

Introduction

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CONFLICTS IN AFRICA

For many people the word 'Africa' has become synonymous with conflict and the various stages of conflict. There are continuing civil conflicts; countries in danger of descent into conflict; countries facing renewed conflict; countries economically, socially or militarily affected by neighbouring conflicts; countries directly involved in neighbouring conflicts; and countries in transition from war to peace.

Over the past three decades, more than seventy wars have been fought in Africa. The total magnitude of armed conflict increased in the period from the 1950s to the 1980s, then declined sharply after the Cold War ended in 1991, and during the 1990s fluctuated between escalation and de-escalation. There are now a growing number of new conflicts in Africa that are increasingly violent and protracted. At the beginning of the new century, armed conflicts afflicted 16 of Africa's 54 countries, and the average duration of conflicts being fought was 22 years, while their median duration was 17 years.¹ This new generation of violence is particularly threatening, not only for the countries involved, but also more broadly for regional and international security. More importantly, peace is often fragile, making it difficult to apply the term 'post-conflict' to many countries – in most cases there is a precarious balance between renewed conflict and sustained peace. Increasingly countries are caught in a 'conflict trap': emerging from conflict but maintaining only a fragile, 'negative' peace; caught in an underdevelopment-conflict cycle. In fact, of the countries that are in their first decade of post-conflict peace, an estimated half will fall back into conflict within the decade.

Whereas internal conflict has been previously seen as a 'political' issue to be addressed by the government concerned, the importance of multi-stakeholder responses is increasingly being acknowledged. The African Union, for example, is trying to tackle the thorny issue of national sovereignty and ensure that internal conflicts are addressed through regional strategies where necessary. Different kinds of actors have become involved in working on conflict issues. Even institutions which have traditionally focused on one aspect only – for example, humanitarian aid – are finding it necessary to adopt a more comprehensive approach to conflict analysis and conflict prevention. Donor organisations increasingly place conflict-prevention or conflict-resolution at the heart of their strategies; non-governmental organisations working in conflict-affected areas are attempting to make connections between 'humanitarian' responses, which are often based on delivery of relief supplies, and

'development' activities which seek to be more sustainable; the United Nations response to conflict is now tailored not only to addressing violence through diplomacy and peacekeeping operations, but to operationalising structural prevention strategies, which, in the words of the Secretary General, Kofi Annan, "address the political, social, cultural, economic, environmental and other structural causes that often underlie the immediate symptoms of armed conflicts."²

The most striking common factor among war-prone countries is their poverty – the poorest one-sixth of humanity endures four-fifths of the world's civil wars. The strong correlation between conflict and poverty includes deep inequality, unequal growth and the unequal distribution of resources. Inequality between groups is one of the foremost causes of violent conflict. Structurally, these may be related directly back to the allocation and distribution of resources, including the scarcity of land and the compromising of land tenure rights. Access to or distribution of properly managed, protected and controlled natural resources can augment livelihood strategies. While it is empirically difficult to demonstrate that either poverty or environmental factors, in and by themselves, are strong determinants of conflict, the 'loss of livelihoods' constitutes a missing link in explanations of current conflict patterns.

THE NEXUS BETWEEN LAND AND CONFLICT

Land lies at the heart of social, economic and political life in most of Africa, but across much of the continent there is a lack of clarity regarding property rights, and all over land tenure is contested. The founder of ACTS, Prof. Calestous Juma, argued in 1996 that, "the way land use is governed is not simply an economic question, but also a critical aspect of the management of political affairs. It may be argued that the governance of land use is the most important political issue in most African countries."³

Over the past two decades the links between environmental stress and conflict have generated a substantial body of research. Much of the early work, such as that undertaken by the Toronto Project on Environment and Acute Conflict, focused on environmental stress as a cause of conflict. 'First wave' discussions focused on the nature of security and the role of environmental scarcity and degradation. In the 'second wave' of research, attempts were made to establish a link between environment and conflict. More recently, researchers have set out to examine the ways in which environmental scarcity and stress interrelate with other drivers of conflict or other factors that influence whether conflict arises. The increasing interest in recent years in the links between land access issues and violent conflicts is related to, first, the explosion of research into complex humanitarian emergencies and second to convergence of views amongst many stakeholders on key aspects of land policy reform.⁴

African governments, donor agencies and international experts are increasingly in agreement that, first, a range of technical approaches may be taken to improve land tenure security, with titling being just one among many options; second, the rights of land users other than the head-of-household (particularly women) are often at risk through formalisation and individualisation of land tenure, which requires legal and other measures to address the problem; third, customary tenure systems should not be ignored or 'abolished' (even if this were possible) but rather should be incorporated into formal systems, through codification or other means; and fourth, some form of decentralisation is necessary in order for land laws to be implemented in locally appropriate ways.⁵

Recent optimism about the potential of land reform stems from the conceptual ground that has emerged from a wide range of debates between diverse actors. In general, having learnt lessons from the failure of past reforms that put absolute faith in the power of titling and the free market, on the one hand, or socialist-inspired social engineering, on the other, there has been a reassessment of conventional wisdom regarding land tenure.⁶ Governments increasingly acknowledge that their power to effectively allocate or even manage land is limited, and are hence decentralising many functions to local-level institutions, and providing informal customary rights with some form of legal legitimacy. This is illustrated by changes in approaches by major organisations such as the World Bank, which has recently started to recognise that land rights and land tenure systems at the local level, which are evolving and innovating across the continent, must not be marginalised. The Bank, in a recent report, takes a more pro-poor stance than previously, and emphasises the importance of gender issues, recognition of customary rights rather than external attempts at 'formalisation', the need to pilot land policies, and the central role of multi-stakeholder dialogue.⁷

Naturally however, there remain many controversies and arguments over the appropriateness of different policies to different countries. For example, while a formidable toolkit of diverse approaches to securing land rights has been developed (incorporating technological innovations, participatory approaches, and hybrid models) these are sometimes ignored due to political, time-related or financial pressures, as well as the particular biases of those in charge of policy reform. In addition to the debates over 'technical' aspects, there are wider differences over the extent to which African countries are able to exercise self-determination in policy-formulation (due to the involvement of 'development partners' in supporting and/or influencing the exercise) and the degree to which civil society groups 'participating' in policy-formulation are really able to have an influence, rather than merely being part of a window-dressing exercise. Despite consultations and research into challenges facing specific areas or specific social groups, there is sometimes a perception that 'standardised' solutions modelled on Western theories of property rights are still being favoured in some countries.⁸

Conflict and land policy are both complex subjects that are characterised by great levels of uncertainty, controversy, and political sensitivity. The nexus of conflict and land as an area of concern has been explored through various projects, programmes and conferences in recent years. A brief look at some major publications and initiatives illustrates some of the recurring themes.

Whilst noting that the issues have to date not received the amount of research necessary, the first major World Bank publication on land issues since 1975, *Land Policies for Growth and Poverty Reduction* (2003), acknowledges that “deprivation of land rights as a feature of more generalised inequality in access to economic opportunities and low economic growth have caused seemingly minor social or political conflicts to escalate into large-scale conflicts”, giving the examples of Burundi, Côte d’Ivoire, Rwanda and Zimbabwe, among others.⁹ The emphasis on inequality is perhaps a new departure for the Bank, which had previously championed market-based approaches which did little to ensure equality. The report identifies three main areas of investment in order to manage land-related conflicts: the development of incentives for settlement of conflicts, especially by informal means; legal validation of agreements reached by informal means, in order to prevent ‘institutional shopping’ between formal and informal mechanisms; and a system of conflict monitoring and information dissemination, including setting up legal aid centers for the poor.

The Organisation for Economic Co-operation and Development (OECD) DAC guidelines on *Helping Prevent Violent Conflict* take land-related sources of conflict very seriously, making a number of references to land issues. The document notes that dispossession of land is a common cause of population displacement (itself a destabilising factor) and identifies localised and regional scarcity of productive land and changes in land tenure systems as contributing factors to violent conflict over resources. In terms of post-conflict reconstruction, it identifies land tenure and administration as a critical area for action, and argues that resolution of disputes related to land-holdings must be addressed as rapidly as possible once violence has subsided. In addition, it emphasises that demobilisation and reintegration of combatants cannot be effective unless combatants are able to gain access to land. Several chapters in this volume support these points, and offer specific recommendations of how these principles can be implemented in a number of African countries.

USAID’s guidelines on *Conducting a Conflict Assessment* note that land is an important tool in violent political struggles between elites, and a complementary toolkit for understanding conflict over land has been developed.¹⁰ The toolkit emphasises land tenure insecurity as a cause of conflict, and also identifies inequality as an issue. Conflict entrepreneurs are blamed for sometimes manipulating land issues to further personal gains; the Rwandan genocide is provided as an example. The need to improve land access in many countries is mentioned, and the report points out that large-scale land redistribution has occa-

sionally been successful in the past (providing examples of Japan and Taiwan), but more often leads to greater instability because of the degree of land expropriation necessary for such programmes. It suggests that a variety of other approaches are more appropriate, including market-based measures, improved land rental markets, and allocation of public lands. The risks represented by population displacement due to conflict or resettlement programmes are described, and importance of addressing land issues in post-conflict situations is emphasised. Key recommendations are for the establishment of property or claims commissions to manage competing claims, and support for informal and community-based conflict resolution systems. In common with most such reports, the document stresses that there are no uniform solutions, and that multi-sectoral approaches are needed.

UN-HABITAT and the Food and Agriculture Organisation of the United Nations (FAO) have both started to develop conceptual frameworks for understanding the impacts of conflict on land administration, and addressing these impacts in the post-conflict context.¹¹ Experts working with UN-Habitat have argued that post-conflict situations are inherently unstable, and hence require a different approach to that taken in 'normal' circumstances; soft-system approaches and holistic analyses of the 'macro-environment' are recommended.¹²

There is increasing recognition that often, land issues in post-conflict contexts are being tackled by the international community and national institutions in ad hoc ways, rather than according to systematic guidelines and normative frameworks. For example, in Kosovo, the United Nation's Mission in Kosovo (UNMIK) had a broad legislative mandate and exercised this in order to establish a Housing and Property Directorate Claims Commission, which adjudicates in property disputes.¹³ Conversely, in East Timor, the United Nations Transitional Administration in East Timor (UNTAET), despite having the power to administer public and private land, did not implement substantive legislation on land issues and was undermined by poor coordination, as a result of lack of political will in some quarters. As a result, the numerous instances of unauthorised occupations of land in east Timor were not adequately addressed.¹⁴

At a recent meeting on Housing, Land and Property Rights in Post-Conflict Societies, experts in this field including UNHCR and UN-HABITAT personnel emphasised the urgent need for the UN and other agencies to develop such systematic policies.¹⁵ Improved convergence by donors and international development agencies on best practice in conflict-sensitive land policy design is also necessary.

This brief review has indicated some of the themes which often reoccur in discussions on land and conflict. First, in some countries, lack of access to land is a major livelihood constraint for many people. This is the case particularly in areas suffering marginalisation as a consequence of political and geographic factors. Where major local grievances exist, poverty can be an underlying reason for recruitment into armed groups

as militia members or members of regular forces are able to sustain themselves by looting.¹⁶ Land scarcity, in the absence of off-farm livelihood options, is therefore often a structural cause of conflict in parts of Africa, as discussed in the chapter on eastern Democratic Republic of Congo in this book.

In addition to these structural aspects, land can also be a proximate cause of conflict: for example, when land disputes, tenure insecurity, or inequality in land access are recognised as major grievances, which (often in combination with other factors) can motivate violence. The Ituri territory in North-eastern DRC may provide an example of this, as discussed in this volume. The nature of mediation and dispute resolution mechanisms are important in determining whether parties involved in a conflict will resort to violence: if they are seen as biased or ineffective, violence is likely. Again, Ituri provides an example of the undermining of such mechanisms through political and military interference. In Burundi, local mechanisms have also been compromised but still provide hope if they can regain credibility.

We should remember, however, that not all land-scarce countries, or areas with unequal land ownership, suffer conflict. Research suggests that the key determinant of whether violence will occur is not the extent of grievance in any given society, but rather the forms of social and political organisation which enable 'boundaries' to be formed and people mobilised for violent ends.¹⁷ Unfortunately, land access disputes often have ethnic dimensions, as land use patterns and customary land tenure systems have an ethnic basis; hence, the frequency of disputes involving farmers and pastoralists, and the use of the 'ethnic card' by conflict entrepreneurs.

In addition to the 'legalistic' aspects of land access and control, there are other dimensions – economic, political, social and spiritual – which are equally important. For example, land may often be significant as a means of production, an area where political authority is expressed and taxes may be raised (the concept of 'territory'), a means by which families and individuals maintain social status and also as a source of feelings of ancestral 'belonging', as ancestors are buried within traditional territories.¹⁸ Land is by definition an emotional issue, therefore, and linked to cultural and other values.

Camilla Toulmin has joined others in pointing out the growing interest in land not only for farming, but also as a speculative asset. "Those who have made money in business or politics increasingly want to establish landed estates, for status as well as financial gain. There is every likelihood that poorer groups will lose out again."¹⁹

Control over natural resources affects land uses and often, commercial development of natural resources involves individualisation of communal (indigenous) rights, with loss of access resulting for some. This indicates an important aspect which is often forgotten: land rights problems are not purely 'home-grown'. Land issues may be 'embedded' within other struggles; for example, over mining rights, protected areas, or

hunting concessions.²⁰ Where there is ethnic and regional competition about scarce resources, it is usually the result of opportunistic politicisation of identity. In 'wars of abundance', belligerents rely on their capacity to exploit and commercialise resources, so such wars become self-financing, self-sustaining and therefore not readily open to mediation. Furthermore, the way that many of these wars are financed highlights that they develop within a 'globalised' war economy in which the industrialised countries play a role: most of the world's civil wars in poor countries involve a struggle for control of natural resources that are ultimately sold to wealthy countries.²¹ The global economy has a huge influence in the modern climate of economic liberalisation. Global forces can impinge on local land use directly, when foreign investment results in the purchase of land for commercial enterprises, for example, or indirectly, when global markets or donor conditionalities stimulate national prioritisation of cash crop production and hence local land use patterns.

Land issues are therefore much broader than usually encapsulated in the mandate of a ministry for lands, or a land policy. A range of other 'sectors' and activities have important links with or impacts on land use and tenure, including agricultural policies, natural resource management systems, policies on urbanisation, infrastructure development, non-agricultural employment creation, internal and international migration, and water management. This suggests the need for a multi-sectoral approach and considerable inter-ministerial coordination, which is not always achieved, hence the frequency of inter-sectoral institutional conflicts which have impacts at the local level. Decentralisation can provide useful mechanisms to ensure that natural resource management strategies can be responsive to local needs. Both Rwanda and Burundi plan to decentralise many land administration functions, as described in this volume. However, it is not a panacea, and communities at the local level can also be affected by the same class - and ethnic-based struggles that affect national level governance.

In many countries, there are important issues around citizenship status and migration, often stemming from events in the colonial era. In southern Africa, these are often related to the economic dominance and control over prime land exerted by white settler communities, as well as the land rights of migrant farm-workers. In the Great Lakes region, these are rooted in colonial and pre-colonial migrations, the arbitrary delineation of borders by colonial powers, and post-colonial migration and forced displacement. These are volatile issues, being handled differently in various countries, and the chapters that follow provide examples of experiences from Zimbabwe and eastern DRC.

The increased focus within the international humanitarian, development and security communities on the relationships between land and conflict, and the improved conceptual understandings that have resulted, are therefore important. However, there are risks associated with such research, and they should be clearly articulated. First, conflict is a multi-causal phenomenon, which cannot be understood solely from

a single perspective. Most importantly perhaps, research on land-related issues tends to concentrate attention in the 'local' or 'national' levels – perhaps with regional tangents taken into account. The 'global' aspects of the conflict are often forgotten. Africa, as much as any other continent, is subject to the forces of globalisation, and has indeed been massively affected by foreign influences for more than a century.

RURAL LAND TENURE

The case studies in this book focus on rural land tenure. This is appropriate because, despite the very high rates of urbanisation seen in some countries, African society remains overwhelmingly rural. In Rwanda for example, some 90% of the population live in rural areas. In Burundi, urban zones cover less than 1% of the total land area. Livelihoods are overwhelmingly reliant on smallholder agriculture, livestock production, fishing, and other forms of subsistence production. Access to land (though not necessarily ownership of land) is a vital underpinning of these livelihoods. Poverty and dependence on agriculture are, at a general level, closely related in Africa.²² The rural populations of the countries discussed in this volume are amongst the poorest communities in the world.

It is true that livelihood strategies are changing in many areas, with off-farm and particularly urban forms of income (including remittances from absent family members) becoming more important. However, access to land (whether through communal or individual claims) remains the centerpiece of most family asset-bases. In addition, while urbanisation and limited industrialisation is impacting some areas, others have been affected by down-sizing of the civil service (sometimes as part of the structural adjustment programmes of international financial institutions) or by the recession or near-collapse of the formal economy, as in Zimbabwe. In such areas, access to land is an important part of subsistence strategies which are implemented in order to cope with economic shocks.

Land tenure encompasses a bundle of rights:²³ land tenure is usually divided into the rights to use, enjoy the fruits of, and dispose of (or alienate, sell) property. In other words, there is a proprietary aspect (the right to 'hold' land) and also a management aspect. These aspects (with their innumerable sub-components) may or may not be the responsibility of the same person(s). Land tenure rights may be held by individuals or groups, depending on the rules of the system in operation. Security of land rights, and clear definition of interests over land, are the most important aspects of any tenure system. The ways in which security is achieved, and indeed, the local perception of security, may vary. Several chapters in this book note that different kinds of arrangements may provide security from different kinds of challenges from different actors, including the state.

Land access is a wider-ranging term, with several possible definitions, that go beyond the strict legal definitions of land tenure. For the purposes

of this volume, we adopt a single useful and succinct definition: “the right or opportunity to use, manage, and control land and its resources. It includes the ability to reach and make use of the resource.”²⁴

Land rights, like all property rights, are socially-mediated entitlements. They establish a relationship between the holder of property and a certain set of resources. The legitimising norms and institutions of societies (whether state or non-state, formal or informal) maintain this relationship over time, and defend it against trespass or other interference. Land tenure is therefore culture-specific, “because it is determined by the history, social organisation and land-use patterns of a given community which reflect, among other things, the ecological characteristics of the region.”²⁵ Because of the numerous norms and regulations that make up property rights, they are, in the end, “relationships between people”.²⁶ The stability of social institutions is therefore important for the security of existing rights to land. This explains the tenacity of customary forms of tenure, despite the fact that statutory law has largely ignored, or even outlawed, them for decades.

One of the defining features of the land rights situation in Africa is the dichotomy between customary land tenure arrangements – which dominate the African landscape – and the statutory systems based largely on western models, which dominate in urban and particularly high-value areas. As has been pointed out by others, western systems tend to equate property rights with individual private ownership. In other words, the right to exclude others from land is a key feature of statutory systems, whereas African customary arrangements tend to be more inclusive.²⁷ According to some, including Johan Pottier in his contribution to this volume, customary systems do not define each person’s ‘rights’, as we usually understand the term. Instead, “rights held by individuals are the fruit of negotiations in which the local land authorities act as arbiters; customary law is by nature ‘procedural’ and not codified.”²⁸ Because customary systems and statutory law (and religious law, in some cases) operate simultaneously in most African countries, a process of ‘forum shopping’ often occurs, whereby people use both systems to try to claim land rights. The richer and more powerful tend to benefit from this phenomenon and the overall result tends to be an undermining of customary regimes. In many areas, tenure insecurity which results from the duality of systems takes two forms: first, a limited number of cases of open disputes over particular areas and jurisdictions, and second, a more generalised chronic situation where lack of tenure security may limit investment and constrain livelihoods, but does not represent an immediate threat to occupancy and use.²⁹

In general, land tenure systems generally become more clearly defined when population density increases and land becomes scarce. This theory is known as induced innovation, or the evolutionary theory of land rights, and has generally developed from the work of Ester Boserup.³⁰ For example, shifting cultivation gradually becomes untenable as population increases, and individual plots are demarcated. Over

time, use rights enjoyed by the household are extended – they gain the right to change the types of crops grown – and eventually, they may be able to sell the land and hence alienate it altogether from the customary system. Some analysts argue that this has often occurred separately from processes of formalisation of tenure, though it is often linked to increasing market penetration of traditional societies, and other aspects of ‘modernisation’.³¹

This trend is often seen as a rational, and hence inevitable, process. The expansion of economic opportunities causes a rise in property values, which encourages a more precise definition of property rights. In practice, however, it is often problematic and is characterised by struggles at the local level. In particular, the individualisation of customary rights may lead to a loss of land access by some, even as particular individuals gain increased tenure security. In some areas, land is subject to multiple and overlapping uses (such as hunting, gathering, livestock-keeping, and farming), by different kinds of users (such as individuals, households, kinship groups) of different status (sometimes termed primary, secondary and tertiary users), at different times.³² The consequences of such a process for women has created a particular controversy, with some experts objecting to the idea that women are always treated as ‘secondary’ or ‘subordinate’ users of land according to African customs. In chapter three, Johan Pottier looks at the concept of evolutionary land tenure systems and the ways in which gender issues are addressed, or sometimes marginalised, in such theories. What is clear, however, is that the individualisation of land previously held under such complex use regimes often results in some users losing their access and use rights.

Because of the increasing frequency of disputes which may arise due to tensions between customary systems and the requirements of the market, it is sometimes asserted that the state has a responsibility to offer greater protection to rural producers through formal mechanisms such as titling. Others are of the belief that titling is neither necessary nor effective, and instead, the best option is a combination of strengthening of local institutions and reliance upon local normative structures, which themselves are evolving to suit the changing rural economy.³³

The rapid pace of change in land tenure systems in Sub-Saharan Africa cannot be disputed. Processes stemming from colonialism, population growth, technological development and the penetration of the global capitalist economy into the periphery have had profound effects.³⁴ We are reminded that:

“customary land tenure is an organic system, which responds to a range of internal and external pressures... thus, the process of codification and integration [of customary and statutory systems] must not assume that land tenure is static or immune to change and should allow for a degree of flexibility and customary legal development.”³⁵

What is very much in question is the precise nature of change in a particular area, and to what extent the increasing individualisation of land tenure actually corresponds to the end of custom and the dominance of market principles. The debate may be most intense in those areas where land scarcity is most in evidence, and/or market penetration is most complete. Rwanda is a case-in-point, as discussed by Pottier, and Musahara and Huggins in this volume.

This is very far from being a neutral, value-free debate. In numerous countries, administrators and experts have declared the death of custom, or arbitrarily decreed that customs were 'abolished', thus privileging their own capabilities, as holders of particular 'external' technical knowledge or positions of law-making power. For the West African region, it has been postulated that the desire by governments to take a stronger role over land ownership and allocation was motivated by a 'hidden agenda': first to gain the ability to use land to negotiate and strengthen alliances between key groups and political allies; and second, to undermine the power of customary leaders who represent a rival to state power at the local level.³⁶ We would suggest that this dynamic also characterises the state's approach to land in other parts of the continent, from colonial times to the present.

Many influential commentators have insisted that custom continues to have a role, and the need to 'integrate', 'harmonise' or otherwise reconcile customary and statutory tenure regimes has become a common theme in recent years. One challenge to such an approach is the great variety in customs as practised across a single state. Another is that some customary leaders have used their position to sell land held under custom, and have hence undermined the very system that they are intended to safeguard. In the DRC, as demonstrated in this volume, some customary authorities scape-goated particular communities for the alienation of land, in a process that eventually led to large-scale conflict.

AIMS AND METHODOLOGIES OF THE RESEARCH

Both ACTS and ISS have looked in detail at the relationships between environmental change, natural resource management, and violent conflict in Africa. Some key findings have been published in a volume entitled *Scarcity and Surfeit: the Ecology of Africa's Conflicts*.³⁷ The volume includes studies from six Sub-Saharan countries affected by competition for resources including fresh water, agricultural and grazing land, columbium-tantalite (coltan), and oil. This publication contributed to the rising profile of natural resources issues as a focus of conflict prevention and conflict management programmes. In the year following the publication of this work, it became apparent that the main challenge was no longer to persuade policy-makers that 'environmental sources of conflicts' existed. Instead, it was to provide them with tools and specific recommendations on how they could address particular kinds of

conflict. It was therefore decided that follow-on work should have a narrower focus, and hence the decision to look at land rights issues. The initial focus was also on Burundi, the DRC and Rwanda, through a research project entitled Preventing Conflict through Improved Policies on Land Tenure, Natural Resource Rights, and Migration in the Great Lakes Region, and supported by the Conflict Pilot Activity Fund of the United States Agency for International Development's Regional Economic Development and Services Office for Eastern and Southern Africa (REDSO/ESA).

Once the three core case studies were complete, other country experiences were examined for purposes of comparison. Nonetheless, this book examines a wider range of circumstances and countries, and the case-studies were purposely selected to represent situations where land disputes and localised land scarcity has been a cause of ongoing conflict (such as the DRC) as well as where post-conflict reconstruction has been followed by attempts to design conflict-sensitive land policy (as is the case in Angola and Rwanda). The book covers a lot of ground; but it does not always attempt to provide extensive definitions of all terms and concepts utilised, nor is it intended as a guide to land policy reform. The conceptual terrain involved is so vast that such a task would require an entire volume to itself, and detailed case-studies could not be included. For background, readers are directed to previous ACTS publications (such as the influential volume *In Land We Trust*) or publications by other organisations, such as the Pan African Programme on Land and Resources Rights.³⁸

The three chapters on the Great Lakes countries are based on field-work and a variety of secondary resources, including grey literature collected within the specific countries under consideration. Interviews were also conducted with refugees and internally displaced households in eastern DRC and Burundi, and with householders and local mayors in Rwanda. In all cases, government officials, civil servants, and members of national and local non-governmental organisations and community-based organisations were interviewed. In-country representatives of the Food and Agriculture Organisation of the United Nations, Jesuit Refugee Service, and other international organisations were also consulted and provided valuable data.

In general, the strategy of the research was to seek to engage with governments rather than merely criticize from the sidelines. For this reason, a senior government official contributed anonymously to one of the chapters, and summaries of the research findings were presented or distributed to senior civil servants for comments. Criticism of the perceived negative aspects of policy development or implementation has consciously been balanced with acknowledgement of the positive, lest governments feel alienated and less willing to consider the recommendations.

Because of the sensitivity of some of the research findings, drafts were peer reviewed by several experts within the region. The findings were

also presented at a conference in Nairobi in December 2004, and comments were received from the Director of Lands in Rwanda, the President of the Commission Nationale de Réhabilitation des Sinistrés (CNRS) in Burundi, and representatives from the Congolese and Burundian embassies in Nairobi, as well as local and international specialists.

Research on such subjects is bound to be controversial to some degree, but the authors and editors hope that the overall result is balanced and representative.

CHAPTER SUMMARIES

In the first chapter, Chris Huggins and Benson Ochieng discuss the paradigms, processes and practicalities of land reform in post-conflict Sub-Saharan Africa. They argue that the process of policy-making in countries recovering from war differs greatly from that experienced during times of peace and political stability. This is because, even after the signing of a peace treaty, countries can continue to be affected by violence, population movements, and other forms of social and political instability. Also, post-conflict governance in the current African context, where conflicts can only rarely be decisively 'won' by a particular warring party, is characterised by the formation of transitional power-sharing governments. At the time of writing, former enemies find themselves attempting to cooperate on political projects in countries such as Burundi, Sudan and Somalia.

The authors use the examples of Eritrea and Zimbabwe to demonstrate how the avowed policies of two victorious rebel/liberation movements – the Eritrean People's Liberation Front (EPLF) and the Zimbabwe African National Union (ZANU) – were to a great degree abandoned after they came to power. In Eritrea, this was due to a failure to form an inclusive culture of governance, which has resulted in a continuation, to some degree, of the centralised and undemocratic planning which characterised the Marxist Derg regime that they overthrew. In particular, the importance of pastoralist land tenure systems has not been recognised, which may be linked to the lack of support received by the EPLF from some pastoralist groups during the civil war.

In Zimbabwe, the ruling party also ended up continuing to implement many colonial policies, and for some years, the black landowning lobby was large enough to block effective land reform. There was a convergence of interests between white farmers and some members of the black political elite. Indeed, when spontaneous land occupations occurred, the government at first refused to support the 'squatters'. It was only when ZANU-PF found itself in a political crisis that it started to support and 'legalise' the occupations, in order to gain political capital and use the ensuing disorder to repress opposition supporters.

The chapter also argues that in Eritrea and Zimbabwe existing customary authorities have been supported or marginalised at different times, for essentially political reasons. In Eritrea for example, they were

important to the EPLF's struggle, but later came to be seen by the government as a threat to central authority. Such tendencies are especially important because across Africa, customary systems are increasingly being hailed as vital aspects of effective land administration.

In his chapter on 'customary land tenure' in Sub-Saharan Africa today, Johan Pottier concentrates on this issue, asking the apparently simple question, "what exactly do we (and others) mean by the term 'customary land tenure'?" He demonstrates that the reality is much more complex than is often implied by the pre-packaged ideal referred to again and again in policy documents and academic debates. The historical evolution of customary land tenure systems, and the changes to the conceptualisation of those systems, is investigated, through examples from across the continent. The author asserts that the reality of pre-colonial customary land tenure was varied, complex, and based largely on negotiation and flexibility. There was a degree of struggle or contention involved. This reality, he argues, was then poorly, partially, and clumsily translated into particular, static, concepts of customary tenure, during the colonial period. The example of what is now the Democratic Republic of Congo serves to illustrate the way in which colonial powers viewed custom through Western conceptual lenses, and hence distorted customary norms to suit their own ideas of 'ownership'. In the words of Toulmin and Quan, African customary systems were often treated with a degree of contempt by colonial administrators; where they proved useful to colonial rule, they were utilised, but only after they had been, "re-cast to fit the roles required... by the colonial government."³⁹ The case of the DRC is particularly important in showing how "this recasting strengthened the position of traditional chiefs and conferred powers upon them often much in excess of their pre-colonial rights over land and people." Pottier characterises the result as the creation of a ruthless 'traditional' structure capable of extorting labour for minimal payment, and also of alienating communal land for personal gain. This set the stage for conflict after independence, as described by Vlassenroot and Huggins in a later chapter.

Pottier goes on to interrogate the idea of 'land rights' in reference to custom. Focusing on the 'land rights' of women, he draws on research from Ghana and Burkina Faso in order to demonstrate that access and control over land is negotiated between men and women, not just at the household level, but also within a dynamic framework formed by the interaction of kinship institutions, statutory laws, and changing economic patterns.

Finally, the example of the new draft land policy in Rwanda is used to show how concepts of customary systems – including mythologised, 'remembered' systems – are of vital importance in policy-making. While lack of information on the nature of land tenure in some areas can limit the ability of policy to articulate effectively with current custom, it is at least necessary to recognise custom and acknowledge regional differences in order that policy resonates with local experiences.

Jenny Clover's chapter on human-centred environmental security is introduced with a brief overview of human concerns about the environment and the various ways in which the relationship between nature and society have manifested themselves over the centuries. Until the 1960s most environmental problems were defined in scientific and technical terms with little attention to political, social or economic impacts. Environmentalism continued, however, to be associated with a rather narrow concept of conservation. Concerns were still driven primarily by scientific and economic analysis, although scientific developments and growing public concern about environmental degradation and its impacts, along with a sense of planetary crisis, resulted in a rise in the number and scope of environmental concerns on the international agenda. It was with the development of political ecology – which is an exploration of holistic links between humans and nature at large and the causative processes and relationships across those environments – that greater integration of environmental and development thinking emerged in the late 1980s. Nevertheless, it has only been over the last decade that alternative thinking and research about nature and the environment has developed that reflects a more socio-culturally embedded analysis of nature, and to a growing interest in the new field of 'environmental security'.

Attention is given to the 'greed and grievance' debates which provide an analysis of the nexus between environmental factors – abundance or scarcity of natural resources – and conflicts. Such concerns have been high on the security agenda since the 1970s, but this she equates with an 'environment-and-security' debate which offers only a partial broadening of the security agenda. What is to be secured is synonymous with environmental threats to the state. Rejecting this narrow, state-centric concept, Clover calls for the adoption of a more comprehensive approach which takes into account the wide range of causal factors of such conflicts, as well as an understanding of how social and political framings are woven into both the formulation of scientific explanations of environmental problems, what drives and sustains environmentally related conflicts, and the solutions proposed to reduce these.

It is on the basis of this approach that land-related conflicts are explored, using a Sustainable Livelihoods framework. Both colonial era laws as well as reforms to land laws adopted by post-colonial governments reveal the social, political and economic factors that shape land policy. This is reflected in an analysis of the socio-political and historical forces that have shaped the political economy of southern Africa. Issues of governance are central to a sustainable livelihoods framework, as witnessed in the important role that the range of formal and informal institutional and organisational bodies play in land policy and administration. Attention is drawn to matters of gender, of natural resource management, and the regulation and administration of land rights. In conclusion, Clover emphasises the value of working towards the goal of sustainable security, which integrates human, state and environmental security

Part Two of the book looks at country specific studies – three of the chapters examine the Great Lakes region, and a fourth looks at Angola, which, like Rwanda, is in a post-conflict phase of reconstruction and development.

Since independence in the 1960s, parts of the Great Lakes region have experienced intermittent but depressingly predictable episodes of political strife, armed conflict and population displacements. In the 1990s, these reached their nadir, with the horrors of the genocide in Rwanda, and the advent of an enduring cross-border problem of armed militiamen and former government soldiers, based in the Democratic Republic of Congo (DRC), who not only threatened Rwanda's borders but also preyed incessantly on the local population. However, the terrors of 'ethnic' pogroms and massacres were not confined to that part of the region; Burundi has long been host to a situation termed 'slow-motion genocide' by some observers, with rebels and government troops inflicting massive losses against an impoverished population, while in the Ituri district of eastern Congo, large-scale ethnic cleansing has occurred, accompanied by numerous human rights abuses.

There has been progress towards peace in all the countries of the region, most recently in Burundi and the DRC. However, sporadic violence continues in some areas, particularly in eastern DRC. Recent events around the borders of these countries, and statements by national leaders, remind us that achieving peace demands a constant effort. The authors assert that effective land tenure systems and management of disputes over land will be an important part of this effort.

In their chapter on land, migration and conflict in eastern DRC, Vlassenroot and Huggins note that access to land has hitherto been largely ignored as a cause of conflict, with some notable exceptions. Instead, emphasis within the 'resources war' discourse has been on the exploitation of valuable resources such as gold, coltan (columbium-tantalite), and cassiterite. However, they argue that in eastern DRC, 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. Second, in the case of Ituri, 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. Third, the present conflict has radically changed land access patterns, through a number of mechanisms including forced displacement and 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. This is especially the case because land was turned from a source of conflict into a resource for the perpetuation of conflict.

The authors trace the development of current land tenure systems and land use patterns from pre-colonial times until the present, with a focus on the ways in which the customary chiefs became key players in the political economy of land ownership. They then provide case studies of the local political dynamics around land from two conflict-affected areas in eastern DRC: the territories of Masisi, in the volatile north Kivu province, and Ituri, which until the late 1990s was generally fairly stable. Fieldwork and anthropological literature demonstrates, however, that contested access to land has been a recurrent theme in Ituri. As elsewhere in the region, the capacity for local leaders to mediate and contain such disputes was undermined by outside forces – first by the Belgian authorities, and more recently by the Uganda People’s Defence Force. The ensuing violence has led to the displacement of hundreds of thousands of people, which has in turn generated many more problems over rights to land, housing and property rights.

In light of the complexity of the problems and the great variety of locally-specific micro-dynamics of conflict, Vlassenroot and Huggins stress that there are no simple, uniform ‘solutions’ which can simply be imposed from the top down. Nevertheless, they do identify a number of recommendations for policy-makers at various levels. Perhaps the most significant is the call for a commission on land ownership to be established and charged with the responsibility to analyze the dynamics of land access nationwide. The commission, they assert, should conduct extensive consultations, involving real community input from rural areas, and its findings would be brought to the parliament for enactment of a new policy on land allocation and distribution.

In their study of land reform, land scarcity and post-conflict reconstruction in Rwanda, Musahara and Huggins focus on the Land Law and Land Policy which were finalised in 2004. Rather than taking a purely legalistic viewpoint however, they emphasise that analysis of policy in Rwanda – as elsewhere – should be contextualised through reference to wider debates about governance and conflict resolution in the country. They suggest that some questions around land tenure and administration, which are often portrayed as purely ‘technical’ issues, actually have such major social and economic implications that they should be treated primarily as political. They therefore proceed with a discussion of the nature of conflict in Rwanda, noting that there is significant disagreement over the most fundamental aspects of governance in the country – while some commentators note with approval that Rwanda has emerged from the post-genocide reconstruction phase and has successfully held multiparty elections, others emphasise the limitations of democracy in the country and warn that without significant ‘opening up’ of the political space, long-term stability of the country may be at risk. This chapter provides a historical perspective on the development of current land tenure systems, and also cites data from government and other sources on the extent of land scarcity in the country. The recurrent problem of food insecurity is also discussed.

The authors highlight seven aspects of the policy which are particularly important from the perspective of pro-poor policy formulation, and the need to maintain stability in the country and encourage national unity and reconciliation: consolidation of land; access to land for the landless; land registration and different meanings of tenure security; the abolition of customary systems; inequalities in land ownership; villagisation; and land use and environmental protection.

Based on the analysis of the draft land policy, a number of recommendations are made for short term actions (such as amendment of the policy in specific ways, and piloting of the policy in different areas) and long term strategies, which should include more transparent dialogue within the country on governance and post-conflict reconstruction; the creation of a more effective mechanism of advocating for land rights as well as engaging government over policy issues, including capacity-building of local NGO networks to advocate for the land rights of the poor; and the development of a workable strategy to promote non-farm activities, based on realistic projections of the possibilities involved, rather than an overly optimistic model.

In their chapter on land access and the return and resettlement of IDPs and Refugees in Burundi, Prisca Mbura Kamungi, Johnstone Summit Oketch and Chris Huggins also emphasise the need for a historically-informed perspective. The conflict in Burundi is often presented as 'Hutu vs Tutsi', but the national dynamics have always been far more complex than that, and have become even more intricate since the peace agreement and the formation of a transitional government. For a very long time, political power and state control has been in the hands of a small elite group. In pre-colonial times, the monarchy were in absolute control, and the princes or *Ganwa* held authority over land and other issues. Since independence, a small group within the Tutsi community from a particular part of the country, has sustained its hold on power through repressive policies. Efforts by this small Tutsi elite to retain political control and domination over associated patronage networks, and violent counter-strategies of the Hutu political and armed groups precipitated ethnic massacres and retaliatory radicalism marked by acts of genocide. One of the main results of the violence that has plagued Burundi for decades are the multiple waves of population displacement which have occurred with cyclic regularity. Because of the subsequent re-allocation by the government of land left 'vacant' by refugees (against a backdrop of general land scarcity) the return of refugees has resulted in disputed claims over particular plots of land. It is not only refugees who have found themselves dispossessed of land: because of illegal appropriation of land in both urban and rural areas (especially the most valuable or productive zones), many people, both Hutu and Tutsi, continue to suffer great injustice.

The chapter examines the Commission Nationale de Réhabilitation des Sinistrés (CNRS), which is tasked with ensuring that the housing, land and property rights of internally displaced households and

refugees are properly managed. The difficulties experienced by the CNRS illustrate some of the challenges of institution-building and effective action during periods of transition where former enemies cooperate within single institutions.

The chapter concludes that while the potential problems of refugee return are significant, land must not be seen as just a 'refugee issue'. Land ownership issues are widespread, complex and politically sensitive, and are related to demographic challenges, the limitations of the legal and policy regimes, as well as decades of poor governance. The new draft land code has measures for decentralisation of many land administration functions, which have the potential for improving local level governance if they can be prevented from 'capture' by particular elite interests. However, as the draft code does not seem to include maximum land ownership ceilings or other mechanisms for improving equity, there are concerns that a lot of land may change hands to the detriment of those who are disadvantaged as a result of poverty, gender issues, or the distorting effects of war.

In her chapter on land reform in Angola, Jenny Clover contextualises Angola's land reform within the southern African context. This is a region characterised by historical and racially based inequities, liberation struggles in which the call for the redistribution of land played a prominent role, and which has more recently been witness to an increase in land grabbing and the enclosure of customary lands by powerful indigenous elites and corporations at the expense of the poor.

Emerging from one of the most protracted and brutal wars of the twentieth century, Angola is beginning the difficult process of rebuilding the country's shattered physical and social infrastructure, and reintegrating the millions of people who fled their homes. A closer examination of Angola's history of land tenure uncovers the potential for recovery that exists in this sector, and also highlights the threat that land in post-war Angola poses for becoming a major source of conflict. Since before independence in 1965 Angola has been struggling with issues related to land access, equitable distribution of land and tenure security. "The legislative history of Angola, especially during the last 40 years, has resulted in a succession of injustices against the rights of traditional communities and the sustainability of their economies."⁴⁰ It is only now, as peace spreads across the country, that attention is being focused on addressing land-related inequalities that still prevail, and building sustainable livelihoods. This is especially in the light of conflicts that have developed, in both rural and urban areas, during the past five years. During war, land is worth little in commercial terms, but now that security issues are no longer paramount, the appropriation and regularisation of natural resources in strategic areas has become a fundamental concern.

The history of land tenure in Angola is traced, starting with the pre-colonial period through to the draft Land Act and draft Territorial Planning Law of 2002. The chapter then explores the potential fracture points facing the country during its current period of post-conflict

normalisation, especially in the light of returnees (refugees and internally displaced peoples), recent land-related conflicts, most notably those experienced by pastoralists in the Gambos region of Huila Province, tensions around peri-urban and urban land issues, and the importance of restoring food security and agricultural productivity. In December 2004 the Land Act was passed into law, ending the period of debate about the pros and cons of the proposed law. In the absence of a land policy, the prerequisites for such a critically important policy framework are presented. Particular attention is given to concerns that have been raised about the capacity of state structures to perform the devolved responsibilities envisaged by the new land law. The potential for Angola to move from conflict to sustained development is greater than ever before. Should an elite be allowed to strengthen its position while poor communities stagnate, inequality will deepen, increasing the risk of conflict in a country already facing huge problems of poverty and unequal development. The chapter concludes with the question of what the potential may be for the emergence of localised violence in the face of the challenges of broad-based recovery.

ENDNOTES

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