaient les personnes qui les occupaient ou les engageaient comme ouvriers. En 1993, suite aux conflits entre ethnies, les gens qui ont été expulsés des fermes y sont revenus et les ouvriers ont envahi les fermes. Tous ces gens y cultivent, y ont construit des maisons et des églises. On se demande quel sera leur sort quand reviendront les concessionnaires détenant les certificats d'enregistrement. Une bombe en retardement.
3. Autre cas, à l'époque de Mobutu vers les années 80, il y avait des gens, d'une part locataires et d'autre part concessionnaires, qui étaient accusés d'empoisonner la population et les dossiers ont été traités au niveau des chefs des groupements. On devait poursuivre la personne accusée d'empoisonnement, et si le fait était établi, le chef de groupement l'expulsait de son entité. Après expulsion, le chef de groupement cédait la terre à un nouvel acquéreur. A l'époque de la guerre du RCD (d'août 1998) les personnes (locataires) qui avaient été expulsées pour empoisonnement sont revenues car elles étaient protégées par le pouvoir du rassemblement Congolais pour la démocratie (RCD) en soutenant qu'elles avaient été expulsées à l'époque de mauvaise gouvernance ( le régime Mobutu) et que leur expulsion était irrégulière. Ces personnes s'imposent et bafouent le droit coutumier. Maintenant quand les retournés veulent occuper leurs champs qu'ils

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avaient abandonnés, ils se heurtent aux premiers occupants. Il s'agit des terres qui se trouvent tout près du chef-lieu du territoire de Masisi.

4. Certaines personnes n'accèdent pas à leur champ car elles appartiennent à une ou une autre ethnie. Ainsi, par exemple, certains Tutsi se retrouvent soit dans les camps de Kirolirwe et de Kahe/Kitchanga (nous ne parlons pas de toutes les personnes s'y trouvant) soit au Rwanda. Un autre conflit risquera d'éclater quand toutes ces personnes rentreront.
5. Le pouvoir du Rassemblement Congolais pour la Démocratie (RCD) avait nommé certains « ex-seigneurs » de guerre de 1993 – 1997 au poste de commandement (chef de poste ou secrétaire de poste). Ces chefs ne sont pas favorables au retour des déplacés car ils ont des intérêts auprès des gens qui occupent les champs des déplacés.

Le territoire de Walikale, couvert d'une grande forêt, est riche en minerais. Ainsi donc, la découverte des minerais entre deux concessions des personnes différentes crée un conflit entre un propriétaire fort et un autre qui est démuné. Le plus riche cherche à accaparer la concession du pauvre dans le but d'exploiter les minerais, et ce, avec l'aide des militaires ou hommes en uniforme.

A ces difficultés s'ajoute celle qui oppose les réserves communautaires aux populations tout comme dans le Masisi et dans le territoire de Walikale.

Dans le territoire de Walikale, collectivité de Waniaga, 11 sur 13 groupements connaissent ces genres de conflits tandis que dans la collectivité de Bakano tous les 2 groupements en souffrent.

### **1. Réaction des populations**

Dans le territoire de Masisi, collectivité Bashali, groupement Bashali-Mokoto, on a créé une réserve au détriment des droits fonciers des populations. Beaucoup de personnes déplacées retrouveront leurs champs incorporés dans la réserve. Cette réserve couvre des forêts où les gens coupaient le bois de construction et de chauffage, des champs et des rivières dans lesquelles les paysans pêchaient, des villages que les populations ont fui, en l'occurrence, les villages Bulende et Lukweti. La création de cette réserve ne permettra plus aux populations de jouir de leur liberté de chasse, d'extraction des minerais, de pêche. Ce projet n'a pas encore de limites bien déterminées. Toutefois, on peut le localiser dans les localités Kalembe, Bushimo... sur les collines Ndurumo, Shingisha, Buhoo, Kamatembe. Le responsable

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de cette réserve ne peut pas arriver à Lukweti car il est pourchassé par la population. Il est accusé de traître et la population croit que cette réserve est créée pour les intérêts du Rwanda qui pourrait y envoyer ses populations pour y habiter. Sur terrain, il a été constaté que cette réserve est vue par les paysans comme une méthode d'envahissement des terres. Presque tous les chefs de localité s'y opposent : *les Bami ne seront pas les Bami des animaux*, déclarent-ils. La population ne voit pas l'intérêt de la création de la réserve non seulement car elle n'a pas été consultée préalablement mais aussi car elle n'y voit pas un avantage ou profit.

A l'époque, la terre se donnait à l'amiable, aujourd'hui les rwandophones spolient, dépossèdent les paysans de leurs champs par force. Le retour massif des rwandophones (tutsi), accompagnés des milliers de têtes de bétail, du Rwanda vers le Masisi inquiète les autres ethnies du Masisi. Beaucoup de vaches importées du Rwanda sont déversées dans la collectivité de Bashali. Dans les groupements de Nyamaboko II, Katoyi et de Nyamaboko 1<sup>er</sup>, les éleveurs font paître leurs bétails dans les champs des autres paysans. Ce qui rendra difficile la cohabitation si l'on ne tient pas compte de droit de propriété des retournés et des déplacés

Dans le territoire de Walikale, la Réserve Communautaire des Primates Bakumbule RECOPRIBA) est en conflit avec les chefs coutumiers de groupements de Ikobo et de Kisimba. Les responsables de cette réserve sont accusé d'avoir délimité les terres ancestrales avec violence et d'avoir spolié la terre des communautés de IHIMBI/ KISIMBA pour des intérêts individuels.

### **2. Attitude du responsable du projet Initiative locale pour la sauvegarde de la nature (ILSN)**

L'ILSN reconnaît les craintes des populations tout en précisant que les collines visées appartiennent aux particuliers qui sont en train d'être sensibilisés aux fins de la conservation des espèces rares qui sont en voie d'extinction et de la recherche du développement communautaire. Il s'agit des gorilles de plaine de l'Est (gorille Beringei grauweri), et les chimpanzés (Pan Troglodytes sheweinfurtii). L'ILSN n'a jamais demandé aux paysans de quitter leurs villages. La jalousie anime les terriens qui croient que les animateurs de l'ILSN vont s'enrichir. Ce problème s'ajoute aux conflits qui opposent les autochtones aux immigrants et les autochtones entre eux.

Aux alentours de la ville de Goma, dans le territoire de Nyiragongo, chefferie de Bukumu, il y a très peu d'alternatives économiques. La surface agricole disponible par ménage est réduite à cause des effets du volcan Nyiragongo en 2002 et de la fragmentation des terrains et exploitations familiales. Un déséquilibre criant est perceptible entre la croissance de la population et la disponibilité des terres arables



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dont la fertilité a diminué de suite de l'absence de mise en jachère. La situation des sans terre est critique et ils sont les plus pauvres des pauvres. Ceci est valable pour les pygmées dont la marginalisation et l'exclusion manifeste les fragilisent. L'absence de terre et la faible production agricole conduisent à une insécurité alimentaire<sup>163</sup> et à l'augmentation du taux de malnutrition chez les enfants et les femmes enceintes.

### **IV. Recommandations**

Le Nord Kivu a connu des violences généralisées causées par une forte militarisation entraînant ainsi une insécurité qui a exposé et qui continue à exposer les populations à la vulnérabilité. Il faudra instaurer la paix, mettre en place des projets de réinsertion socio-économique dans les milieux ruraux.

Les populations du Territoire du Nord Kivu n'étant pas sécurisés dans leurs droits de propriété foncière et informés sur leurs droits ainsi que ne bénéficiant pas du développement agricole comme des politiques ou programmes environnementaux adéquats, comme préalable, tout acteur qu'il soit étatique ou humanitaire devra entretenir une corrélation nécessaire entre les objectifs fixés, les possibilités dont il dispose et les moyens à employer.

#### **I. Les cours et tribunaux et la résolution des conflits fonciers<sup>164</sup>**

Le principe de l'inattaquabilité du certificat d'enregistrement qui possède en droit congolais une valeur légale, a connu une certaine évolution quant à sa portée, et ce, à travers le décret du 06 février 1920 et la loi du 20 juillet 1973, d'une part, et à travers la loi du 18 juillet 1980, d'autre part.

A ce jour, la loi du 18 juillet 1980 affirme avec véhémence le principe d'inattaquabilité du certificat d'enregistrement qui, au regard de la doctrine et de la jurisprudence consultée à ce sujet révèle que ce principe a une portée absolue en droit civil au regard de la jurisprudence consultée à ce jour.

En effet, en droit civil, l'article 227 de la loi foncière est de stricte application sauf en cas de certificat d'enregistrement qui couvrirait irrégulièrement un bien relevant du domaine public de l'Etat. Cet article décide que les droits constatés par le certificat d'enregistrement sont inattaquables après un délai de deux ans à partir de la mutation.

Il apparaît que ce délai préfix est moins sécurisant dans la mesure où certaines personnes s'arrangent pour se faire octroyer frauduleusement les certificats d'enregistrement à l'insu des véritables « propriétaires » et ne les font sortir qu'après deux ans.

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1. Pour barrer la route à cette tricherie et assurer efficacement la sécurité des droits fonciers et immobiliers, il serait souhaitable que *ce délai de deux ans ne commence à courir après que la mutation aura été publiée au Journal Officiel*. Ce mécanisme limitera la fraude et le principe de l'inattaquabilité du certificat d'enregistrement en sortira renforcé.
2. Contrairement à ce qui est prévu en matière civile où ce principe d'inattaquabilité est absolu, en matière pénale, par contre, le certificat d'enregistrement entaché de faux ou falsifié ou encore établi sur base de faux n'est pas protégé par ce principe. En effet, « le certificat peut être directement attaqué par voie d'action publique en faux » dans la mesure où il porte atteinte à l'ordre public, peu importe le délai préfix prévu à l'article 227 de la loi foncière. Ainsi donc, l'Etat congolais, par le biais du juge pénal, devra annuler tous les certificats d'enregistrement qui ont été établis frauduleusement notamment sur base des faux documents. La décision du juge pénal sera suivie par la confiscation et destruction du document reconnu faux ou établi sur base de faux. Par la suite, le juge civil qui statue en matière de droit foncier et immobilier portant sur le certificat d'enregistrement confisqué et détruit par le juge pénal à la suite de son caractère faux, ne pourra que contester l'inexistence du certificat d'enregistrement et ordonner en conservation des titres immobiliers d'établir un nouveau titre de propriété au profit de la victime de spoliation.
3. Pour les terres qui ne sont pas en conflit, il faudra aider les indigents à sécuriser leurs droits de propriété foncière en les accompagnants dans le processus d'obtention des titres fonciers auprès des services habilités en la matière..
4. De toute évidence, on ne saura rendre justice aux indigents que si la justice est équitable. Cela exige comme préalable l'indépendance du pouvoir judiciaire mais aussi la réhabilitation des cours et tribunaux, le recyclage et l'amélioration des conditions des magistrats et des auxiliaires de la justice.

### *II. Suggestions pour les actions agricoles et environnementales*

Les objectifs se résument en deux ordres. En premier lieu, l'activité agricole accompagnée des activités de résolution des conflits fonciers doit être appelée à satisfaire du point de vue économique deux types de besoins : au niveau du producteur lui-même, son activité doit lui permettre de satisfaire ses besoins, directement ou par échange, dans une mesure compatible avec le niveau de développement économique de son milieu. S'il contribue à l'accroissement du produit local ou national qu'il soit, l'agriculteur doit avoir accès dans la même mesure aux fruits de cette croissance.

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Au niveau de l'économie locale, la production agricole du Nord Kivu ne permet plus la satisfaction des besoins à l'alimentation directe. Ainsi donc, il faudra la modernisation du secteur agricole pour modifier les structures économiques.

1. Les paysans du Nord Kivu souhaitent travailler efficacement la terre et désirent se développer. Malheureusement, l'Etat se fait propriétaire du sol et sous-sol, et, il est incapable de protéger les droits des ruraux.

En réalité, l'Etat congolais, doit inciter les populations rurales dans sa politiques agricole : barrer la route à la tricherie et assurer efficacement la sécurité des droits immobiliers pour limiter la fraude et le principe de l'inattaquabilité du certificat d'enregistrement en sortira renforcé, faciliter les paysans de recouvrer leurs droits' de propriété fonciers, distribuer des semences et des outils aratoires, ...

2. Le vice de la politique planificatrice serait l'adoption d'une planification non pas à l'impératif mais plutôt à l'indicatif. La planification tiendra compte, du point vue de l'éducation, de deux niveaux : il faudra éduquer les fonctionnaires et agents de l'Etat dont les agents administratifs d'encadrement et les acteurs agricoles sans oublier les paysans (lutter contre l'analphabétisme). Cette éducation portera sur le droit foncier, les droits et politiques ou programmes agricoles et environnementaux, l'éducation civique et sur la gestion des conflits (pour contribuer à diminuer les tensions ethniques) ...

L'Etat congolais devra recycler le personnel disponible dont les services sont relatifs au foncier, à l'agriculture, pêche et forêts, au développement, à l'environnement... et les répartir selon leurs compétences et les besoins sur terrain.

3. L'Etat devra faciliter la population rurale de s'aider soi-même, il devra stimuler les initiatives locales et faire participer la population à tous les efforts entrepris pour élever son niveau de vie:

\*Faciliter le retour des personnes déplacées dans la dignité humaine dans leurs milieux d'origine, les réinstaller et les intégrer. Les actions en faveur des déplacés devraient aussi prendre en compte la situation des familles d'accueil.

*\*Faire du village une « entité agricole ».*

Dans le Nord Kivu, les villages sont formés par les mêmes membres d'un groupe parental ou des groupements parrainés. Les villageois sont unis par un lien politique et ne sont soumis qu'à une seule autorité qui est le chef du village; ils participent tous aux travaux d'intérêt général. Le chef du village intervient dans le partage des

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terres entre ses sujets et perçoit des redevances... Cela étant, l'on devra songer à mettre fin aux conflits fonciers et à exploiter les terres sur base de rationalisme pour que le village soit une vraie « entité agricole ».

Ainsi donc, le rôle des conseils des notables qui existent déjà dans les villages devra être renforcé par des mécanismes réalistes. Ces conseils devront être épaulés par des agronomes, des moniteurs agricoles, représentants des Eglises et des ONG locales, et différents agents dont les attributions sont relatives aux droits humains, au droit foncier, au développement et à l'environnement. S'appuyant sur les conseils des techniciens et les coutumes ancestrales, les notables seront capables de résoudre les conflits fonciers et d'atteindre les objectifs de l'exploitation rationnelle de la terre. A part les attributions administratives ou traditionnelles, les notables assureront la gestion des biens agricoles de production collectifs des paysans, du stockage des greniers populaires des produits et outils indispensables aux semences. Ils seront des superviseurs des travaux communautaires comme ils l'ont toujours été. Ils vulgariseront les lois et politiques relatives au droit foncier, au droit agricole et au droit de l'environnement. Ils feront l'arbitrage entre les paysans en cas de conflit relatif au droit de jouissance sur la terre pour assurer la justice sociale. Ces notables devront consolider la solidarité ancestrale tout en n'oubliant pas les impératifs du progrès économique et social de la province du Nord Kivu.

Il faut ajouter que les petits villages devront garder leurs structures mais on songera de mettre sur place un conseil des notables venant de ces différents villages.

A tous les niveaux, il faudra éviter des structures draconiennes qui risqueraient de compromettre la solidarité recherchée pour la résolution des conflits fonciers et l'exploitation rationnelle de la terre. Pour ce faire, il n'y aura pas à la tête du conseil du village un chef au modèle de l'administration publique de qui vient tout commandement ni à l'exemple d'une coopérative. Le conseil des notables ne sera pas une structure étatique mais une affaire purement *communautaire*.

Depuis plus d'une décennie, les politiciens ont manipulé certains chefs coutumiers dans le Nord Kivu et la population en a été victime. Dans le cadre du conseil des notables, politisé le système du *village-entité agricole* exacerbera l'ethnicité et la méfiance entre les membres des différentes communautés dans le Nord Kivu, et, l'objectif poursuivi en pâtira.

Toute action qu'elle soit de résolution des conflits fonciers ou de développement agricole ou encore environnementale cherchera à rendre paisibles les conditions de vie des populations du Nord Kivu et de rendre le plus vite possible autonome le

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ystème *village-entité agricole*. Ce qui renforcera l'esprit d'initiative et d'aide mutuelle entre les communautés du Nord Kivu.

A l'état actuel, la République Démocratique du Congo en général, le Nord Kivu en particulier gère avec beaucoup de difficultés les conséquences néfastes des conflits dont il a été victime. Il demeure donc fragile, les services publics n'ayant pas de moyens financiers pour matérialiser les recommandations précédentes.

Ainsi donc, il s'avère très nécessaire que les Organisations internationales et les organisations non gouvernementales internationales, bref, la communauté internationale s'implique davantage dans les efforts déjà amorcés par les ONG locales pour la pacification de la région du Nord Kivu, pour l'encadrement des paysans et de leur accompagnement dans le processus du développement durable et de justice.

## **4.0 Group discussion reports**

### 4.1 (Customary) Land Tenure Under Situations of Land Scarcity and Commoditization<sup>165</sup>

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#### **Is customary land tenure about rights?**

##### **Views and commentary**

- [Vincent Shauri] Customary law is a pre-colonial system of land governance, which was not abolished, but changed and was influenced by colonialism; it provides a set of rights and procedures for dealing with matters such as disputes
- In some contexts, customary law is not pre-colonial, but an evolution over time that doesn't have much to do with colonialism; customary power structures are not based (necessarily) on distribution of land, but may involve e.g., raising taxes, paying tribute, etc.; the content of customary law has changed over time depending on the context
- [Musa] Customary law is a system for management of people's use and access to land; it is not the idea of property rights in the modern sense; land did change hands and people did account for others' uses of the land; e.g., pastoralists and cultivators; it was a management system related to social groups; i.e., it is not individually oriented; not a fixed/rigid system, but rather fluid and dynamic; it can accommodate later events, including colonialism and indirect rule; administrative units combined with units related to land because of the need to manage conflicts related to land, but there was no official movement or shift in tradition
- **Dr. Congo** [Safari Deo] – power to allocate land is vested in the customary chief who is the chief of the collectivité, which is the administrative nucleus of the national administration; his power is entrenched in the constitution; however, the law also says that all land belongs to the government and does not except the collectivité, therefore people at higher levels of government take advantage of the law to allocate land within the collectivité; there is a tension between the law which says that the land belongs to the government whereas the local chief still has power to allocate land within his jurisdiction; the creation of a land commission would ensure that these issues are clear

How does custom change when leaders are compromised by conflict? Who safeguards custom when legitimate leaders are no longer legitimate?

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- **DR Congo:** the involvement of the customary chiefs may have prevented conflict by resisting allocation at higher levels; politicians intervened for their own interests and the customary chiefs today are not legitimate; the real hereditary family of the chief is forced out of the village; customary chiefs who resist allocations can be arrested or armed groups may intervene; they have tried to control the customary systems in place; they did not want to create new systems; but they cannot control (the customary systems) from outside; identity is based on knowing who you are, where you are; there is still a parallel structure/leadership which is in power returning and clarifying the constitutional power of the customary chiefs would solve the problem
- **Angola** [Rosario Advifta]: Traditional chiefs are nominated by the government, but there can be a parallel chief at the local level and a real chief protected by secret/no one knows to which family he belongs

What is the future of customary law? Should it be retained? Does it contribute to human security or detract from it?

- Customary law is not just about allocation of land, but also mediation in conflict and dealing with community issues
- When people make claims under customary law they make claims simultaneously to “what is remembered” (customary law) and to written/statutory law; often people resort to statutory law when they do not get the desired outcome at the traditional level
- Customary system refers to social groups; the customary chief is recognized by those who are beneath him; however, there may be situations where the customary chief represents a minority of the population (e.g., where the majority is migrant); which law applies?
- It is possible to have multiple customary systems in one country; e.g., **Northwest Rwanda:** *Ingikingi* system (grazing land) was abolished in, but *Ubukonde* (agricultural land) system continued; under both systems land passes through inheritance from father to son, but there was a difference in the power of the chief to allocate land
- Some customary law may not be friendly to women (E. Congo); however, there may be systems; e.g., matrilineal system in some regions (W. Congo), which may be more friendly to women

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- **Rwanda** [Rurangwa Eugene]: traditional chiefs no longer exist; administration is through the mayors/bourgemestres and passes through written law; the land tenure system is one in which people own land through inheritance; there is a need to combine written law with a process of decentralization; recognize the role of mayors; where there are chiefs (as in DR Congo), it is possible to entrench their power in the new law through decentralization
- **Eritrea/Ethiopian Highlands** [Seife Berhe]: The Dergue wanted to destroy the customary system, but it continues to exist; in Eritrea there were two systems of customary land tenure under the first system women could not own land unless the husband died and they had no other source of income; under the second system women had right of land ownership; however these rights were not automatic; i.e., women had to claim their right and it was decided by “wisemen” who were involved in conflict/dispute resolution; traditional courts exist and government has empowered them indirectly by referring cases/disputes to them
- Limits of customary systems: integrating diversity of structures/systems into a single body of law; prevent migration when there is population pressure because migrants cannot claim rights as “foreigners” (e.g., E. Congo, problem of migration)

How can multiple rights of multiple users, especially women, be protected?

- Through a participatory system; e.g., where the chief is a member of the local land commission; i.e., representative
- Problem of writing/rewriting statutory law where women are left out
- The government can legislate, but it will not work unless the local chiefs are convinced about the rights of women e.g., **Uganda**: good law, but no awareness; **Eritrea**: at the rural level, the government has *promulgated*, but there was awareness-raising at the local level for women to inherit; i.e., *implementation* through the community structure; **Rwanda**: women are able to inherit land by law, but the law also prohibits subdivision of land into parcels smaller than one hectare, therefore practically, women may not inherit (i.e., where there are many children)
- Need to constitutionally entrench (rights); educate women; where custom is strong, insist that customary chiefs are not above the law and limit their power; increase level of education of the chiefs
- Is individual title the only solution? – group registration e.g., through families; consolidation; protection against those who challenge the situation



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Is land concentration and sale by the poor inevitable?

- **Eritrea/Ethiopian Highlands:** in the rural areas, entitled to own land, but cannot sell it; assistance is provided within the community; those whose income depends in the urban areas cannot own farmland in the rural areas
- **Rwanda:** people are allowed to sell land, but the entire family has to consent (to avoid speculation); i.e., wife and children above 18 years; there are procedures at the district level (district land officer and land commission) to investigate and verify that there is consent
- **DR Congo:** government forces people to sell their land for urbanization; e.g., may be required to sell if they cannot fulfill building requirements (zoning)

What is the most appropriate system to achieve tenure security in rural areas (e.g., deeds, titles, other forms of registration)?

- Need to define tenure security; e.g., registration/title versus security from conflict
- Forced migration and displacement changes the equation; registration changes the character of land (i.e., it becomes freehold)
- Need to go beyond the registration paradigm; intermediate adaptations may allow people to invest at the local level without disenfranchising other groups
- There may be different preferences and circumstances depending on the context; e.g., pastoral (communal preference) v. agrarian systems (individual preference); Rural or “peasant” (unregistered) versus modern “investment” or “urban” (registered)
- Even within communal systems there is a need to recognize borders/markings; however, traditional markings are not included in the government system, therefore someone in the city can allocate pastoral land; there is a need to identify so-called “vacant” land; sale of communal land may be prohibited, but registration allows for investment purposes (i.e., beyond micro-credit) and identification (i.e., memory can fade)
- **Sudan:** customary land is not considered “registered” but is recognized by people in the community; ethnic conflict can arise between cultivators and pastoralists who use the same land; registration alters migration patterns and also gives absolute rights to one group; however there is also low investment capacity for unregistered land; i.e., vertical development and infrastructure

## **Final Comments**

- There is a need for responsible and forward-looking leadership to manage land for present and future generations
- Provide means for people to develop what has been allocated to them

[Some participants were]: Against sale of communal land in principle because the state of the economy is such that people would be impoverished, but it is important to give security through registration and inputs (investment)

Others noted that: Even if land cannot be sold, subdivision of plots may eventually result in poverty anyway; off-farm livelihoods require collateral, therefore some may have to sell the land to invest outside and escape the rural poverty trap

In **Angola** there was a consultation process for the new land law. Only in 2 zones did people support communal land and for the community authority negotiating/dealing on their behalf; the majority believed they owned the land and came long before the state; but the law was the reverse (i.e., not representative of a majority of views)

In **Eritrea**, in the rural areas government has recognized that it will not touch the land because a lot of people will sell if they are pressurized, but they cannot survive in the urban areas; different scenario in peri-urban areas; registration (security) and investment needed; on fragmentation, family members leave (rural areas) and land is consolidated by those who remain; you lose your rights when you leave.

## **4.2 Land Policy Reform in Post-Conflict Contexts**

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1. When is a post conflict 'ready' for land reform or development of a land policy? What are the criteria to judge 'readiness'?

- land reform is necessary when there are large numbers of people displaced by conflict
- land reform should be promoted when there is a legal and regulatory vacuum.
- Where policies exclude some members of societies, land reform should be used to promote participation
- When there is immense pressure of people wanting their land after war e.g. in Burundi.
- When the supply of land mismatches the demand-land reform is necessary to address land scarcity
- Rampant poverty among people who depend on land, there should be reform by which access to land will improve access to social services like education.
- Land reform should be sequenced after restoring security in a country and disarming groups that threaten security
- The legitimacy to undertake reform should be clarified by promoting an inclusive dialogue especially where warring factions still want to control vital resources
- Populations' movements should be minimized before land reform
- Institutions should be set up and alignment of different groups should precede reforms
- Where land was part of the conflict, reform should come as early as possible
- Stabilization of the country should factor in land reform
- Land reform is necessary where existing laws are irrelevant to post-conflict situations or a lot of corruption and fraudulent practices surround land titles and transactions
- Land reform should be contextual. It should be timed according to situations obtaining in a country e.g. security is an important prerequisite in DRC
- Land reform should be sequenced after rehabilitation of infrastructure, capacity building, information gathering and policy analysis

2. What are the appropriate rules for the international community in supporting that process?

- Should offer technical support
- Assist in promoting the exchange of information with other groups in other countries
- Advice on how to engage government
- IC has the responsibility to understand the situations and root causes

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- Refrain from influencing the process e.g. Burundi, DRC, Angola
  - Offer financial support
  - Should give budgetary support where there is lack of resources e.g. Somali
  - Can assist in research and capacity building
  - Facilitate the inclusion of other stakeholders in the process especially the civil society.
3. What mechanisms can be put in place to manage relations between civil society and government relations?
- A forum for dialogue should be put in place
  - Identification and definition of civil society is necessary to remove the ambiguity of what is anti-society
  - yard sticks of cooperation should be government devised
  - civil society should organize itself to be able to deal with government
  - platforms which civil society will operate should be built
  - Capacity should be mobilized at all levels including all elements of civil society to strengthen the 'watchdog' function of civil society.
  - Monitoring and evaluation is important and tool kits have to be assembled
  - Civil society should clean itself if it were involved in conflict such as genocide
  - Mechanisms to show that civil society is not an enemy or spy are important-civil society needs to demonstrate that they have the capacity to advise governments
  - Alternative space for dialogue should be created for the civil society.

## 4.3 Mechanisms for Management of Land-Related Disputes<sup>166</sup>

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### Building capacities of dispute settlement mechanisms

- There is a need for concrete examples of dispute settlement mechanisms and the extent to which they are productive as well as reflections on experiences
- **Tanzania:** system of (formal) courts beginning with ward tribunals, primary, district, high court and court of appeals; informal mechanism where traditional leadership is strong; process can take up to three years and there is a backlog of cases; recent legislation created specialized court for land matters, but it is recently established and there are no concrete examples; need to build capacity of the judiciary to deal with cases otherwise they lose legitimacy
- **Zimbabwe:** accessibility is a problem; courts are at the provincial level; it is rare that people bring disputes to the court; legal representation (i.e., lawyers) is also a problem; people rely on traditional leaders/village heads; inheritance is often a family affair and there is no reporting to village/head chief or follow-up on legal issues; women may be evicted after husband's death
- **Rwanda:** four levels of dispute resolution (not in hierarchical order): (1) courts; (2) ombudsman's office; council of districts; (4) ministerial commission, including ministries of land, local administration, agriculture and internal affairs; courts do not function properly; ombudsman's office is more efficient, but centralized (i.e., in Kigali) with no representatives at the local level; also lacks capacity; there was legal reform, but there is a backlog of land-related and genocide cases; *Gacaca courts* seemed to be effective and have been revived, but mainly for genocide cases; could include land cases but women would not go, only men; new gacacas have elected women and need to include them more
- **Tanzania:** traditional courts do not address conflicts related to *registered* land; both judicial and informal mechanism; land disputes at the community level v. individual level

### Political interference in judicial mechanisms

- **Uganda/Kenya:** political interference with the judiciary and weak judiciary; e.g., Karamoja v. Teso case studies where politicians took over the matter and enacted by-laws restricting access by one group to disputed land

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- **DR Congo:** judiciary has aggravated the conflict because of corruption; need for capacity building at two levels: (1) judicial reform including hiring new judges and magistrates; salaries and incentives to control corruption; (2) capacity-building in the rural areas; e.g., literacy levels of litigants and assisting traditional courts to do their work, including training of judges (on procedural matters as well as equitable justice)

### **Role of civil society in dispute settlement mechanisms**

- Need to classify NGOs and clarify roles (1) advocacy in community conflicts; e.g., pastoralists v. cultivators; (2) community hearing groups; NGOs may help to coordinate and promote understanding (e.g., in pastoral communities), but meddling may be harmful (e.g., in agricultural communities)
- **Kenya/Uganda:** National Land Alliance plays a role in advocacy as well as alternative to politicians
- **Sudan:** customary courts presided over by a chief as well as community hearing groups that can sit without the chief's presence
- **Angola:** associations (CBOs) that are "self-representing" mechanisms; e.g., when there is conflict between the community and an outside interest, where the groups are developed and well-managed, they can stop the conflict; they have the ability to negotiate because they are united; they also have previous experience with NGOs e.g., setting up and capacity-building

### **Simultaneous and confusing dispute settlement mechanisms**

- Addressing weaknesses of customary system of law and differing results in various forums
- **Somalia/Sudan:** land commission needs to go to the field and engage in process of consultation (recommendations at Mbagathi are not the same as what is on the ground)
- **Kenya:** registered and unregistered land cases may be dealt with differently; e.g., women are not encouraged to inherit land and traditional leaders may disinherit whereas courts recognize women's right to inherit
- **Rwanda:** ombudsman's office resolves contradictions (including authority to nullify judicially decided cases); set up to resolve injustice, not just land issues; fight

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against corruption in the justice system v. **Kenya** where the decision of the court prevails; reflection of weaknesses in resolving conflicts; lack of effective mechanisms for dispute resolution at the local level (including advocacy by civil society); local leadership perceived to be the culprit in land disputes where in fact it should mediate; increased prevalence of land-related cases (80-90% of ombudsman's cases)

### **Contradictions, challenges and inhibitions of different dispute settlement mechanisms**

- The law must be clear; instead of simply referring cases to the customary courts, lawmakers should legislate and give guidance on how cases should be handled/ manage disputes
- NGOs can help at the grassroots level with sensitization; i.e., where to go and who to go to with disputes

### **Legitimacy of dispute resolution mechanism in post-conflict contexts**

- Legitimacy is not just a question of legality
- Systems may be imposed; communities may not take cases to the dispute settlement mechanism
- Institutions may be directly created by political parties (i.e., partisan) There is a need to depoliticize local level institutions
- **Uganda:** CBOs wanted a regional umbrella to partner/mediate with NGOs, governments; etc., organizing people at the regional and national level; i.e., set of representatives organized by the community and able to speak on their behalf

### **Recommendations for legal and policy frameworks for effective dispute settlement mechanisms**

- **Somalia:** (1) need to resolve political instability; (2) need to establish independent land commission with access to records and field research to compare notes and find out what is happening on the ground; (3) need to harmonize legislation (combination of Islamic/Sheria Law and Code); need coordination among different types/mediums of conflict resolution; e.g., joint committees and clear appeal process/hierarchy; participation and consultation with communities; i.e., experts' views may differ from views/expectations of community

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- **Rwanda:** intermediate level dispute resolution mechanism (Abunzi) – instituted through the constitution and elected by the local people at the sector level; mandated to deal with land issues
- Need for land *policy* before land *law* (see e.g., Uganda and Sudan)
- **DR Congo:** law exists but there is no presidential decision to give guidance on how the law will be applied; land commission needed to discuss contradictions in allocation of land and resolution of disputes
- **Kenya:** Ndungu Report suggests abolishing unilateral allocation by the president
- **DR Congo:** bad leadership, bad governance and corruption; government in power is not in control of the entire country; how to manage conflict in the region not governed
- Poverty in local leadership and regional interference; international interference
- Implementation of recommendations



## **4.4 Off-farm Livelihoods and Technological Innovation**

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Definition: Off-farm is a peasant, who might work as an employee in another farm or related activity.

Non-farm activity – jobs outside farming not as technician. Non farm needs skills/capacity.

So the distinction from both activities has to be made. We should not concentrate exclusively on crop/animal production. Do subsidiary activities such as delivery, processing, services etc. More effort should be put in marketing and agricultural production. Malaysia was used as an example. In the 1960s 80% were dependent on farm activities yet 20% are now. Allotment of land was given to investors/multi-nationals to produce IT/rubber etc. They are a number of countries importing labour, from India etc.

- This can only be achieved through education/technical education. Unfortunately the worst students go for technical education. Expansion of technical education, which is the best gateway to social development.
- “Can we harmonize it with other policies such as land reform”? Is it within the mandate of land reform?
- Some participants a bit worried about the concept that Agrarian development is not working. All nations have passed through it. Technological development is not necessarily perfect as there is a lot of poverty even in the USA. In the centre of our efforts we need to put people in the front. In Malaysia people do not have freedom and work as slaves.
- The HIV issue has been forgotten in the meeting. People assume that all is well and when an endemic occurs most people will die and children will have no parents. So what is land reform? Land reform alone cannot exist without being dynamic and interfacing with health, agriculture etc/other sectors. So it should not be static and needs a human face.
- We have also to take into consideration non-farm activities to get/give services to the farmers such as technicians, builders, small alternative/appropriate tools technology
- We need to think in terms of short term and long term. We cannot forget about technology. In Malaysia are the people working so hard to share resources equitably or not?

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- We cannot talk about technology without education. PSPR also has to be included in the equation.
- There is need for economic cooperation to improve the function of regional markets
- Africa needs to develop integrated development, planning, democratization and security assurance
- Also to revive high speed urbanization, need to have decentralized economic development and women should not be missed in this technological development. Women might be marginalized.
- Education should target low-level income groups/communities.

## **4.5 Migration, Citizenship and Land Access**

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Due to pressures of time, discussion of this vast topic was brief. Participants noted that:

Improved regional links, including movement of labour, is one of the ways for the Great Lakes countries to avoid land-related conflicts. The issue has already been discussed in some diplomatic fora, including within the United Nations system. For example, it has been noted that in Western Tanzania land is relatively abundant and it has been suggested that some could be made available for cultivation by farmers originating in neighbouring countries.

However, borders have rarely been made sufficiently open through appropriate arrangements and policies. According to participants, 'xenophobia' has been noted in a number of countries not just in the Great Lakes but elsewhere in Africa and indeed in Europe.

Reference was made to problems stemming from the drawing of borders by colonial powers during the Berlin Conference, particularly in the case of the DRC which was left with a complex situation.

It was noted that in Angola, on the contrary, there are few challenges related to issues of nationality despite the presence of many people from other countries (e.g. Namibia and the DRC)

Due to the tendency for unscrupulous actors to politicize ethnic and citizenship issues for political gain, participants identified political stability as a key foundation for effective progress. African States must respect each other's borders, create a climate of trust between them selves in order to move towards regional solutions. The Economic Community of the Great Lakes Countries (CEPGL) has failed to be effective because of lack of political will and trust. Political stability and maturity is also a prerequisite for developing domestic laws which match relevant international legal principles and laws on human rights.

There is hope: it was remembered that the current system of free movement within Europe was virtually unthinkable in previous years. Diplomatic and other problems were overcome within the last twenty years in order to make labour movement within the European Union a reality.

## **5.0 Conclusions**

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A final plenary session was held to discuss gaps on the existing knowledge, and ways in which the problems identified and debated in the conference may best be addressed.

Mr. Chris Huggins of ACTS noted that it was difficult to effectively summarize two day's worth of ideas, but he did identify some of the key issues arising from the conference discussions as follows:

Issues:

- Customary land tenure systems dominate in most parts of rural Africa, but we rely heavily on dated anthropological accounts of these systems in order to understand them. Are we generalizing too much about the nature of customary laws? How much do we really know about the realities of contemporary customary land tenure?
- Many of the participants have emphasized the importance of off-farm livelihood options and technological advancement. An example of a 'success story' of economic transformation was Malaysia. However, others were skeptical of the relevance to Africa of such examples, and also concerned with the negative effects of urbanization and 'social engineering' which may be associated with such change. The key question is whether land-based (generally agrarian) development is working in Africa.

Possible ways forward and institutional links:

- The Blair Commission for Africa, as mentioned during a presentation and ongoing at the time of the conference.
- The UN/AU Conference on the Great Lakes Region – even if it may not deliver on all of its ambitious aims, it is opening the way for dialogue and action on the links between the environment and conflict.
- Moves are underway within UN-Habitat and UNHCR to emphasize the importance of housing, land and property rights in post-conflict situations, and UN personnel are eager to link up with organisations such as those present. There are also efforts to develop various decision-making and planning tools on land issues, though these have not yet been adapted to suit African realities. It is important that the UN and other major organisations benefit from the experiences of those present in order to enhance their approaches.

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- The Pan-African Programme on Land and Resource Rights (PAPLRR) is currently coordinated by ACTS, and provides a platform for information exchange and dissemination. Perhaps some participants may be interested in learning more about it.<sup>167</sup>

Following Mr. Huggins' suggestions, various participants from a range of countries made contributions. Several of them emphasized the need for more opportunities such as that represented by the conference, to meet other land, development and conflict specialists from the region in order to network and learn. Participants added the following specific comments:

- People are exposed to HIV/AIDS due to poverty, as a result of conflict. This issue needs more attention and research.
- There is good-quality research going on, but which is not widely recognized, due to constraints of funding, language, and institutional linkages, particularly in conflict-affected areas. Mechanisms for exchanging ideas are important so that information is disseminated to all the countries in question, and to the wider international community.
- There are many resettlement and 'villagisation' schemes in the region and therefore we need to produce a study on these issues. How can we expand discourse on land issues to incorporate issues like resettlement and repatriation?
- Land has more importance rather than its productive capacity. Other things have to be resolved not only through land reforms but also through political reforms – good governance is the key.
- ACTS work, which is based on 'scientific' approaches, is offering good policy recommendations. In order to ensure that these recommendations are implemented, they should work with organizations on the ground, and also influence larger organizations such as Oxfam GB [which was represented at the conference].
- ACTS has expanded their work from the national to regional level, and so other institutions should do the same. Due to processes such as migration, population displacement and globalization, land issues cannot solely be seen from a national perspective.
- We need to further examine the land issues arising in on-going peace processes, such as those being negotiated in Kenya (e.g. Sudan and Somalia peace talks)

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- The land rights of IDPs are a major issue in Africa. At the international level there are some laws and guidelines to address the issue, but they are not always applied. Dissemination of such guidelines is important – e.g. in the case of DRC there are also documents in Kiswahili. We should see how to apply international law to solve this problem once and for all so that it does not spread into the entire continent.
- Governments should adopt what was presented in this conference and sensitize other institutions on possible ways forward.

The Closing Address was delivered by Prof. Goran Hyden, a member of ACTS Governing Council and an authority on governance issues in East Africa and elsewhere. Prof. Hyden, who had attended much of the meeting, noted that the multi-disciplinary approach and the regional nature of the discussions enabled land issues to be seen within a broad context. This which is important, he emphasized, as land is at heart a governance issue, a political issue, as well as an economic and social issue. Prof. Hyden also praised the quality of the research and presentations made. He finished by making an observation of the role of a key crop – bananas— in the demographic and political formation of several areas within the Great Lakes region, including Rwanda, Burundi, and parts of Uganda. The success of the banana as a staple which can provide multiple crops per year, prevented out-migration from these fertile areas and may even have encouraged in-migration. It is perhaps ironic, he noted, that the areas of the old 'banana kingdoms' are perhaps victims of their own success – the current land pressure stems from the success of agriculture in the past. This example illustrates the need to analyze livelihood systems in order to fully understand the challenges faced today.

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### Notes

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1. This question was added in response to comments received during the course of the conference, and hence sub-questions were not formulated.
2. Considerable input and fieldwork data was also provided by Jenny Clover and Jean-Marie Gasana of the Institute for Security Studies (ISS).
3. See for example, Ndikumana, L. (2004) *Distributional Conflict, the State, and Peace Building in Burundi*. Paper presented at UN-WIDER Conference on Making Peace Work, Marina Congress Centre, Helsinki, June 2004
4. Reyntjens, Filip, *Burundi: Breaking the Cycle of Violence*. London: Minority Rights Group, 1995.
5. Hammar skjold, Mikael, *The Environment, Natural Resources and HIV/AIDS*. SIDA: Environment Policy Division, Dec. 2003.
6. Mullins, D., Drimie, S. (undated), *HIV/AIDS and Land: Kenya, Lesotho, Malawi & South Africa*, Paper presented at Social Aspects of HIV/AIDS Research Alliance Conference, 1 – 4 September, Pretoria, South Africa, available online at <http://www.sarpn.org.za/documents/d0000158/index.php>
7. See Kitevu and Lind, (2001) *Enhancing the Arusha Agreement: Environmental Aspects of the Burundi Peace Process*. Eco-Conflicts Policy Brief Vol. 1 No. 2, April 2001
8. UNHCR, *Burundi repatriation: Over 10,000 return during August*. Press Briefing, 3 Sept 2004. Available online through IRIN, [www.reliefweb.int](http://www.reliefweb.int)
9. See for example Kitevu and Lind, (2001) *op cit*, and International Crisis Group (2003) "Refugies et Deplaces au Burundi – Desamorcer la Bombe Foncier". *Africa Report* N°70, 07 October 2003
10. Felleson, M., *Prolonged Exile in Relative Isolation: Long-Term Consequences of Contrasting Refugee Policies in Tanzania*. (Sweden: Uppsala University Press, 2003).
11. See Protocol I, Article 7 (25c) and (19).
12. Hatungimana, A. and Ndayishimiye, J. (2003) *Politique de Rapatriement, de Reinsertion et de Rehabilitation des Sinistres ainsi que la Problematique de Gestion des Terres au Bunundi*. Observatoire de L'Action Gouvernementale. Bujumbura.
13. Nkurunziza, J. D. and Ngaruko, F. (2002) *Explaining Growth in Burundi: 1960 – 2000*, Hatungimana, A. and Ndayishimiye, J. (2003) *op cit*
14. Norwegian Refugee Council, Profile of Internal Displacement: Burundi. [www.idpproject.org](http://www.idpproject.org)
15. Jackson, D. (2003) *Twa Women, Twa Rights in the Great Lakes Region of Africa*. Minority Rights Group.
16. UN (2004) *Les Defis du Processus de Transition: Bilan Commun de Pays*. Draft 4. Bujumbura.
17. UN-OCHA (2004) *Internally Displaced Populations and Displacement Sites in Burundi*. March-April 2004
18. Ibid.
19. IRIN, "Burundi: Focus on Displaced Batwa." March 30 2004. [www.reliefweb.org/country/burundi](http://www.reliefweb.org/country/burundi).
20. Sabimbona, S. "The Problems of Displaced and Returnee Women Faced with Current Land Tenure Policies in Burundi" in *Women's Land and Property Rights in Situations of Conflict and Reconstruction*; United Nations Development Fund for Women (UNIFEM), 1998.
21. Interviews with Francois Ngendahayo: Minister of Repatriation, Reintegration and Reconstruction; Terence Nahimana, M. P.; and NGO personnel. Bujumbura, April 2004.
22. These NGOs include Global Rights and League ITEKA.
23. Most of the refugees who fled due to violence in 1988 returned to their hills within six months.
24. International Crisis Group (2003) *op cit*
25. Article 53 of the Law Code: Republique du Burundi (1986) *Loi Portant Code Foncier Du Burundi*. Loi No 1/008, 1 Septembre 1986

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26. Ligue ITEKA (2003) *Monitoring Des Repatriés*. Bujumbura, December 2003
27. IRIN (2004) *Special Report on Repatriation of Burundian Refugees*. Dar es Salaam. 15 Apr 2004
28. Interviews in Bujumbura and Nairobi, May 2004.
29. For example, in 1972 many ordinary families would have owned several hectares, but the average is much smaller today.
30. Hatungimana, A. and Ndayishimiye, J. (2003) *op cit*
31. See for example IRIN-BURUNDI, *Returnees Stage sit-in to demand food, shelter*, 8 April 2004.
32. See Oketch, J. and Polzer, T., "Conflict and Coffee in Burundi" in Lind, J and Sturman, K (eds.) *Scarcity and Surfeit: The Ecology of Africa's Conflicts*, ACTS Press, Nairobi / Institute for Security Studies, Pretoria. 2002, pp.85-156: 121.
33. Arusha Peace and Reconciliation Agreement for Burundi (Arusha: 28 August 2000), Article 1 (4).
34. Interviews with civil society organisations, Bujumbura, May 2004.
35. See Sabimbona, S., *The Problems of Displaced and Returnee Women Faced with Current Land Tenure Policies in Burundi*, Paper presented at the Inter-Regional Consultation, Kigali Rwanda, February 1998; The African Centre for the Constructive Resolution of Disputes (ACCORD), *Conflict Trends* Special Issue on Women, Peace and Security, No. 3 2003.
36. FAO and IFAD, *Rural Women's Access to Land and Property in Selected Countries* (Geneva: FAO, IFAD, 2003).
37. Initially, the *Mushingantahe* title was conferred upon the most deserving person(s) by a council of *Bashingantahe* at the end of a period of preparation, training and initiation to the function. See Ngorwanubusa, Prof J., "The Institution of *Bashingantahe* and the Universal Ideal of Mankind", in Multidisciplinary Study on the Revival of the Institution of *Bashingantahe* (Bujumbura: University of Burundi Press, 1991)
38. See International Crisis Group (2003) *op cit*
39. Arusha Peace and Reconciliation Agreement for Burundi (Arusha: 28 August 2000), Protocol 2, ch 1 article 9 para 8
40. Arusha Peace and Reconciliation Agreement for Burundi (Arusha: 28 August 2000), Chap 4 art 8 para i
41. Arusha Peace and Reconciliation Agreement for Burundi (Arusha: 28 August 2000), Chap 4 art 8 para h.
42. Chap 4 art 8 paras b, c, and k
43. Sources for this section include Nikumasabo, V, Ndaye, E., Nindorera, D. (2004) *Avant-Projet de Code Foncier: Text Integral, Version Provisoire*. Ministere de L'Aménagement du Territoire, de L'Environnement et du Tourisme. Bujumbura. Interviews with a member of the committee of the Project for Revision of the Land Code (Projet Du Code Foncier Revise); Anonymous (2004) *Compe Rendu Des Travaux De Validation De L'Avant-Projet Du Code Foncier Revise*. Mimeo. February 2004.
44. Nikumasabo, V, Ndaye, E., Nindorera, D. (2004) *Avant-Projet de Code Foncier: Text Integral, Version Provisoire*. Ministere de L'Aménagement du Territoire, de L'Environnement et du Tourisme. Bujumbura. Chapter 2, Section 1
45. Nikumasabo, V, Ndaye, E., Nindorera, D. (2004) *ibid*.
46. See Musahara and Huggins, forthcoming from Institute for Security Studies/ACTS Press
47. Interview with Director General, Ministry of Environment, Bujumbura, April 2004.
48. See International Crisis Group (2003) *ibid*
49. See Vlassenroot, K. and T. Raeymaekers, The Politics of Rebellion and Intervention in Ituri: The Emergence of a New Political Complex ?, in: *African Affairs*, Vol. 103, 2004, pp. 385-412.
50. Pottier, J., *Emergency in Ituri, DRC: Political Complexity, Land and Other Challenges in Restoring Food Security*, Paper presented at the FAO international workshop on 'Food Security in Complex Emergencies: building policy frameworks to address longer-term programming challenges', Tivoli, 23-25 September 2003.



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51. See Tilly, C., *The Politics of Collective Violence*, Cambridge University Press, Cambridge, 2003. For a discussion of boundary formation.
52. Mamdani, M., *Citizens and Subject. Contemporary Africa and the Legacy of Late Colonialism*, Princeton University Press, Princeton, 1996, p. 22.
53. Another consequence of this convention was that it cut through existing local Kingdoms and divided ethnic communities.
54. The Tutsi-minority of Rwandan descent (or Banyamulenge) living in South Kivu, however, was not entitled to the same rights. The fact that the Belgian colonial powers did not treat this minority in the same way as it did the minorities living in the Ruzizi Plain and North Kivu, resulted in an exclusion from the right to institute their own customary authority.
55. Law No. 73/21 of 1973, later amended and supplemented by Law No. 80/8 of 1980. See also Aide et Action Pour La Paix, *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, 2004.
56. Interviews with civil servants and FAO personnel, Bunia town, May 2004.
57. SIDA, *A Conflict Analysis for the Great Lakes Region*. Division for Eastern and Western Africa, Stockholm, 2004.
58. De Saint Moulin, L., L'évolution des densités de la population du Zaïre, in: *Revue Belge de Géographie*, vol. 58, no. 1-2, 1995, p. 95.
59. Schoepf, B.G. & C. Schoepf, *Food Crisis and Agrarian Change in The Eastern Highlands of Zaïre*, p. 11.
60. Laurent, P.J. and M. Tsongo, *Mouvements de populations, cohabitations ethniques, transformations agraires et foncières dans la Kivu montagneux*, Institut d'Etudes du développement, Louvain, 1996.
61. See e.g. Cogen, M. and Reyntjens, P., *The Great Lakes, Kivu and the Search for Peace*, 1999 (Unpublished paper available online at [http://allserv.rug.ac.be/~mcogen/KIVU\(mc\).html](http://allserv.rug.ac.be/~mcogen/KIVU(mc).html)). It should be remembered, of course, that conflict systems are by nature dynamic, and the epicenters of conflict change over time.
62. TSONGO, M., *Problématique d'accès à la terre dans les systemes d'exploitation agricole des régions montagneuses du Nord-Kivu (Zaïre)*, Louvain-La-Neuve, UCL, 1994.
63. Interview with Ngo personnel in Goma, July 2004; and Aide et Action Pour La Paix, *Les Conflits Fonciers et Les Mouvements Des Populations Dans Le Masisi: éviter la retour a la case de depart*, Aide et Action Pour La Paix, Goma, 2004.
64. Interviews with national and international NGOs, Goma, July 2004.
65. Interview with Director of North Kivu Province, Goma, March 2004.
66. Land tenure security is here understood as a function of the perceptions of local people, not just a legal or social 'objective reality'.
67. Bigagaza, J; Abong, C; and Mukarubuga, C. Land scarcity, distribution and conflict in Rwanda, in Lind, J and Sturman, K (eds.) *Scarcity and Surfeit: The Ecology of Africa's Conflicts*, ACTS Press, Nairobi / Institute for Security Studies, Pretoria. 2002, pp.85-156: 121.
68. Kairaba (2002) and Bigagaza et al (2002)
69. Because of the overwhelmingly rural nature of Rwandan society, this study concentrates on rural issues.
70. The government of Rwanda gives a figure of 937,000 people.
71. See Melvern, L. (2000) *A people Betrayed: The Role of the West in Genocide in Rwanda*. Zed books.
72. See e.g. University of Rwanda (forthcoming); De Lame, D. (1996) *Une Colline entre Mille Ou me calme avant le tempete: Transformations et Blocages du Rwanda Rurale*. Musee Royale de L'Afrique Centrale, Tervuren. The National Ombudsman reported that the majority of cases received concern land disputes and settlement issues (see Kazoora, Moses, 'Ombudsman Meets District Officials', *The New Times*, Kigali, 16-18 February, 2004)
73. Andre, C. (1998). The term *ibikingi* is preferred by some, such as Prunier (1994)

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74. In the process, the Twa were pushed from their customary homes and left with the remaining pockets of forest.
75. Prunier (1996)
76. Nkurikiyimfura, J-N., (1994) *Le Gros Betail et la Societe Rwandaise*, L'Harmattan, Paris, cited in Prunier (1994)
77. Uvin (1996) points out that throughout this entire period, and ever since, the *Bazungu* (Europeans) have effectively formed a 'fourth tribe' in Rwanda: and have consistently enjoyed the highest standards of living in Rwanda.
78. National Agricultural Survey, 1984, cited in Uvin, P. (1998)
79. Uvin, P. (1998)
80. See Uvin, P. (1998)
81. Interviews, Butare Province; and Bledsoe, D. (2004) *Trip Report for MINITERE*. RDI
82. Jones, L. (undated)
83. Baechler, G (1999)
84. Clay et al (1986)
85. Republic of Rwanda (2002) *A Profile of Poverty in Rwanda*. MINECOFIN, Kigali
86. See Republic of Rwanda Ministry of Lands (2004)
87. Interviews with CSOs, Kigali, April 2004, and Human Rights Watch (2001)
88. See SIDA (2004) *A Strategic Conflict Analysis for the Great Lakes Region*. SIDA Division for Eastern and Western Africa.
89. Kornfield et al (2002)
90. See e.g. Loevinsohn, M. and Gillespie, S. HIV/AIDS, Food Security and Rural Livelihoods: Understanding and Responding. *Renewal Working Paper* No. 2. IFPRI/ISNAR, 2003; Strickland, R.S. To Have and to Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa. Working Paper. International Centre for Research on Women/ The Global Coalition on Women and AIDS. June 2004.
91. Kamusiime et al (2002)
92. Kornfield et al (2002)
93. Loevinsohn and Gillespie, 2003
94. See e.g. documents by LandNet Rwanda, MINTERE/DFID, and Oxfam GB, available online at [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/africa\\_east.htm](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/africa_east.htm)
95. Andrea, Catherine. 2003. "Custom, Contracts and Cadastres in North-West Rwanda," in Tor A. Benjaminsen & Christian Lund (eds.), *Securing Land Rights in Africa*. London: Frank Cass. Cited in Bledsoe, D. (2004)
96. Blarel et al (1992)
97. Chemonics International Inc. (2002) *Rwanda: Quality and Environmental Management Incentives for Agricultural Trade*. USAID.
98. Frequent periods of famine have been recorded in the history of Rwanda: 1890, 1895, 1887-98, 1900-1903, 1904-08, 1909, 1910, 1911, 1912, 1916-18, 1921-22, 1924-26, 1927, 1928-29, 1943 (Bachler 1999 citing Nahimana 1993).
99. See for example Andre C., Plateau, J-P., (1995)
100. Section 5.1.2.3 of the draft land policy.
101. Draft Land Law, May 2004
102. See Bledsoe (2004)
103. Interviews, Kigali, April 2003; April 2004. The draft land policy also mentions "the increasing hold of the urban elite over rural land", though details of plot sizes are not provided.
104. Law to Supplement Book 1 of the Civil Code and to Institute Part 5 Regarding Matrimonial Regimes, Liberalities, and Successions. A concise summary and critique of the law is found in Kairaba, A. (2002)
105. Children of polygamous marriages will also be excluded from legal inheritance rights. Burnet, J. (2001)
106. Interview with land specialist in Kigali, May 2004.
107. Van de Gisien, N. and Andreini, M. (1997) Legal Quagmires: Wetland Use and Development in Rwanda and Zimbabwe, in *Law and Anthropology. International Lawbook for*

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- Legal Anthropology*. No 9; cited in Potteier, J. (2002)
108. Pottier, J (2002)
  109. This is not a reference to any particular ethnic group, but rather to a small group of powerful, politically connected individuals based largely in Kigali.
  110. Interview with Qassim Bursaliid, November 2004.
  111. More on Somali history is dealt with in Omar, O. M., The Scramble in the Horn of Africa: History of Somalia 1827-1977 (Mogadishu: Somali Publications, 2001).
  112. This is Richard Burton's explanation of Somalis, See Burton, R. *The First Footsteps in East Africa*.
  113. Under the EU/ACP's Lome Convention, Somalia enjoyed a 70,000mt duty exempt on banana exports.
  114. From old records of the former Ministry of Treasury and Finance, Somalia Democratic Republic, 1990.
  115. See more on the UN website, [www.unsomalia.net](http://www.unsomalia.net)
  116. 185,000 mt of charcoal is exported out of the country annually, reports the Mogadishu-based Center for Research and Dialogue (CRD), Mogadishu.
  117. To paraphrase Jon Unruh. See Unruh, J. "Land and Property Rights in the Peace Process" at [http://www.beyondintractability.org/m/Land\\_tenure.jsp](http://www.beyondintractability.org/m/Land_tenure.jsp)
  118. See The World Bank and The Carter Center (WBCC), From Civil War to Civil Society: the Transition from War to Peace in Guatemala and Liberia (Atlanta: the World Bank and The Carter Center, 1997).
  119. The *paysannat* system involved the distribution of plots to nuclear families in a process akin to villagisation. In most instances recipients were young men who did not have sufficient land of their own to establish a household. In *paysannat* houses were built in rows beside an access road and were backed by family fields. Families received a certificate 'guaranteeing' their rights to use the land as long as they met certain requirements that varied between regions. The Paysannats, so called, usually had individual holdings in addition to access to communal fields where cash crops were cultivated by the entire settlement (Olson 1994). The paysannat system is not considered the best land tenure system for Rwanda, given the mounting pressures from land scarcity and the growing population. The system promoted agriculture without integrating it with other important sectors of the rural economy, such as education.
  120. The programme closely resembled the *paysannat* and RDCs system and had some of the same intentions. These were to group the people in the expectation of intensification and modernisation of agriculture, and of facilitation of service provision.
  121. Author is a Research Fellow attached to the Centre for Applied Social Sciences (CASS), University of Zimbabwe.
  122. According to Utete Report (2003), around 11million hectares of land has been redistributed to some 135 000 smallholder and commercial farms.
  123. Section 16A of the Constitution was amended to the effect that:
    - "(1) In regard to the compulsory acquisition of agricultural land for the resettlement of people in accordance with a programme of land reform, the following factors shall be regarded as of ultimate and overriding importance-
      - 'a. Under colonial domination the people of Zimbabwe were unjustifiably dispossessed of their land and other resources without compensation
      - b. The people subsequently took up arms in order to regain their land and political sovereignty
      - c. People of Zimbabwe must be enabled to assert their rights and regain ownership of land and accordingly –
        1. The former colonial power has an obligation to pay compensation for agricultural land compulsorily acquired for resettlement through an adequate fund established for that purpose and
        2. If the former colonial power fails to pay compensation through such a fund, the Government of Zimbabwe has no obligation to pay such compensation for agricultural land compulsorily acquired for resettlement.

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- (2) In view of the overriding considerations set out in subsection (1), where agricultural land is compulsorily acquired for the resettlement of people in accordance with a programme of land reform, the following factors shall taken into account in the assessment of any compensation that may be payable –
  - (a) the history of the ownership, and occupation of the land
  - (b) the price paid for the land when it was last acquired
  - (c) the cost or value of improvements on the land
  - (d) the current use to which the land and any improvements on it are being put
  - (e) any investment which the state of the acquiring authority may have made with improved or enhanced the value of the land and any improvements on it,
  - (f) the resources available to the acquiring authority in implementing the programme of land reform
  - (g) any financial constraints that necessitate the payment of compensation in installments over a period of time, and
  - (h) any other relevant factor that may be specified in an Act of Parliament”
124. J. Barnett, *The Meaning of Environmental Security: Ecological Politics and Policy in the New Security Era*, Zed Books, 2001, p. 122.
125. Elliot, L., 1998: *The Global Politics of the Environment*, Macmillan Press Ltd, London, p.231.
126. Lubchenco, J, *Entering the Century of the Environment: A New Social Contract for Science in Science*, Vol. 279, 23 January 1998, p. 491.
127. Social capital looks at the social entitlements of an individual – the potential and actual resources associated with networks and relations that an individual can mobilise for his or her benefit. It cannot be assumed to always be something positive *per se*. Political capital determines the access to and influence on larger institutions in society, of how individuals are able to capture resources and political advantages through patronage networks. Ref: B. Korf, *Ethnicised entitlements in land tenure of protracted conflicts: The case of Sri Lanka*, 9th Biennial IASCP Conference on “The commons in an age of globalisation”, June 2002.
128. R de Satgé, *Livelihoods analysis and the challenges of post-conflict recovery*, Institute for Security Studies\*\*\*\*\* complete reference....
129. Khagram, S., Clark, W.C., and Raad, D.F. From the Environment and Human Security to Sustainable Security and Development”, *Journal of Human Development*, vol. 4, No. 2, July 2003.
130. Khagram, S., Clark, W.C., and Raad, D.F. From the Environment and Human Security to Sustainable Security and Development”, *Journal of Human Development*, vol. 4, No. 2, July 2003.
131. Oxfam in this paper will comprise a mix of Oxfam GB (which employs me) and Oxfam International. It is not worth differentiating in every case in a paper of this nature.
132. For further reflections on this, see Robin Palmer, ‘Land as a Global Issue – A Luta Continua’, Paper for Oxfam-Zambia Copperbelt Livelihoods Programme Land Workshop, 29-30 March 2004 [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/land\\_global\\_issue.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/land_global_issue.rtf)
133. In Burundi, we were waiting for peace to break out in order to undertake jointly with CARE some post-conflict research and campaigning on identifying linkages between land tenure rights and livelihood security, but suddenly withdrew from the country in 2003, a decision which many have found difficult to understand.
134. For more details, see Robin Palmer and Isobel Birch, *Zimbabwe: A Land Divided* (Oxford; Oxfam, 1992).
135. Susanna Smith, *Front Line Africa: The Right to a Future* (Oxford, Oxfam, 1990).
136. Robin Palmer, ‘Land Reform in Zimbabwe, 1980-1990’, *African Affairs*, **89**, 1990, 163-81.
137. [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/zim1980s.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/zim1980s.rtf)
138. 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,

## Conference Proceedings

- 6-21. [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/struglin.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/struglin.rtf)
139. [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/debatmoz.pdf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/debatmoz.pdf) and the Portuguese version [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/hanport.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/hanport.rtf)
140. Robin Palmer, 'Lawyers and Land Reform in South Africa: A Review of the Land, Housing and Development Programme of the Legal Resources Centre (LRC)', September 2001 <http://www.lrc.org.za/Publications/AcademicPapers.asp>
141. Catherine André and Jean-Philippe Platteau, 'Land relations under unbearable stress: Rwanda caught in the Malthusian trap', *Journal of Economic Behavior and Organization*, **34**, 1, 1998, 1-47.
142. She has subsequently risen to be Minister of State in charge of Land and Environmental Rehabilitation.
143. [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/kigali.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/kigali.rtf)
144. [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/rwanlp.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/rwanlp.rtf)
145. [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/lnrwams.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/lnrwams.rtf)
146. Independent Land Newsletter (June 2004), 'Angola', in *Land Reform Highlights in Southern Africa, 2003-4* [http://www.oxfam.org.uk/what\\_we\\_do/issues/livelihoods/landrights/downloads/ind\\_land\\_newsletter\\_sth\\_afr\\_june\\_2004.rtf](http://www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/ind_land_newsletter_sth_afr_june_2004.rtf)
147. Allan Cain, 'Livelihoods and the informal economy in post-war Angola', Jeremy Clover and Richard Cornwell (Eds), *Supporting Sustainable Livelihoods: A Critical Review of Assistance in Post-Conflict Situations* (Pretoria; Institute for Security Studies, Monograph **102**, August 2004), 87-101 (quotes here from 97-8). [www.iss.co.pubs/Monographs/No102/Contents.html](http://www.iss.co.pubs/Monographs/No102/Contents.html)
148. Numerous writers have made the point that women frequently lose gains they may have made during conflict (for example skills acquired in refugee camps) when peace comes and men reassert patriarchal control.
149. Johan Pottier, *Re-Imagining Rwanda* (Cambridge; Cambridge University Press, 2002), 200.
150. République Démocratique du Congo, Ministère de l'Agriculture, et de l'Élevage, du Plan, de l'Éducation nationale et de l'Environnement, Conservation de la nature, Forêts et pêche, *Monographie de la province du Nord Kivu*, Octobre 1998.
151. CONCERN/Goma en collaboration avec Vital KATEMBO MUSHENGEZI (CIDEV Consulting Goma), *Étude participative sur la vulnérabilité des communautés de cinq quartiers (Kiziball, Lac Vert, Ndoshoh, Mugunga et la chefferie de Bukumu/ Munigi) en zone péri-urbaine de Goma*, Goma, octobre 2004.
152. MATTHIEU, P., et MAFIKIRA TSONGO, « Enjeux fonciers, déplacements des populations et escalade conflictuelle », in *Conflits et guerre au Kivu et dans la région des grands lacs : entre tensions locales et escalade régionale*, Paris, Harmattan, 1999.
153. FRANK VAN ACKER, « La péménisation du haut-Kivu : opportunisme et droits fonciers révisités », in *L'Afrique des Grands Lacs*, Paris, Harmattan, 1998-1999.
154. Pour plus d'informations, lire AIDE ET ACTION POUR LA PAIX, *Ce qu'il faut connaître sur le sol en droit congolais*, Étude juridique n°1, Goma, janvier 2004, pp 3-4 ; ou surfer sur [www.db.idpproject.org/sites/idsurvey.nsf/wcountries/Democratic+Republic+of+Congo](http://www.db.idpproject.org/sites/idsurvey.nsf/wcountries/Democratic+Republic+of+Congo)
155. NAWEZI KATOK'A NAKAMBOL et alii, *Le problème foncier du Nord Kivu : de ses causes et de celles de l'inexécution des décisions de justice y relatives*, (s.l).
156. Aide et Action pour la Paix, *Les conflits fonciers dans le Masisi : obstacle au retour des déplacés*, Étude juridique n° 2, Goma, août 2004.
157. MUGANGU MATABARO, S., *Conservation et utilisation durables de diversité biologique en temps de troubles armés : cas du parc national des Virunga*, UICN - Programme Afrique Centrale, janvier 2001 ; INSTITUT DES PARCS NATIONAUX DU CONGO BELGE, *Enquête sur les droits des indigènes dans le Parc national Albert*, Bruxelles, (s.d).
158. TRINTO MUGANGU et Vital KATEMBO MUSHENGEZI, *Exploitation conflictuelle et non*

## Conference Proceedings

- durable par la gestion séparée des systèmes contigus et de conservation de la nature : cas du Mont Tshiabirimu auparc National des Virunga, RD Congo, UICN, Burkina Faso, juillet 2000.*
159. RACHEL ZOZO et ANDREW PLUMPTRE, *Impacts des établissements humains au Parc National des Virunga de 1996-2002 cas des secteurs Est et Centre* (2003).
  160. WWF/PEVi, *Rapport final de l'atelier de planification conjointe des actions de conservation communautaire dans les sites du patrimoine mondial en République Démocratique du Congo*, Beni, Province du Nord Kivu, 25-30juillet 2002 ; Christol PALUKU MASTAKI , *Effectivité de la protection de la biodiversité biologique en République Démocratique du Congo : cas du Arc national des Virungas*, Mémoire Université Libre des Pays des Grands Lacs (ULPGL), Faculté de Droit, Option Droit public interne et international, 2001-2002.
  161. RACHEL ZOZO et ANDREW PLUMPTRE, *op.cit.* ; Vital KATEMBO MUSHENGEZI, *Environmental impacts local livelihood and socio-econmic aspects of fishing enclaves in Virunga national park/ DRC*, Makerere University, Institute of environmental and naturel resources, September 2004.
  162. Nous avons eu plusieurs entretiens, au cours de mois de janvier et juin avec le Chef de Collectivité de Oso, M. Dunia Mufano et certaines personnes qui habitent et qui connaissent l'histoire de Masisi. Cette complexité a été réaffirmée par beaucoup de déplacés et les ONGs locales travaillant dans le Masisi et dans le Walikale.
  163. CONCERN/Goma en collaboration avec Vital KATEMBO MUSHENGEZI (CIDEV Consulting Goma), *op.cit.*
  164. FATAKI wa LUHINDI, D. A., *Les limites du principe de l'inattaquabilité du certificat d'enregistrement en droit congolais*, Editions du service de documentation et des études du Ministère de la Justice et Garde des sceaux, Kinshasa, 2004.
  165. Special thanks to the Chairperson: Prof. Johan Pottier; and Rapporteur: Ms. Wakio Seaforth
  166. Special thanks to Mr. Vincent Shauri (Chairperson); Ms. Wakio Seaforth (Rapporteur)
  167. See <http://www.acts.or.ke/paplr/index.htm>

## 6.0 References

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- Abdul-Jalil, Musa A. & Umbadda, Siddiq (1986): "Problems and Prospects of Horticulture in a Subsistence Economy: The Case of Wadi Kutum" in Wel, P. & Ahmed, A. M., *Perspectives on Development in the Sudan*, The Hague: Institute of Social Studies.
- Abdul-Jalil, Musa A. (1988): "Some Political Aspects of Zaghawa Migration and Resettlement", in Ibrahim, F. & Ruppert, H. (eds.)(1988) Bayreuther Geowissenschaftliche Arbeiten vol. 11 *Rural – Urban Migration and Identity Change: Case Studies from the Sudan*, University of Bayreuth (Germany).
- ACTS (1996). In land we trust: Environment, private property and constitutional change. Kenya.
- ACTS (2002). Scarcity and Surfeit: The ecology of Africa's conflicts. Kenya.
- Administrative Court of Zimbabwe, (2000) LA 212/2000; Minister of Lands, Agriculture and Rural Resettlement v Kashwao Private Limited, Harare.
- Administrative Court of Zimbabwe, (2000) LA 212/2000; Minister of Lands , Agriculture and Rural Resettlement v Kashwao Private Limited, Harare.
- Administrative Court of Zimbabwe, (2001), LA 2977/02, The Minister of Lands, Agriculture and Rural resettlement v David Charles Walker, Mutare.
- Administrative Court of Zimbabwe, (2001); LA 110/2001; The President of the Republic of Zimbabwe vs Jacobus Marthinus Erasmus, Harare.
- Administrative Court of Zimbabwe, (2001); LA 110/2001; The President of the Republic of Zimbabwe vs Jacobus Marthinus Erasmus, Harare.
- Administrative Court of Zimbabwe, (2001); The President of the Republic of Zimbabwe v David Bruce Clark, Harare.
- Administrative Court of Zimbabwe, (2003), Case No. LA1362/02: The Minister of Lands, Agriculture and Rural resettlement v Karori (Pvt) Limited, Mutare.
- Administrative Court of Zimbabwe, (2003), Case No. LA1362/02: The Minister of Lands, Agriculture and Rural resettlement v Karori (Pvt) Limited, Mutare.
- Bernstein, Henry (1994) "And now who plans its future?" land in South Africa after apartheid', in Hann, C (ed) *When history accelerates: essays on rapid social change, complexity and creativity*. London: Athlone Press, pp161-187
- Chitiyo, Tapera Knox 2000 Land, Violence and Compensation: Reconceptualising Zimbabwe's Land and War Veterans' Debate. [Internet]
- Cornwell, R.J., 2004: *The security situation in sub-Saharan Africa: An overview of 2004*, <http://www.trainingforpeace.org>
- Danish Ministry of Foreign Affairs (2001). Issue Paper – Donor response in conflict-affected countries: Implementation partnerships in Rwanda.
- Deininger, K. (2003). *Land Policies for Growth and Poverty Reduction*. World Bank, USA.

## Conference Proceedings

- Deininger, K. (2004). Land rights and administration in Africa. World Bank/UK. To be published).
- El Amin, Khalid A. (1999): Drought, Adjustments in Economic Activities, Changes in Land Use and Land Tenure Forms in Darfur, Sudan, DSRC Monograph Series No. 42, University of Khartoum.
- EU (2003). *EU Land Policy Guidelines: Guidelines for support to land policy design and reform processes in developing countries*.
- Fadul, Abduljabbar A. "Natural Resources Management for Sustainable Peace in Darfur", A Paper Submitted to a Workshop organized by U N University for Peace & University of Khartoum Peace Research Centre on Environmental Degradation and Conflict in Darfur (15/16 December 2004).
- Fairhead, J. (1992) 'Paths of Authority: Roads, state and the market in eastern Zaire', *European Journal of Development* 4 (2): 17-35.
- Fay, R. (2003). Microsoft Encarta Reference Library, Microsoft Corporation.
- Fobih, D. (2004). *The significance of secure access to land for the livelihoods and food security of Africa's farmers and the urban poor. Ghana (To be published)*.
- Fortes, M. & Evans-Pritchard, E. E. (1940): African Political Systems, Clarendon Press: Oxford.
- Government of Zimbabwe. Measures (Acquisition of Farm Equipment or Material) Regulations, Government Printers, Harare.
- Hajabakiga, P (2004). *Addressing land issues in post conflict setting: the case of Rwanda. UK (To be published)*.
- High Court of Zimbabwe, 2000, ZLR 503: *Commissioner of Police v Commercial Farmers Union*, Harare.
- Huggins, C; Ochieng', B.O. (2004). *Land Policy Reforms in Sub-Saharan Africa: Paradigms, Processes and Practicalities. ACTS/Kenya (To be published)*.
- Huggins, Chris (2004) 'Preventing Conflict through Improved Policies on Land Tenure, Natural Resource Rights, and Migration in the Great Lakes Region', *Eco-Conflicts* 2 (1): 1-4. ACTS, Nairobi, January 2004.
- International Federation of Surveyors Commission 7. (2004). *Land administration in post conflict areas: Proceedings of a symposium held by Commission 7 on 29-30 April, 2004 at the European UN-HQ, Palais des Nations, Geneva, Switzerland*.
- IUCN, *State-of-the-Art Review on Environment, Security and Development Cooperation*, For the Working Party on Development Co-operation and Environment, OECD Development Assistance Committee.
- Kairaba, A. (2001). *The relationship between State and Civil Society in a Post-Conflict Situation: a case of Rwanda. Ireland*.
- Kairaba, A. (2002). *Integrating land issues into poverty reduction: strategies and the broader development agenda. World Bank*.



## Conference Proceedings

- Kanji, N; Braga, C; Mitullah, W. (2004). *Promoting land rights in Africa: How do NGOs make a difference? IIED:UK.*
- Khagram, S., Clark, W.C., and Raad, D.F. July 2003: From the Environment and Human Security to Sustainable Security and Development, *Journal of Human Development, Vol. 4, No. 2*, Li, Tania Murray (2002) 'Local histories, global markets: cocoa and class in upland Sulawesi', *Development and Change* 33 (3): 415-437
- Kurwijila, R. (2004). *Securing rights to land: a priority for Africa. African Union Commission, Commissioner for Rural Economy and Agriculture (To be published).*
- League Iteka (2003) *Annual Report*. Bujumbura.
- Lorenzo, C. (2004). *Securing the Commons in an era of privatization: Policy and Legislative Challenges. IIED, UK (To be published).*
- Mackenzie, Fiona (2003) 'Land Tenure and Biodiversity: an exploration of the political ecology of Murang'a district, Kenya', *Human Organization* 62 (3): 255-266.
- Madhuku, L (2004): *Law, Politics and the Land Reform Process*, chapter in Masiwa (ed.): Post Independence Land Reform in Zimbabwe: Controversies and Impact on the Economy, Friedrich Ebert Stiftung and Institute of Development Studies, Harare, pp 124-146.
- Marongwe, N (2004): *Socio-economic Conflicts of the Fast Track Resettlement Programme*, chapter in Masiwa (ed.): Post Independence Land Reform in Zimbabwe: Controversies and Impact on the Economy, Friedrich Ebert Stiftung and Institute of Development Studies, Harare, pp 25-34.
- Mohamed, Yagoub Abdalla, "Land Tenure, Land Use and Conflict in Darfur", A Paper Submitted to a Workshop organized by U N University for Peace & University of Khartoum Peace Research Centre on *Environmental Degradation and Conflict in Darfur* (15/16 December 2004).
- Mohammed, Adam Azzain (2005): "The Rezeigat Camel Nomads of Darfur Region of Western Sudan: From Co-operation to Confrontation", *Nomadic Peoples*, (forthcoming).
- Moyo, S (1998): *The Land Acquisition Process in Zimbabwe (1997/8)*, UNDP Resource Centre, Harare.
- Musahara, H; Huggins, C; (2004). *Land Reform, Land Scarcity and Post Conflict Reconstruction: a case study of Rwanda. Issue Paper: Eco-conflicts, \_Vol. 3, No. ACTS:NBI.*
- Musahara, Herman and Chris Huggins (2004) *Land Reform, Land Scarcity and Post-conflict Reconstruction. A Case Study of Rwanda*. Nairobi: ACTS.
- National University of Rwanda (2003). *Overview of the land issues in Rwanda: a case study of Kibungo Province (To be published).*
- Newbury, C. (1988). *The cohesion of oppression: Clientship and Ethnicity in Rwanda, 1860-1960*. USA.
- O'Fahey, R. S. (1980): *State and Society in Darfur*, Hurst: London.
- Peters, Pauline (2004) 'Inequality and social conflict over land in Africa', *Journal of Agrarian Change* 3 (1/2): 269-314.

## Conference Proceedings

- Pottier, J (2002). *Re-imagining Rwanda: Conflict, Survival and Disinformation in the late twentieth century*. UK.
- Pottier, Johan (1999) *Anthropology of Food: The Social Dynamics of Food Security*. Cambridge: Polity Press.
- Pottier, Johan (2002) *Re-Imagining Rwanda: Conflict, Survival and Disinformation in the late 20th Century*. Cambridge, Cambridge University Press.
- Pottier, Johan and James Fairhead (1991) 'Post-Famine Recovery in Highland Bwisha, Zaire: 1984 in its context', *Africa* 61 (4): 537-570.
- Quisumbing, Agnes, Ellen Payongayong, J.B. Aidoo and Keijiro Otsuka (2001) 'Women's Land Rights in the Transition to Individualised Ownership: Implications for tree-resource management in Western Ghana', *Economic Development and Cultural Change* 50 (1): 157-181.
- Rakodi, C (2004). *Informal land delivery processes and access to land for the poor in Africa n Cities: Summary of main findings and policy implications*. University of Birlingham:UK (To be published).
- Ranger T.O. (1985): *Peasant Consciousness and Guerrilla War in Zimbabwe*, James Currey, London
- Republic of Rwanda (2004). *National Land Policy*. Ministry of Lands, Environment, Forestry, Water and Natural Resources (MINITERE) Rwanda.
- RISD (1999) *Land Use and Villagisation in Rwanda*. Rwanda.
- RISD (2001) Women and Land. Rwanda.
- Robins, S. (2003) 'Whose Modernity? Indigenous Modernities and Land Claims after Apartheid', *Development and Change* 34 (2): 265-286.
- Ronnfeldt, Carsten., 1997: *Environment, Poverty and Conflict, Preliminary Version*, The Fridtjof Nansen Institute & The International Peace Research Institute, Oslo.
- Rose, L.L. (2004). *Women's land access in post-conflict Rwanda: bridging the gap between customary land law and pending land legislation*. Texas Journal of Women and the Law, Vol.13.
- Runger, Mechthild (1987): *Land Law & Land Use Control in Western Sudan: The Case of Southern Darfur*, Ithaca Press: London.
- Rwanda Government (2001). *PRSP. Ministry of Finance, Rwanda*.
- Rwanda Government (2004). *National Land Law. Ministry of Lands, Rwanda*
- Rwanda Government (2004). *National Land Policy. Ministry of Lands, Rwanda*.
- Schoepf, B.G. and C. Schoepf (1987) 'Food Crisis and Agrarian Change in the Eastern Highlands of Zaire', *Urban Anthropology* 16 (1): 5-37.
- Schoepf, B.G. and C. Schoepf (1988) 'Land, Gender and Food Security in Eastern Kivu, Zaire', in J. Davison (ed.) *Agriculture, Women and Land: The African Experience*. Boulder, Co. and London: Westview Press.

## Conference Proceedings

- Schoepf, B.G. and Walu Engundu (1991) 'Women's Trade and Contributions to Household Budgets in Kinshasa,' in Janet MacGaffey (ed.) *The Real Economy of Zaire: The Contribution of Smuggling & Other Unofficial Activities to National Wealth*. London: James Currey, pp.124-51.
- Shellenberger, M. & Nordhaus, T., 2004: *The Death of Environmentalism: Global Warming Politics in a Post-Environmental World*, [www.thebreakthrough.org](http://www.thebreakthrough.org)
- Southall, Aidan W. (1954) 'Belgian and British Administration in Alurland', *Zaire* 8 (5): 467-86.
- Southall, Aidan W. (1956) *Alur Society: A Study of Processes and Types of Domination*. Cambridge: Heffer.
- Suliman, Mohamed (1999). *The Sudan: A Continent of Conflicts (A Report on the State of War and Peace in the Sudan)*, Swiss Peace Foundation, Institute for Conflict Resolution and SDC, Federal Department of Foreign Affairs.
- Supreme Court of Zimbabwe, (2000) Judgment No. S.C. 132/2000: Commercial Farmers Union v 1) The Minister of Lands, Agriculture and Rural Resettlement 2) The Minister of Local Government, Public Works and National Housing 3) The Minister of Rural Resources and Water Development 4) The Minister of Home Affairs 5) The Commissioner of Police 6) The President of the Republic of Zimbabwe.
- Supreme Court of Zimbabwe, (2001) Judgment No. S.C. 55/2001; *The Minister of Lands, Agriculture and Rural Resettlement vs Demetrios Nicholas Paliouras; The Minister of Lands, Agriculture and Rural Resettlement v Claire Kit Wiggill*
- Supreme Court of Zimbabwe, (2001) Judgment S.C. 111/2001; 1) The Minister of Lands, Agriculture and Rural Resettlement 2) The Minister of Local Government, Public Works and National Housing 3) The Minister of Rural Resources and Water Development 4) The Minister of Home Affairs 5) The Commissioner of Police 6) The President of the Republic of Zimbabwe v The Commercial Farmers Union.
- Tibaijuka, A.K. (2004). *Keynote address at the Royal African Society, Natural Resource Institute (NRI), and International Institute for Environment and Development (IIED) Conference on 8-9 November 2004, UK.*
- Tibaijuka, A.K. (2004). *Opening Remarks at the Royal African Society, Natural Resource Institute (NRI), and International Institute for Environment and Development (IIED) Conference on 8-9 November 2004, UK.*
- Toulmin, C.; Quan, J. (2000). *Evolving land rights, policy and tenure in Africa*. DFID:UK.
- Toulmin, C.; Quan, J. (2004). *Formalising and securing land rights in Africa: Overview paper. NRI/IIED, UK* (To be published).
- Tshuma, L (1997): *A Matter of (In) Justice: Law, State and the Agrarian Question in Zimbabwe*, SAPES Books, Harare.
- UN Security Council (2002). *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of DR Congo*. Date: 16 October 2002 ref S/2002/1146.

## Conference Proceedings

- UNEP, (2002) *Global Environment Outlook 3: Past, present and future perspectives*. UNEP, Nairobi
- United Nations, (2004) *A more secure world: Our shared responsibility*. Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, Washington D.C.
- US Embassy, Rwanda (2002). *Vulnerability Assessment Report. Rwanda*.
- Uvin, P. (1998). *Aiding Violence: The Development Enterprise in Rwanda*. USA.
- Vlassenroot, Koen (2002) *The Making of a New Order: Dynamics of Conflicts and Dialectics of War in South Kivu (DR Congo)*. Ghent: PhD thesis, Ghent University.
- Vlassenroot, Koen and Chris Huggins (2004) 'Land, Migration and Conflict in Eastern D.R. Congo', *Eco-Conflicts* 3 (4): 1-4. Nairobi: ACTS.
- Webster, C. C. and Wilson, P. N. (1980). *Agriculture in the Tropics*, Longman: London.
- Whitehead, Ann and Dzodzi Tsikata (2003) 'Policy discourses on women's land right in sub-Saharan Africa', *Journal of Agrarian Change* 3 (1/2): 67-112.
- Zimbabwe, Government of (1996): *Constitution of Zimbabwe*, revised edition, Government Printers, Harare.
- Zimbabwe, Government of (2000): *Statutory Instrument 148A of 2000, Presidential Powers (Temporary Measures) (Land Acquisition) Regulations*, Government Printers, Harare.
- Zimbabwe, Government of (2001): *Rural Land Occupiers (Protection from Eviction)*, No. 13/2001, Government Printers, Harare.
- Zimbabwe, Government of (2003): *Statutory Instrument 273A of 2003, Presidential Powers (Temporary Measures) Acquisition of Farm Equipment or Material) Regulations*, Government Printers, Harare.
- Zimbabwe, Government of (2004); *Land Acquisition Amendment No 1*, Government Printers, Harare.

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